

Title: Policing and Crime Bill: Making powdered and vaporised alcohol part of the definition of alcohol under the Licensing Act 2003. IA No: HO0221 Lead department or agency: Home Office Other departments or agencies:	Impact Assessment (IA)
	Date: 21 December 2015
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
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Summary: Intervention and Options	RPC Opinion: GREEN
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Cost of Preferred (or more likely) Option

Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of the Business Impact Target?	Measure qualifies as
Not Known (N/K)	NK	Not known	Yes	Qualifying regulatory provision

What is the problem under consideration? Why is government intervention necessary?

Powdered alcohol was authorised for sale in the USA in March 2015, although as far as we are aware it is not yet on sale in the USA or anywhere else. The Government is not currently aware of any plans to sell it in the UK. Alcohol is defined in the Licensing Act 2003 as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor”. The inclusion of powdered alcohol in the legal definition of alcohol would put beyond doubt that the sale of powdered alcohol is to be regulated under the Licensing Act 2003. If this is not made clear, and powdered alcohol arrives in the UK, there would be a risk that it may be sold by unlicensed premises and to persons under the legal limit to consume or purchase alcohol. Vaporised alcohol is already sold in a few licensed premises as a novelty product. The Government is not aware of it being sold without a licence. The licensed trade and licensing authorities are treating vaporised alcohol in the same way as liquid alcohol, but the Government and Industry wishes to clarify the legal position.

What are the policy objectives and the intended effects?

The purpose of the current system of alcohol licensing is to promote four fundamental objectives; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. The policy intention of the current proposal is to ensure that the four fundamental objectives continue to be met despite innovations in alcohol products and that society, especially children, are continually protected from the dangers of alcohol products. The intended effect of taking action on powdered and vaporised alcohol is to protect the public through ensuring that these objectives continue to be delivered.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing. This would leave an ambiguity in the law which may result in powdered and vaporised alcohol being sold by unlicensed premises.

Option 2: Ban powdered and vaporised alcohol. This would make the sale of powdered and vaporised alcohol illegal.

Option 3: (preferred and proposed option) Clarify the law to ensure that powdered and vaporised alcohol are regulated under the Licensing Act 2003. This is a proportionate approach which will deliver the Government’s aim of protecting the public.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** It is expected to be reviewed after five years as with other licensing reforms. It may be reviewed sooner if there is a specific reason to do so (namely if powdered alcohol comes onto the market and there is evidence that it is more harmful/used in more harmful ways than liquid alcohol).

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Summary: Analysis & Evidence

Policy Option 2

Description: Ban powdered and vaporised alcohol. This would make the sale of powdered and vaporised alcohol illegal.

FULL ECONOMIC ASSESSMENT

Price Base Year 2015/16	PV Base Year 2015/16	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: Not Quantified

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by 'main affected groups'

It is extremely challenging to estimate the impact of any regulation on the market for powdered alcohol, largely because it is not clear whether, and if so how, the market might develop in the absence of regulation. Similarly, vaporised alcohol is a very new market and its sale is not widespread. As such, the costs cannot be reliably monetised.

Other key non-monetised costs by 'main affected groups'

By prohibiting the sale of powdered alcohol, a ban would prevent any benefit which would have accrued to business under the do nothing option. This is not possible to estimate since, as explained above, the baseline position regarding supply and demand cannot be determined. Enforcing a ban would come at a cost to law enforcement agencies although this additional workload cannot be estimated. A ban would also prevent the benefit gained by consumers of these products. Given there is no evidence to suggest these forms of alcohol are more harmful than liquid alcohol, a ban would be a disproportionate curtailment of consumer choice.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by 'main affected groups'

As explained above, without a sense of the baseline position in the absence of regulation, the benefits cannot be monetised.

Other key non-monetised benefits by 'main affected groups'

It could be argued that a ban on powdered and vaporised alcohol is the most effective way of delivering on the licensing objectives and preventing any negative impact on public safety. However, if these products act as a substitute for liquid alcohol and only displace alcohol consumption, it is unlikely that a ban would present benefits over regulation.

Key assumptions/sensitivities/risks

Discount rate (%)

This option may lead to poor quality counterfeit products being created in lieu of not having properly licensed powdered and vaporised alcohol. This would also limit the benefits that responsible consumers and businesses would derive from the products.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO? Measure qualifies as	
Costs: N/Q	Benefits: N/Q	Net: N/Q	Yes	N/A

Summary: Analysis & Evidence

Policy Option 3

Description: Making powdered and vaporised alcohol part of the definition of alcohol under the Licensing Act 2003.

FULL ECONOMIC ASSESSMENT

Price Base Year 2015/16	PV Base Year 2015/16	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised costs by 'main affected groups'

It is extremely challenging to estimate the impact of any regulation on the market for powdered alcohol, largely because it is not clear whether, and if so how, the market might develop in the absence of regulation. Similarly, vaporised alcohol is a very new market and its sale is not widespread. As such, the costs cannot be reliably monetised.

Other key non-monetised costs by 'main affected groups'

Businesses who wish to sell **only** powdered alcohol and not any other alcohol products would have to apply for an alcohol licence. The fees range between £100 with an annual charge of £70 (for non domestic rateable value up to £4,300) to £635 with an annual charge of £350 (for non domestic rateable value of £125,001). As no business has attempted to sell vaporised alcohol without an alcohol licence, the impact of regulating it is expected to be minimal. There would be no additional costs to law enforcement agencies as enforcement would be subsumed into the functions already carried out under the Licensing Act 2003.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	N/Q	N/Q	N/Q

Description and scale of key monetised benefits by 'main affected groups'

As explained above, without a sense of the baseline position in the absence of regulation, the benefits cannot be monetised.

Other key non-monetised benefits by 'main affected groups'

This option would present benefits to the public and protect children by placing controls on the time and location of alcohol sales in addition to ensuring only those aged over 18 can buy it. Regulation focuses on preventing harmful sales while still retaining the benefits of responsible sales. There are also benefits to licensing authorities and businesses from avoiding any potential legal challenges and associated costs which could result from the current ambiguity in the law.

Key assumptions/sensitivities/risks

Discount rate (%)

Based on consultation with the Association of Convenience Stores, we anticipate the number of businesses who would seek to sell only powdered alcohol and would therefore be affected by this option to be very small. This cannot be known for certain given that there is no other similar product currently available. It is possible that this option would lead to increased non-compliance through businesses not holding an alcohol licence and selling these products. This would lead to further prosecutions for not holding an alcohol licence (for which a fine of up to £20,000 and/or a prison sentence of up to six months can be imposed).

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: N/Q	Benefits: N/Q	Net: N/Q		

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

Alcohol licensing

1. The Licensing Act 2003 (the 2003 Act) regulates the sale of alcohol. Licensing Authorities (LAs) i.e. district and borough councils or unitary councils, administer the system of licensing under the 2003 Act. LAs must carry out their functions with a view to what is appropriate to promote the statutory licensing objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm). To ensure the continued promotion of the licensing objectives, an effective regulatory framework is necessary, but it also needs to be proportionate so that it does not affect responsible drinkers and businesses disproportionately.
2. Alcohol is defined in the 2003 Act as “spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor”. This definition focuses on alcohol as a liquid and therefore it is not clear whether powdered alcohol is covered by the 2003 Act. There is a case to be made that vaporised alcohol is already covered by the Act – given that it is dispersed liquid – but it is important to remove ambiguity and ensure that this is made explicit.

Powdered alcohol

3. Powdered alcohol marketed under the name ‘Palcohol’¹ was approved for sale in the USA in March 2015 by the Alcohol and Tobacco Tax and Trade Bureau. The product is not yet for sale in the USA, and it is not clear when it will be available to buy, but the website states that the company is working on its production. It is being treated in the same way as other alcohol products in America. There has been no suggestion of powdered alcohol being sold in the UK, but the website marketing Palcohol is inviting interest from distributors in countries outside the USA.
4. Palcohol is the only company the Government is aware of which is intending to produce powdered alcohol. The ‘Palcohol’ website states that the powdered alcohol would be sold in sachets containing the correct quantity of powder to make the equivalent of one shot (25ml) of, for example, vodka or rum when it is diluted with the appropriate quantity of liquid.
5. Although powdered alcohol is not available for sale in the UK, HMRC have confirmed that they would treat powdered alcohol in the same way as liquid alcohol for the purposes of paying duty. Section 1 of the Alcohol Liquor Duties Act 1979 defines spirits as: “Spirits of any description which are of a strength exceeding 1.2%, any such mixture, compound or preparation made with spirits as is of a strength exceeding 1.2% or, liquors contained, with any spirits, in any mixture which is of a strength exceeding 1.2 %.” The website marketing powdered alcohol “palcohol”

¹ Company website: <http://www.palcohol.com/>

claims that the strength of each portion of powdered alcohol is the equivalent of “one average mixed drink”.²

Vaporised Alcohol

6. Vaporised alcohol is sold mainly as a novelty and has not been sold widespread across the UK. One bar in London sells this (50 minutes of time in their vapour area costs £12.50)³ and will only be open until January 2016; a department store chain sold it during October in 2015 in some of its stores⁴.
7. As far as we are aware, when it has been sold, it has been with an alcohol licence, and businesses and licensing authorities have treated it as liquid alcohol in terms of licensing. However, it is unclear if the current definition of alcohol does in fact cover vaporised alcohol.

A.2 Groups Affected

8. **Non- Licensed premises** in England and Wales (for example shops and cafes) would not be eligible to sell powdered and vaporised alcohol if it were regulated in line with other alcohol products.

If it remains unclear whether or not powdered and vaporised alcohol is classed as alcohol under the 2003 Act, there is likely to be confusion about whether unlicensed premises can sell it.

9. **Licensed premises:** Licensed premises may wish to sell powdered and vaporised alcohol under their existing premises licence.
10. **Members of the public** are protected from the effects of irresponsible alcohol sales through regulation provided via the 2003 Act. The 2003 Act contains a number of criminal offences relating to the sale and supply of alcohol, including the offence of selling alcohol to a child under the age of 18.
11. **Licensing Authorities** are responsible for the administration of the 2003 Act.
12. **The Police** enforce the 2003 Act, working in partnership with LAs and other responsible authorities such as a trading standards and environmental health. If powdered alcohol becomes available to buy, Home Office Science will undertake tests in relation to alcohol detecting breathalyzers.

A.3 Consultation

Within Government

13. We have notified the Food Standards Agency which is responsible for considering whether or not the use of powdered alcohol should be authorised under the EU Novel

² “Frequently asked questions” <http://www.palcohol.com/f.a.q..html>

³ <http://bompasandparr.com/projects/view/alcoholic-architecture1/>

⁴ <http://www.harveynichols.com/news/2015/09/24/hendricks-vapouriser-tour/?store=liverpool>

Foods Regulation, which defines “Novel food” as newly developed, innovative food or food produced using new technologies and production processes. They have said that there is insufficient information about what powdered alcohol is, how it is produced, and its intended use in order to decide the applicability of (EU) novel foods legislation.

14. We have also contacted DEFRA who are not undertaking any work on powdered alcohol. HMRC have confirmed that they would treat powdered alcohol the same way as other forms of alcohol for tax purposes. The Scotland Office has been notified of the Government’s intention to amend the 2003 Act in respect of England and Wales; alcohol licensing is a devolved matter in Scotland and licensing is regulated under the Licensing (Scotland) Act 2005.

Public Consultation

15. Consultation on bringing vaporised and powdered into the definition of alcohol was undertaken with key partners via two workshops in summer 2015. One included the Local Government Association, Institute of Licensing, licensing officers from seven licensing authorities, and representatives of the national policing lead on alcohol and the Police and Crime Commissioner lead on alcohol. The second workshop included industry partners such as the British Beer and Pub Association, Association of Convenience Stores, Wine and Spirits Trade Association and Association of Licensed Multiple Retailers. Our workshops did not elicit significant concern or practical difficulties with the proposals and partners were in agreement that the legal position should be put beyond doubt before powdered alcohol becomes available to buy.
16. Police and licensing authorities are in favour of clarifying the law in order to make licensing and enforcement clear, the licensed trade was also in support of these measures so that there was clarity in the law to operate their licences effectively. The Government’s intention to put the status of powdered and vaporised alcohol beyond doubt was welcomed by all partners.
17. We have not conducted a public consultation. The Government Consultation principles states that one of the circumstances in which formal consultation may not be appropriate includes technical amendments to regulation or existing policy frameworks⁵.

B. Rationale

18. Regulating the sale of alcohol is essential to public safety and crime prevention. Alcohol is believed to be a factor in over half of violent incidents (2013/14)⁶ and nearly one fifth of adults perceive people being drunk or rowdy as a very or fairly big problem in their local area (2014/15)⁷. The 2003 Act seeks to promote the licensing

⁵ <https://www.gov.uk/government/publications/consultation-principles-guidance>

⁶ Office for National Statistics (2015). Crime Statistics, Focus on: violent and sexual offences, 2013/14.

<http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/focus-on-violent-crime-and-sexual-offences--2013-14/index.html>

⁷ Office for National Statistics (2014) Crime in England and Wales, Year Ending March 2014.

<http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-march-2014/stb-crime-stats.html>.

objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm), to minimise the extent of alcohol related harms. Bringing powdered and vaporised alcohol into the definition of alcohol will ensure that the licensing objectives continue to be promoted.

19. As described above, alcohol continues to be a major issue in matters of public disorder and public safety, however current alcohol regulation works to address such issues by placing controls on the time and location of alcohol sales in addition to ensuring only those aged over 18 can buy it. Regulation therefore acts to limit the negative impacts of alcohol on public safety and crime prevention. If powdered alcohol is not regulated we may see businesses being able to sell alcohol to whomever they want, whenever they want and where they want. This includes being able to sell alcohol to children, for whom the impacts of alcohol use can be particularly acute. Unregulated sale of powdered and vaporised alcohol would undermine the impact and effectiveness of the licensing objectives.

C. Objectives

20. The policy intention is to ensure the public are protected from sales of new forms of alcohol. The aim of this is to ensure that legal ambiguity regarding powdered and vaporised alcohol does not undermine public safety.
21. This will ensure that the public continue to be protected from potentially harmful sales of alcohol (in any form). The purpose of the current system of alcohol licensing is to promote four fundamental objectives:
- a) The prevention of crime and disorder;
 - b) Public safety;
 - c) The prevention of public nuisance; and
 - d) The protection of children from harm.
22. The intended effect of taking action on powdered and vaporised alcohol is to ensure that these objectives continue to be delivered.

D. Options

23. Option 1: Do nothing. This would leave an ambiguity in the law which may result in unlicensed premises selling vaporised or powdered alcohol. The definition of alcohol under the 2003 Act may then be subject to legal challenge and the courts may subsequently clarify the issue.
24. Option 2: Ban powdered and vaporised alcohol. This would mean it would be illegal to sell powdered or vaporised alcohol.

We are aware that some States in America have banned powdered alcohol due to fears it will make it easier for minors to consume alcohol. We do not believe that this is a necessary or proportionate measure for the UK. Safeguards in the Licensing Act will prevent the sale of alcohol to under 18s. Vaporised alcohol is already being sold as a novelty product in a few licensed premises. There have been no concerns raised about it being sold irresponsibly, and no indication that it poses a greater risk to the

licensing objectives than liquid alcohol. The Government therefore sees no reason to ban vaporised alcohol.

25. Option 3: Clarify the law to ensure that powdered and vaporised alcohol is regulated under the 2003 Act. This will mean that sale of powdered and vaporised alcohol is regulated in the same way as other forms of alcohol. Anyone wishing to sell it would need a premises licence. Criminal offences in the Licensing Act 2003 would apply, such as the sale of alcohol to those under the age of 18. There is the possibility that powdered alcohol may have a different market to liquid alcohol, such as those camping or hiking and due to the ease at which it can be taken to venues where alcohol is not sold.

E. Appraisal (costs and benefits)

The Baseline: Option 1 – Do Nothing

26. It is extremely challenging to estimate the impact of any proposed regulation on the market for powdered alcohol, largely because it is not clear whether, and if so how, the market might develop in the absence of regulation. The costs and benefits of options 2 and 3 would need to be expressed relative to option 1 but for the following reasons it is not possible to reliably estimate this baseline position:
- We do not know how readily available it will be to consumers. Powdered alcohol is not currently sold. Whilst we are aware that at least one company is attempting to manufacture the product, we do not yet know whether it can actually be made commercially available, and if so how much might be supplied. We do not know what the extent of the supply would be.
 - We do not know the extent to which there will be demand for the product as it is still being developed, as such we do not understand the precise nature of the product. We also do not know the nature of this demand; whether it will be bought as a substitute for liquid alcohol or whether it will develop as an additional complementary good due to, for example, its novelty or portability.

Option 2: Ban powdered and vaporised alcohol

COSTS

Retailers

27. Due to factors mentioned above (that we do not know the likely price, demand or supply of powdered alcohol) we are unable to estimate a monetised impact that banning powdered alcohol would have on retailers. By prohibiting the sale of powdered alcohol, a ban would prevent any benefit which would have accrued to business under the do nothing option. If powdered alcohol were to develop into a complementary good and not simply as a substitute for liquid alcohol, a ban would be closing off a new retail opportunity for business.
28. Vaporised alcohol is sold mainly as a novelty item at pop up bars and has not been sold widespread across the UK. One bar in London sells this (50 minutes of time in their

vapour area costs £12.50)⁸ and will only be open until January 2016; and a department store chain sold it during October in 2015 in some of its stores⁹. Due to the lack of premises selling this product on a permanent basis, it is difficult to ascertain what the future supply of vaporised alcohol would be as it does not appear to be an established market. We are therefore unable to estimate the full impact to business of a ban as it is not possible to know this impact going forward.

Law Enforcement

29. Enforcing a ban would come at a cost to law enforcement agencies, such as the police, and also to the criminal justice system (e.g. the Crown Prosecution Service and Her Majesty's Courts and Tribunals Service). Given the difficulties in establishing the baseline, it is not possible to estimate the additional workload which would be placed on law enforcement were a ban to be implemented. This is made particularly difficult by the fact that regulated sales of liquid alcohol would still be available and it is not possible to know how this would interact with a ban on powdered and vaporised alcohol.

Public

30. A ban on powdered and vaporised alcohol would prevent consumers benefitting from being able to purchase these products. Given there is no evidence to suggest these forms of alcohol are more harmful than liquid alcohol, a ban would be a disproportionate curtailment of consumer choice. Without knowledge of what demand for these products would be, it is not possible to provide a monetised estimate of this impact.

BENEFITS

Public

31. A ban on the sale of powdered and vaporised alcohol would limit any negative impact on public safety when compared to the do nothing option as it will limit and possibly prevent potentially harmful sales of alcohol in these forms, particularly to children. It could be argued that a ban on powdered and vaporised alcohol is the most effective way of delivering on the licensing objectives. However it should be noted that the nature of the products suggests a ban would not present significant benefits over licensing. It is possible that most sales of powdered alcohol would be as a substitute for liquid alcohol, in which case there is no reason why it should pose a greater risk to the licensing objectives than liquid alcohol if alcohol consumption is simply displaced. It may also be purchased as a complementary good, perhaps for the novelty factor or due to its portability. Similarly, there have been no concerns raised about vaporised alcohol being sold irresponsibly and hence posing a risk to the licensing objectives.

Option 3: Regulate powdered and vaporised alcohol under the 2003 Act

⁸ <http://bompasandparr.com/projects/view/alcoholic-architecture1/>

⁹ <http://www.harveynichols.com/news/2015/09/24/hendricks-vapouriser-tour/?store=liverpool>

Largely due to the difficulty of establishing the do nothing baseline, we are unable to monetise the costs and benefits of regulating powdered and vaporised alcohol under the 2003 Act as outlined above. We outline below in further detail why we are unable to provide a monetised estimation of the costs and benefits of each regulation and focus on who might be affected by these regulations, and how.

COSTS

Retailers

32. *Powdered alcohol*: The only group of businesses upon which this measure will have an impact will be those who wish to **only** sell powdered alcohol and not any other alcohol products. Premises that are already licensed to sell alcohol will be able to add this to their stock much as they would add a new type of spirit or wine. Retailers which would otherwise be unlicensed would be unable to sell powdered alcohol without applying for a licence.
33. There is the potential for some businesses to be adversely affected as forcing retailers to get a licence would likely reduce the number of retailers who would choose to stock powdered alcohol. We do not know how many businesses this might be, because there is no other similar product available. However, we anticipate the number of businesses who would seek to sell only powdered alcohol (without already possessing an alcohol licence) to be very small. In our consultation the Association of Convenience Stores (ACS) stated that the majority of retailers wish to demonstrate that they are responsible businesses and the ACS therefore considers that most that may wish to sell powdered alcohol would choose to do so alongside other types of alcoholic products operating the same principles of good practice, even if they were not legally obliged to do so. The ACS Local Shop Report 2015 shows that 88% of convenience stores have an alcohol licence, so a minority of 12% would not be able to sell powdered alcohol¹⁰, if they wanted to without a licence. It is not known how many of these would wish to do so. It may also appeal to camping or hiking shops or to shops who may stock it as a novelty product. They would have to apply for a licence to sell alcohol; the fees for the application of a licence (and its annual fee) are based on rateable values ranging between £100 with a annual charge of £70 (for non domestic rateable value up to £4,300) to £635 with an annual charge of £350 (for non domestic rateable value of £125,001). Whilst we do not know the number of premises that will be affected, this would be the unit cost to those that are affected. There are transitional costs of having, and maintaining a licence to sell alcohol. These are harder to quantify and includes the time taken to apply for a licence and the cost of time taken to become familiar with the licensing system and the 2003 Licensing Act.
34. *Vaporised alcohol*: Licensing authorities and businesses are already treating vaporised alcohol in the same way as other forms of alcohol, as defined by s.191 of the 2003 Act. The Government is not aware of any business selling it without a licence; as such we do not believe that there is a demand to sell this product without a licence. It is currently sold as a novelty product, with the Home Office being aware of it being used in short term

¹⁰ The figure of 88% of convenience stores having an alcohol licence includes stores in Scotland as well as England and Wales. There are 51,524 convenience stores in mainland UK, 45,942 in England and Wales, and 5,602 in Scotland. http://www.acs.org.uk/mwg-internal/de5fs23hu73ds/progress?id=CopTFsmu9SZtYsJJSZV/VOLjMrt3YNw3_sM8b2c-t3GA

bars or art installations such as the “Alcoholic Architecture”¹¹ pop up bar in London. The feedback from stakeholders in the licensed trade is that this measure is welcomed as it will make clear what the law is. Due to the fact that no business has attempted to sell vaporised alcohol without an alcohol licence, the impact of regulating vaporised alcohol is not possible to monetise. However it is expected to be minimal given regulation would have no impact on the market as it currently exists.

Law Enforcement

35. The regulation of powdered and vaporised alcohol under the Licensing Act 2003 would mean that enforcement of these forms of alcohol would be subsumed into the functions already carried out as part of the Act. There is therefore expected to be no additional cost to law enforcement agencies from the regulation of these products.

BENEFITS

Public

36. The issues around public safety of sales of alcohol are outlined above. As discussed, alcohol regulation works to address such issues by placing controls on the time and location of alcohol sales in addition to ensuring only those aged over 18 can buy it. Regulation therefore acts to limit the negative impacts of alcohol on public safety and crime prevention. This option would therefore present benefits to the public and protect children. While it could be argued that a ban would be more effective in that it would prohibit the sale of alcohol, regulation focuses on preventing harmful sales while still retaining the benefits of responsible sales. The safeguards which are put in place by the licensing act include; test purchasing, making it an offence to sell alcohol to under 18s and allowing licensing authorities to put conditions on licences if appropriate.

Licensing Authorities and Businesses

37. A separate issue is possible legal challenge. It is an offence to sell alcohol without a licence under s.136 of the 2003 Act, and clarifying that powdered and vaporised alcohol are alcohol as defined under the 2003 Act will avoid any potential legal challenge and associated costs to both licensing authorities and businesses.

F. Risks

38. The “do nothing” option carries significant risks to the public, as it could lead to alcohol being sold irresponsibly.
39. Option two may lead to counterfeit products being created in lieu of not having properly licensed powdered and vaporised alcohol. It is likely that such counterfeit products would be of a poorer quality and would potentially be cut with other substances. This would also limit the benefits that responsible consumers and businesses would derive from the products.

¹¹ <http://bompasandparr.com/projects/view/alcoholic-architecture1/>

40. There is possible risk that option three would lead to increased non-compliance through businesses not holding an alcohol licence and selling these products. This would lead to further prosecutions for not holding an alcohol licence (for which a fine of up to £20,000 and/or a prison sentence of up to six months can be imposed).

G. Enforcement

41. Monitoring and enforcement of the Licensing Act 2003 is conducted by licensing authorities, the police, and in some cases by trading standards. The inspection and enforcement of the offence of selling alcohol to a person under the age of 18 is undertaken by trading standards officers and the police, who are able to carry out test purchases under s.154 of the 2003 Act.

H. Summary and Recommendations

42. As explained in point E, we are unable to provide a monetised cost and benefit analysis for these measures, largely because establishing the do nothing baseline is not possible. Comparing the two policy options, it is clear that the costs of Option 2 would exceed the costs of Option 3 across the board (e.g. in terms of lost profits to retailers, and lost consumer welfare), but it is not clear that the benefits of banning powdered or vaporised alcohol would be much greater than the benefits of regulating its sale through the Licensing Act.
43. Our recommendation is to amend the definition of alcohol at s.191 of the 2003 Licensing Act to make it clear that powdered and vaporised alcohol are regulated under the Act. This will avoid any ambiguity in the law and ensure public protection against uncontrolled sales of alcohol.
44. The Government does not consider it necessary to ban powdered alcohol, as there is no evidence to suggest that it would be more dangerous than liquid alcohol, if it is sold responsibly. This will be kept under review if and when the product comes onto the market. Similarly, we are not aware of any business selling vaporised alcohol without a licence to sell alcohol, selling it irresponsibly or of any evidence to suggest that it is more dangerous than liquid alcohol.
45. As such we do not consider it necessary to make it illegal to sell powdered or vaporised alcohol. This would be a proportionate approach which will deliver the Government's aim of ensuring that the four licensing objectives continue to be delivered, without disproportionately affecting responsible businesses and consumers. This will ensure the benefits of responsible sales continued to be retained.
46. The proposed measure will ensure the avoidance of any ambiguity or confusion for businesses or licensing authorities as to whether a license to sell alcohol is required to sell vaporised or powdered alcohol. This will avoid any future legal challenge to businesses if there is ambiguity, and they sell either of these types of alcohol without the relevant licence.

47. We do not consider it acceptable to do nothing. This approach would leave the public at risk from irresponsible sales of powdered alcohol as it would not be clear if these two types of alcohol fall under the current definition of alcohol. If the legal ambiguity remained, this would reduce the effectiveness of the licensing regime in seeking to protect the public from irresponsible sales of alcohol. It is possible that the legal ambiguity would be addressed through a legal challenge, but this could be costly to the parties involved and it is preferable to avoid this by clarifying the law.

I. Implementation

48. Amending the definition of alcohol will require primary legislation. Statutory guidance issued under s.182 of the Licensing Act 2003, provides guidance to licensing authorities on the carrying out of their functions under the Act. The guidance will be updated to make it clear to licensing authorities that the sale of powdered and vaporised alcohol is to be licensed in the same way as other forms of alcohol under the Act.

J. Monitoring and Evaluation

49. Vaporised alcohol: the Home Office will monitor media reports, and in our discussions with licensing authorities and the licensed trade whether the market for vaporised alcohol expands and whether there are any specific risks/issues associated with vaporised alcohol that require Government action.

50. Powdered alcohol: the Home Office will monitor websites marketing powdered alcohol and any related press stories, to keep abreast of whether powdered alcohol becomes available to buy in America or other countries. If it does we will seek information about the market and if there are any emerging problems.

51. We will continue to discuss with representatives of the licensed trade to understand the potential market for powdered alcohol as well as seeking the opinions of non-traditional sellers of alcohol such as camping shops if powdered alcohol becomes available. If powdered alcohol becomes available to sell, we will evaluate whether the regulation of powdered alcohol achieves the described aims and is proportionate in light of the market and risks.

K. Feedback

52. The Home Office will gather feedback from licensing authorities and the police on any issues around the sale of powdered or vaporised alcohol.

L. Small and Micro business assessment

53. The Government does not plan to introduce exemptions or mitigating options for small or micro sized businesses. Alcohol licensing applies to all businesses regardless of size and this is necessary to achieve the intended benefits of the measures (the promotion of alcohol licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of

children from harm). Effective regulation would not be achieved if any businesses were exempted from these measures. Extended transition and temporary exemption are not required as powdered alcohol does not yet exist to buy, and as such there is no need for businesses to change their equipment or processes if they were selling this without a licence. For vaporised alcohol, all businesses (that we are aware of) supplying it are doing so in accordance with an alcohol licence. We will however notify local authorities of the change to the definition of alcohol under the 2003 Act.

54. It should be noted that the fees for alcohol licences differ depending on the size of the business. Setting the fee relative to the value of business ensures that the cost of regulation for small and micro businesses is less than that for larger businesses.
55. Due to the fact that powdered alcohol is not yet available, and all those selling vaporised alcohol are doing so under a licence, these measures have no immediate impact on small or micro sized businesses.
56. As highlighted previously, two workshops were held on alcohol measures for the Policing and Crime bill. One of these included industry partners such as the British Beer and Pub Association, Association of Convenience Stores, and Association of Licensed Multiple Retailers who all represent small businesses. The Governments intention to put the status of powdered and vaporised alcohol beyond doubt was welcomed by all partners.

M. Family Test

57. This policy may have a positive impact on individuals' ability to play a full role in family life, including with respect to parental and other caring responsibilities. The purpose of the measure is to ensure the promotion of the licensing objectives, one of which is "the protection of children from harm". This measure will help ensure that children are not able to purchase alcohol.