

The Licensing Act 2003

Report of the Independent Fees Review Panel

Submitted to the Secretary of State for Culture, Media & Sport
December 2006

Index

	Page
The Panel	4
1. Chairman's Foreword	5
2. Scope and Approach to the Review (including Terms of Reference)	7
3. Context	9
4. Licensing Authority Data Capture Exercise	15
5. The Model for Calculating Fees	17
6. Details of Income and Cost from the Sample Licensing Authorities	20
7. The Gap between Income and Expenditure: Fees for future years	29
8. The Gap between Income and Expenditure: The transitional period (2004-05, 2005-06 & 2006-07)	32
9. Other Fee Issues	35
Annex A: Interim Report – November 2005	45
Annex B: Licensing Authority Data – additional information	48
Annex C: Application Forms	52
Annex D: List of Stakeholders	55
Annex E: Panel Member Details	57

The Panel

Sir Les Elton (Chairman)

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Chairman's Foreword

As detailed in our Terms of Reference, we have been asked by the Secretary of State for Culture, Media & Sport to report on the system of fees introduced by the Licensing Act 2003. We wish to thank all those interested in the outcome of the review who have supplied us with information, constructive comment and support, and for their unfailing courtesy.

The Licensing Act 2003 was a major piece of legislation. We have found that stakeholders are generally positive about the intent of the Act and do feel that the new licensing system is beginning to settle down and to work well.

We have found our task to be a complex one, and almost all stakeholders have acknowledged that there will be no single right answer across all interested groups. Many of the diverging views are predictable, but we have also formed the view that bringing complexity to the process would not be helpful: it is too easy to benefit one group of stakeholders by producing unwanted and unnecessary problems for others.

We are conscious that this new licensing system has not yet settled to a clear pattern of future activity. This means that we have had to base our recommendations for future licensing fees on estimates made by the local authorities informed by their initial experience, rather than on the costs which will emerge. In this we were surprised at the lack of pattern to the differing levels of expenditure within the various authorities. This will always be an issue, as the fee levels for the future can only ever be based on costs of the past together with estimates. An intrinsic problem for authorities is not knowing how applicants for licences will behave, what objections may be received or what level of enforcement may be required. This was the case during the transitional period for the legislation and there is no reason to think that it will not be so in the future (for example, the forthcoming ban on smoking is likely to lead to a number of applications to vary from pubs and other premises). Lack of knowledge can add to fear in anticipating the likelihood of reviews and hearings; resources needed to deal with such activity may in fact not be required if the activity happens at a lower level.

We are aware that other papers have indicated an interest in this report and we are also aware of the Government's response to those other reports (for example, The Office of the Deputy Prime Minister Committee¹ (now Department for Communities & Local Government) and the Better Regulation Commission²). In a number of areas, as explained in the body of the report, we have come to similar conclusions but in others we differ.

My colleagues on the Panel were chosen for their expert knowledge and experience of the issues involved, and it is to their considerable credit that they have been able to contribute as individuals bringing that knowledge to bear on reaching unanimous conclusions and recommendations made in this report.

¹ House of Commons – ODPM: Housing, Planning, Local Government and Regions Committee *Re-licensing* Second Report of Session 2005-06; HOC 606, March 2006

² The Better Regulation Commission (an independent advisory body whose terms of reference are to advise the Government on action to reduce unnecessary regulatory and administrative burdens, and ensure that regulation and its enforcement are proportionate, accountable, consistent, transparent and targeted) published its report *Implementation of the Licensing Act 2003* in April 2006.

In reaching a conclusion on what the total income to local authorities should be, our judgement was that it could never be a matter of simply totalling the local authority figures. Given the lack of a discernible pattern to the information we received, we have had to make our own judgments on what is reasonable and efficient, whether local practice and policies account for some differences, and to choose a method of recommending the total level of income from fees from the only information available to us which was that supplied by the local authorities.

Full details of our recommendations are in the relevant sections throughout the report, but in summary we have identified that there has been an excess of cost over income during the introduction and implementation of the Licensing Act 2003 (which we will refer to as the transitional period). We have concluded that the total that should be funded is £43 million for the three year period 2004/05 – 2006/07 and that this sum should be met by central Government. For future fees, we are recommending an increase to the current fees of 7% for the three year period 2007/08 – 2009/10.

Apart from the fee system itself, we have examined a number of connected issues particularly where stakeholders brought them to our attention as being relevant to overall costs of the new system.

A handwritten signature in black ink that reads "Les Elton". The signature is written in a cursive style with a long horizontal stroke underneath the name.

Sir Les Elton
Chair
Independent Licensing Fees Review Panel
December 2006

2. Scope and Approach to the Review

- 2.1 The Licensing Act 2003 provides for fees to be payable to licensing authorities in return for the functions that they undertake in respect of the Act. The fee levels are set centrally by the Secretary of State for Culture, Media and Sport. Following consultation with local authorities, industry, clubs, community facility groups and other stakeholders about licence fees, the Secretary of State announced the fee package on 20 January 2005. This was implemented by the Licensing Act 2003 (Fees) Regulations 2005³ which took effect on 7 February 2005.
- 2.2 The objective of the Regulations is to set the level of these fees so far as possible to allow licensing authorities full recovery of their legitimate administration, inspection and enforcement costs of the new regime, while at the same time achieve arrangements which are fair to businesses of differing sizes and to non commercial organisations and other individuals seeking licences.
- 2.3 We have been tasked by the Secretary of State to review and report in autumn 2006 on the system of licensing fees introduced by the Licensing Act 2003 and the above Regulations. Our Terms of Reference (set out below) and work primarily concentrates on the impact of issues surrounding the licence fees structure. There are, however, contributing areas of licensing activity that we have considered which have an effect upon the cost of the new licensing regime.
- 2.4 We presented our interim report to Government in November 2005, focussing mainly on the start-up and Transition period during the introduction of the new legislation. That report contained four recommendations and identified nine areas of work for further consideration by ourselves during the first full year of operation of the new legislation, culminating in this, our Final Report (Annex A contains a summary of our interim report or go to http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/monitoring_and_evaluation/ifeereview.htm for full details.)
- 2.5 Our work during the review has involved engagement with over 100 organisations and individuals representing the wide range of licensing interests. We have taken evidence of their concerns and explored with them any problems that they perceive have arisen and the choices they have made in implementing and complying with the new licensing regime. We have also undertaken a detailed data collection exercise with licensing authorities in England and Wales covering the financial years 2004-05, 2005-06 and 2006-07. Further details about the data capture exercise with licensing authorities can be found in **Section 4**. The full list of stakeholders who have informed our work is at **Annex D**.
- 2.6 Throughout the review we have been supported by a Secretariat provided by the Department for Culture, Media & Sport (DCMS), which included assistance in collating

³http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/fee_levels.htm

the information provided by licensing authorities. The baseline data from which we have worked was settled upon by ourselves, DCMS and the Local Government Association (LGA). The interpretation and analysis of that data which has informed our judgements has, however, been undertaken independently by ourselves.

Terms of Reference

2.7 We have been tasked by Secretary of State with:

- considering whether the fees cover the full cost to licensing authorities;
- identifying the scale, extent and nature of any problem(s) encountered by licensees/licence payers and licensing authorities;
- making recommendations about how the existing fee structure and levels could be developed;
- ensuring best practice is being fully realised across all authorities; and
- identifying how the regime could be developed to address any other issues, which will include the impact of the structure of the fee scales on community amateur sports clubs, village and community halls.

2.8 We were asked to deliver to the Secretary of State:

An interim report in the autumn of 2005 – focusing mainly on the Transition period, but based on findings it takes a forward look at implications for the first full year of operation of the system.

A final report in the autumn of 2006, detailing findings and where appropriate making recommendations for the immediate and medium term development of the licensing fees regime.

3. Context

Licensing Act 2003

- 3.1 The Licensing Act 2003, which received Royal Assent in July 2003, provides for a unified system of regulation of the activities of the sale and supply of alcohol, the provision of regulated entertainment, and the provision of late night refreshment. The purpose of the new system of licensing for these activities is to promote four primary objectives:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm
- 3.2 Licences and certificates are granted by licensing authorities (which are generally the local authority) under the Act for the area in which the premises are situated or, in the case of personal licences, in which the individual applicant is normally resident. The Transition period, during which existing licences and certificates could be converted to the new forms of licences and certificates commenced on 7 February 2005 (the First Appointed Day), and the new licensing regime took full effect on 24 November 2005 (the Second Appointed Day).

The Fees Regime

- 3.3 As we understand the policy of fee regimes, a fee or a charge is the price for a unit of service provided to a user (e.g. for the provision of a licence). Fees and charges should normally be set to recover the full cost of the service, whilst recognising that in some cases that may not be appropriate. Fees which are intentionally set to generate an excess of income over cost are presumed to be taxation.
- 3.4 The Licensing Act 2003 requires that fee levels be set centrally by the Secretary of State for Culture, Media & Sport; the Fees Regulations package was announced by DCMS on 20 January 2005 and took effect on 7 February 2005. The setting of fees is not based on the ability to pay, but on what is required to cover the costs of administering the regime. It is inevitable that with a national fees regime there will be outliers in terms of excess of income over cost and cost over income.
- 3.5 It has been stated by the Government that the taxpayer was, in effect, subsidising the cost of the previous licensing system for the sale of alcohol through the magistrates' courts to a level of around £25 million per annum. The Government has consistently expressed the aim of ensuring that, so far as possible, the legitimate costs of local authorities' administration, inspection and enforcement associated with the new regime should not fall on the central or local taxpayer, but on those choosing to engage in licensable activities. It is our view that there are different approaches for dealing with that which we address later in our report at **Section 8**. Defining that is a

complex issue because it is difficult so soon under the new arrangements for appropriate standards of efficiency to be fully determined.

- 3.6 The Final Regulatory Impact Assessment⁴ (RIA) has, however, also made it clear that fees should not be set at too high a level from the point of view of individual organisations as this would create an unfair financial burden on voluntary groups, charities, members clubs, industry and others who pay fees. We realise, of course, that fee payers with licences for the sale of alcohol from the previous magistrates' system – where a renewal fee of £30 was payable every three years – will already have had the surprise of a perceived unsubstantiated increase.
- 3.7 Following the laying of the Fees Regulations, local government said that the fee levels were too low and non-commercial bodies and industry said too high. The Secretary of State therefore agreed to the Local Government Association's (LGA) request for an independent review of the fee levels based on practical experience following implementation.
- 3.8 Reaching a conclusion about the fees regime, both for the start-up and transitional periods, and for future years, has inevitably been a complex task. Local government has said that there is a shortfall for the transitional period and future years and the excess of expenditure should be met. Other stakeholders maintain that if some authorities can undertake their licensing functions at cost, then it should be possible for all authorities to do so.
- 3.9 The overall purpose of the Licensing Act 2003 is to regulate licensable activities. It is not a taxing Act. The assumption would therefore be that it is not intended as a tool for raising revenue. During our research it has been suggested to us that as part of a broader drive to help curb anti-social behaviour, the level of licensing fees should be set to include the costs of enforcement action (such as activity undertaken by Trading Standards' under-age test purchasing). The fees are, however, used by licensing authorities to carry out their duties in respect of implementing the Act, not to cover associated costs.

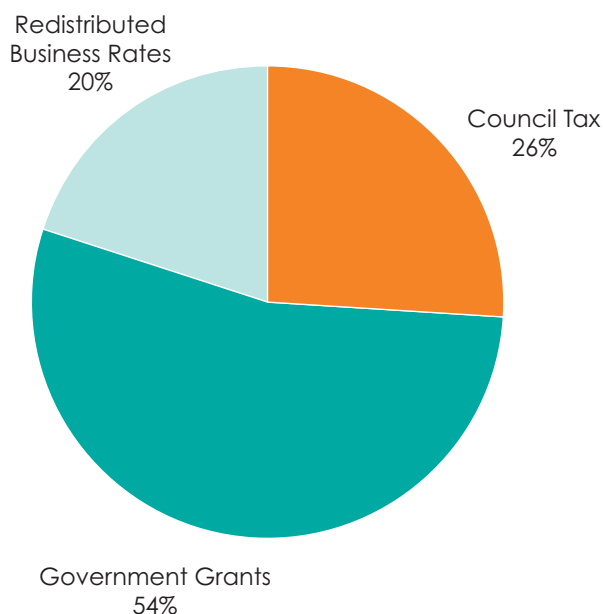
Local Government

- 3.10 It is worth setting out the context of local authorities and the issues which then became relevant when a national function is placed within a local delivery mechanism.
- 3.11 Local authorities derive their income from a range of sources including fees and charges and council tax, and the Government's contribution to financing local services which is made up of the national non-domestic business rate, Revenue Support Grant and specific grants. In 2006/07 this contribution amounted to approximately £68.8 billion for England and Wales⁵. The latest statistics for 2006/07 budgets show that after deducting income from fees and charges, the revenue expenditure of local authorities is funded as follows:

⁴Final Regulatory Impact Assessment – The Licensing Act 2003 (Transitional conversions fees) Order 2005; The Licensing Act 2003 (Fees) Regulations 2005

⁵Source: Department for Communities & Local Government *Local Government Finance Key Facts November 2006* and Welsh Assembly Local Government Finance Division.

Funding of Local Government Revenue Expenditure 2006/07



- 3.12 These figures are average national figures and the proportion of funding does vary between local authorities quite significantly, depending upon the type of services that authorities provide, their share of government grants and the relative size of their authority taxbase. Central Government has a great deal of influence over each of these sources of income as it sets the level of grants and redistributed business rates each year and limits the extent to which local authorities can increase the level of their council tax. In recent years, Government has sought to cap increases in council tax that are above 5% per annum.
- 3.13 This means that where local authorities incur additional costs, these must either be funded from use of reserves, from increases in future council tax levels (where this is possible) or from savings in other services. If additional income was generated from fees in the future then this income could be used to pay back the use of reserves. If reserves were not replenished from fee income then authorities would have to take a view on the adequacy of their reserves and either top them up in future from savings elsewhere within their budgets or from council tax income, where this is possible.
- 3.14 When the new licensing function was made the responsibility of local authorities, a number of positive things were able to happen. Decisions which balance the interests of the objectives of the legislation, applicants for licences and the general public can be considered by a body used to balancing interests in taking decisions. For licensing, those decisions can be made locally, and authorities can operate the function in the context of a broader partnership approach to issues around local economies and social issues around behaviour. However, those aspects of the nature of local authorities which are all so positive in this regard can complicate matters, such as assessing and calculating the proper costs of dealing with responsibilities under the licensing legislation and how those costs should be met.

- 3.15 At the same time, however, local authorities are not simply administrative organisations. Their policies are set by elected councillors who take a view on relative priorities on many functions and which obviously can affect those costs. When the new licensing regime was introduced, authorities had to make individual decisions about what they would do to implement and comply with the Act, including decisions about how many staff to employ to carry out the work and when each of those employees would be brought onto the payroll (at which point their cost would commence).
- 3.16 One particular problem for authorities was that no one knew exactly how and when applicants would apply for their new licences. This was partly aggravated by the timing of the Fee Regulations which were laid on 20 January 2005, only a matter of weeks prior to the First Appointed Day; the late-laying of Fee Regulations and the Statutory Instruments⁶ relating to the application forms and plans, and issues surrounding the date set for the annual fee were key reasons given to us for the later than anticipated receipt of applications during the Transition period. Some local authorities erred on the side of caution and employed staff before the applications came in, finding themselves expending money in advance of the intended activity or any income. Others used existing staff until sufficient applications had arrived to require the services of new staff who were then employed to handle the work. Clearly the second approach proved to be less expensive, but it can be seen why different authorities adopted different approaches.
- 3.17 Furthermore, a function such as licensing tends to be grouped in managerial responsibilities with other similar functions, so that one manager is responsible for a range of separate budgets or a combined budget which includes income and expenditure for each function. When the new function of licensing was introduced, some authorities appear to have expected those managers to use some flexibility across their different functions and budget to minimise any extra expenditure in the year in question. On occasions, therefore, staff who would have been engaged in work on one of the related functions had to handle the additional activities of the Licensing Act work. In the process, work on that other function may not have happened, possibly leading to that work being delayed. Confusion can then flow from the fact that there was additional activity required by the new Licensing Act but it might not have fallen on the council taxpayer, but rather costs may have been met by postponing other work.

Fee Payers

- 3.18 It is of course also relevant to look at the impact on industry and, more importantly, the thousands of individual business people, voluntary groups and charities who now deal with local authorities through the Licensing Act 2003.

⁶ <http://www.opsi.gov.uk/si/si2005/20050042.htm>
<http://www.opsi.gov.uk/si/si2005/20050040.htm>
<http://www.opsi.gov.uk/si/si2005/20050041.htm>

- 3.19 From a fee payer's perspective, many of the issues faced by local authorities were mirrored in their own organisations. Industry already had experience of dealing with local authorities through areas such as planning and were therefore aware of the fact that each authority had their own individual, variable approach. For some fee payers, the introduction of the Licensing Act 2003 may have been their first substantive experience of dealing with authorities.
- 3.20 As with local authorities, fee payers had to make individual decisions about what they would do to implement and comply with the new legislation, including decisions about how many staff to employ to carry out the work. Again, as with local authorities, fee payers were unsure as to how and when they would apply and this was also partly driven by the late laying of the fees regulations. In particular, the fact that the final sign off for the detail behind forms and plans was only a matter of weeks before the First Appointed Day on 7 February 2005. As a result, the industry employed and continues to employ additional staff to cope with the workload, and individual licensees commissioned and continue to commission additional legal support. Other licensees also had to use and have continued to retain additional resources and assistance.
- 3.21 Whilst the Government has said it expects the new licensing regime to produce savings for industry of about £2 billion over a period of 10 years – through reduction in the associated cost of the new licensing processes rather than through the fees paid, we understand that the industry does not agree with this figure.
- 3.22 The industry has said that its overall costs since the introduction of the new licensing legislation are more than originally anticipated. Reasons include, for example:
- the costs of advertising applications;
 - the time and effort involved in the application process;
 - the time and cost involved in the variation process;
 - the number of Designated Premises Supervisor (DPS) transfers required;
 - the number of hearings and appeals;
 - where additional conditions are applied; and
 - the late introduction of the multiplier prior to the Fees Regulations taking effect in February 2005;

Perception and Reality

- 3.23 The Licensing Act 2003 is a significant piece of legislation. It has provided for a major change in the way licensable activity can be undertaken, consolidating as it does six licensing regimes into one, reducing the number of forms from nearly 200 down to under 20 and reducing the number of licensing authorities to one. The Act has also harmonised consideration of the sale of alcohol with regulated entertainment and sale of late night refreshment (between 23.00 and 05.00).

- 3.24 The Office of the Deputy Prime Minister Committee and Better Regulation Commission reports highlighted lessons to be learned to help Government implement large pieces of legislation in future, and made a number of recommendations for future licensing arrangements. We are also aware that DCMS recently published a Better Regulation Simplification Plan⁷ which identifies areas to help reduce the administrative burdens arising from the Licensing Act 2003.
- 3.25 The first anniversary of the Second Appointed Day has recently passed. In the run up to the 24 November 2005 and for the past 12 months, there has been much said about the 24-hour, seven-day-a-week drinking climate and the impact on cities, towns and villages throughout England and Wales. In practice this has meant a move into an environment of no fixed hours, and the application process for a licence taken out of the magistrates courts and into locally elected bodies (licensing authorities). There are perceptions of the new licensing arrangements as played out in some parts of the media that are not necessarily reflected in our experience in talking to stakeholders.
- 3.26 Whilst acknowledging that it is probably still too early to draw any firm conclusions about the new regime, the feedback we have received from stakeholders that have engaged with us throughout the review process – both local government and fee payers – has been generally positive about the intent of the Act. It seems to us that new licensing systems are working now that they are starting to settle down.

⁷http://www.culture.gov.uk/Reference_library/Publications/archive_2006/simplificationplan_2006.htm?contextId={89A6F8D9-FA43-4DAD-9DF4-364AC840A261}

4. Licensing Authority Data Capture Exercise

- 4.1 In order to assess the level of costs that should reasonably be incurred to efficiently and effectively deliver the statutory licensing function, it was very important to clarify and understand the reasons for differences in net transitional and estimates of annual ongoing costs between licensing authorities. We also needed to look at the issue of local authority inspection and enforcement activity.
- 4.2 We discussed with DCMS, the LGA and the Local Authority Co-ordinators of Regulatory Services (LACORS) the data we believed we required in order to support us in the next stage of our work. We settled on the forms⁸ for consulting all licensing authorities in England and Wales in January 2006 (including the Middle Temple and Inner Temple and the Isles of Scilly Council) about the level of impact of the new licensing regime. We are grateful to the LGA for circulating the data capture forms to authorities on our behalf. We requested data which included information about activity during set-up and Transition (2004-05 and 2005-06) and an estimate of the potential ongoing net costs of licensing arrangements during the current financial year (2006-07) – the first full year of operation under the Licensing Act 2003. There was a four-phased approach to the task and authorities were asked to provide information as follows:
- | | |
|---------|---|
| PHASE 1 | basic income and costs data (by 1.2.06)
<i>274 authorities responded (73%)</i> |
| PHASE 2 | number of licences, large events and detailed fee income (by 15.2.06)
<i>242 authorities responded (64%)</i> |
| PHASE 3 | detailed costs and staff resource data (by 15.03.06)
<i>208 authorities responded (55%)</i> |
| PHASE 4 | key facts and cost drivers (by 15.04.06)
<i>171 authorities responded (45%)</i> |
- 4.3 All authorities were given the option to agree that the information they provided for us be shared with the LGA. The final cut off date for the returns was 26 May 2006; we had to have an end point so that we could start to clean and analyse the returns. The handful of authorities that responded after that date were therefore excluded from the exercise. We are very grateful to those who contributed to our research, and appreciate that it was a time consuming but for us a very necessary exercise.
- 4.4 Our analysis for the report has focused primarily on a sample of 155 authorities for which consistent income and expenditure from all four phases was available. This sample represents 41% of all licensing authorities in England and Wales, and is broadly representative of the total authority population in terms of authority region and type. A breakdown of the sample in these terms is included at **Table A1, Annex B**.

⁸The data capture forms that were issued to licensing authorities can be found at :
http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/monitoring_and_evaluation/ifeereview.htm

- 4.5 The data exercise was followed by visits to a number of licensing authorities in May/June 2006, to discuss in more detail the information provided, any problems that arose, and the choices made in implementing the new licensing regime. The different types of local authorities visited had provided returns that indicated variable differences between income and cost. The authorities visited were Bath, Birmingham, Cardiff, Chichester, Doncaster, Leeds, Mole Valley, Northamptonshire Licensing Partnership⁹, South Bucks, Vale of Glamorgan and the City of Westminster.
- 4.6 We found the meetings with individual local authorities extremely useful in gaining an understanding of the wide range of underlying issues that were reflected in the income and cost information that had been submitted. Not unsurprisingly, it is clear authorities had some unique features in terms of the circumstances they faced and in their approach to resolving issues in order to implement the new legislation as effectively as they could. Examples of good practice were identified in all authorities including risk-assessed and targeted enforcement, and authorities that combined their resources to administer the processing of licences; we were impressed by the professional approach being demonstrated to making the new legislation work and would like to thank all concerned for their help in enabling us to gain firsthand an understanding of the issues that they had faced.
- 4.7 Further information was provided to us by the LGA/LACORS and London Councils, which highlighted a number of key issues that the organisations considered to be relevant. This was helpful in giving an overview of the position and identifying common issues and cost drivers.

⁹The Northamptonshire Licensing Partnership: East Northamptonshire Council, Kettering Borough Council, Corby Borough Council, Borough Council of Wellingborough, and Daventry District Council – have combined resources and set up a centralised unit to administer the processing of all licences under the new legislation.

5. The Model for Calculating Fees

- 5.1 In our interim report, we reflected that a range of stakeholders were supportive of the current national, unified system and said that centrally set fees removed the inconsistencies in fee levels that previously existed (particularly for public entertainment licences), creating a fair and level playing field across England and Wales. Whilst some acknowledged that non-domestic rateable value (NNDR) did not provide the ideal mechanism for calculating fees, this classification could be applied across premise type, and they recognised that there may not be a better model on which to determine the fee scales. Others firmly considered it was not the best mechanism for calculating fees for the different types of applicants. However, no universally applicable alternative solution was supplied at the time.
- 5.2 In our own considerations there were a number of options for calculating and implementing fees. These range through:
- locally determined fees locally applied
 - locally set fees within a national regime
 - nationally set fees locally applied (the present system)
 - nationally set fees nationally applied
 - nationally set fees with local discretion for specific licenced activities/premise types
- 5.3 We said that we were open to receiving either alternative methods or mechanisms for calculating fees, but these would need to be considered as part of broader considerations. Subsequently, a number of different systems have been suggested to us, all reflected in the combinations above.
- 5.4 We have also been presented with a varied range of options for calculating fees as an alternative to NNDR, including towards the end of our research, detailed proposals received from LGA/LACORS and London Councils. These papers reflect the Government's view that local authorities should not be out of pocket as a result of the fee structures, but also acknowledged that fees should only ensure recovery of costs reasonably incurred under the Act.
- 5.5 The preferred approach by LGA/LACORS was that local authorities should set their own fees – with discretion for varying them and to pursue best practice and innovation. The paper also considered the recovery of excess expenditure over income and sanctions for non-payment of the annual fee. It also proposed five alternative structures for calculating fees involving hours, location and activities, and capacity.
- 5.6 The London Councils' paper identified the effect of a national scheme on London authorities and the need for increased fee income for London boroughs in order to achieve full cost recovery. The paper maintained that neither a national nor a London specific scheme could meet the excess costs over income in some boroughs. Two alternative models for fees were suggested based on rateable value and on identified

cost drivers. The model using rateable value acknowledged this as a plausible basis for a licensing fee structure but suggested that other factors are required to recover costs, including alterations to the banding.

- 5.7 We have considered fully the options put to us throughout the review. From our own research, whilst there was support amongst some licensing authorities to set fees locally, we heard a stronger range of voices from fee payers and some local licensing officers who supported the application of a nationally determined locally applied fees regime. We have considered all these options fully, **but we believe that, (with the exception of fees for large events; see Section 9), the fees regime should continue to be a national regime locally applied.** Ultimately this removes the complexities of a locally decided system, and the extra costs incurred by some authorities by virtue of location are catered for by Government's contributions to financing local services. Trying to reflect cost differential within the fee structure moves away from a national regime locally applied. We believe that a consistently priced and applied regime provides certainty to those engaged in licensing activity in their application for a licence – wherever they are based – and for licensing authorities in the billing of fees. Finally, we also believe that a mechanism which re-introduces additional costs for differential hours moves away from a fundamental deregulatory premise of the Act: that of no fixed hours.
- 5.8 Our overall aim has been to simplify the regime where possible and appropriate, and we are concerned that the alternative suggestions for setting fees run the risk of adding complexity. We acknowledge that NNDR as a basis for fee banding may not be perfect, but no universally approved alternative system has been presented that is transparent, simple, consistent for different types of licence holder and also provides for licensing authorities to recover costs. It is also an established system that existing or new licensees will be aware of; other system/s would need to be devised and the legislation amended. We believe that such a major amendment so early in the fees regime would be disproportionately costly and confusing and have, therefore, also **concluded that the means for allocating premises to fee levels should continue to be NNDR.**
- 5.9 We have dealt in more detail with an element of the banding in relation to Bands D and E (**Section 6**), but have concluded that a splitting of the existing bands (for example, dividing Band B in two and therefore creating an additional Band, F) would recreate issues for fee payers who would fall near to the new dividing line.
- 5.10 We also noted in our interim report that stakeholders had told us about concerns where licensable activity is only a small area of a much larger premise. The licence fee is not based on the rateable value of the part of the business premises selling alcohol but on the premises as a whole (for example, camping and caravan holiday parks). Some stakeholders wanted the link between NNDR and fee banding reconsidered so as to ensure that fees are calculated on the hereditament¹⁰, the proportion of the licensed activity of the business (for example licensed activity

¹⁰Rateable Value(RV) applies to the whole premises/area. Hereditament is the part of the property to which the RV is applied.

occupying a portion of a larger premise, particularly a warehouse). We agreed to look further at this as more data from sectors became available and to explore this issue with the Valuation Office Agency.

- 5.11 We have considered carefully proposals put to us that the level of fee should be based on the rateable value of the part of the business premises selling alcohol rather than the rateable value of the premises or site as a whole. We are not, however, prepared to support this proposal. Our view is that alcohol bought at the point of sale can be consumed anywhere on the premises or site. The four principles of the Licensing Act 2003 apply equally to the whole area (as private land) as well as at the point of sale. DCMS may wish to consider, however, in cases where sales/consumption are limited to a certain part of a building for real reasons, whether the licence holder could explore the possibility of varying the licence so that the “premises” only extends to that part and hence the rateable value could be adjusted accordingly.

6. Details of Income and Cost from the Sample Licensing Authorities

Background to fees regime and assumptions

- 6.1 The Regulatory Impact Assessment (RIA), which accompanied the Fees Regulations, took effect in February 2005. It estimated that had the previous licensing regimes continued, compliance costs would be around £41.8 million per year for the 4 year period from 2004-05 (£167.2 million). It stated that the taxpayer was, in effect, subsidising the cost of the previous magistrates system to a level of around £25 million per annum. In addition, it also said that local government was carrying a deficit of around £7 million per annum for the Public Entertainment Licence system for which it had responsibility.
- 6.2 The RIA stated that over a period of 10 years, the Government expected the new licensing regime to produce savings for industry of about £2 billion – through reduction in the associated cost of the new licensing processes rather than through the fees paid. We understand that a year on from the full implementation of the Licensing Act 2003, the Government maintains this estimate. We understand, however, that the industry does not agree with this savings figure.
- 6.3 The RIA estimated that around 190,000 businesses and other stakeholders would be captured by the new fees regime. There would also be around 240,000 individual personal licence holders.
- 6.4 The RIA made the following assumptions about licensing authority income:
- first year following first appointed day (Feb 05- Feb 06) = £55.8m
 - year following that period (Feb 06-Feb 07) = £51m
 - year following that period (Feb 07- Feb 08) = £52m
- 6.5 Following our extensive research and data capture exercise with licensing authorities (see Section 4) it would seem that licensing authority income is broadly in line with the RIA assumptions, but that there have been potentially around 210,000 premises licences issued.
- 6.6 We requested a large amount of information from authorities in a short timescale, which led to some gaps in the data that has been provided. Whilst, in association with the LGA, we have endeavoured to undertake as much cleaning of that data as possible, the returns have been incomplete in areas. We had to prioritise, and the 41% sample authorities provided the most complete information available as indicated at paragraph 4.4 above.
- 6.7 Local authorities are autonomous bodies that all work differently from each other, and there has been a variable pattern to the information received from them. There is clearly a large variation of licensing authority costs; some authorities have delivered

the implementation of the Act on the basis of income, but others have not been able to do so. During our research, we have come across some examples of very good practice. Further good practice will clearly develop over time as the new system settles into a steady state, and this should impact on the income that authorities require in order to operate the system.

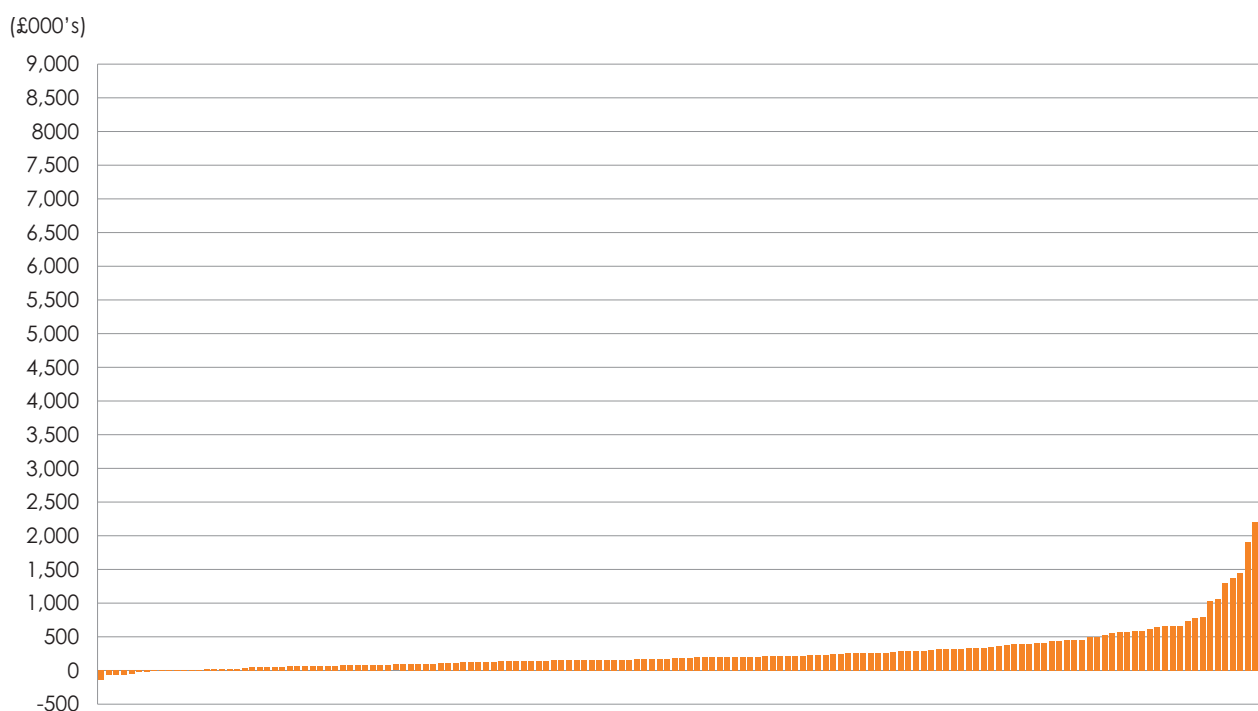
- 6.8 The detailed information on income and costs was supplied in phases 2 and 3. Information was provided for three financial years – 2004/05 actual figures, 2005/06 estimated outturn and 2006/07 estimates. A significant funding gap is reported for each year, with a £50.7m estimated three year gap for this sample of 41% of licensing authorities.

Table 1: Summary of Income and Costs for Sample Authorities

	2004/05	2005/06	2006/07	Total
	£m	£m	£m	£m
Costs	17.3	43.7	38.4	99.4
Income	0.3	27.9	20.5	48.7
Net excess of cost over income	17.0	15.8	17.8	50.7

- 6.9 While reported cost exceeds income by £50.7m for the sample, the picture at individual local authority level varied significantly. The gap for a single local authority over the three year period ranged from an estimated net excess of cost over income of £8.6m at one extreme to a net excess of income over costs of £0.14m. The scale and range over the three year period is illustrated in the chart below.

Chart 1 Estimated Three Year Net Cost per authority



- 6.10 There are large estimated excesses of cost over income of over £1.0m in eight (5%) of local authorities in the sample. Seven of these are located in London. Ten local authorities estimated that they would make a small net excess of income over costs over the period.
- 6.11 The scale of the net excesses appears to vary for a wide range of factors. These are described in detail in paragraphs 6.18 to 6.35 below. To reflect the impact on the figures shown above, costs in relation to income (calculated as a % of costs in relation to income) has been identified. These are illustrated for each of the survey authorities in **Chart A1** in **Annex B**.
- 6.12 This analysis shows that for the majority (94%) of local authorities in the sample, costs are expected to exceed income over the three year period 2004/5 to 2006/7. In particular, we have estimated that over the three year period, the total reported excess of costs over income for all shire district authorities was equivalent to around 0.35% of their total budget requirement. In comparison, this figure was 0.05% for all other classes of authority together. The apparent effect on shire district budgets was therefore around seven times of that on other authorities. The design of our data capture form meant that all estimated costs in 2006/07 had to be returned as on-going running costs (see paragraphs 7.3 and 8.2).

Income

- 6.13 The phase 2 returns provided information about fee income for the licensing authorities. A summary of the results of information about income is given in **Table 2** below. This shows the make up of the fee income. The key issue for 2006/07 and beyond will be the level of the Annual Fee, which in 2006/07 was estimated to make up around three-quarters of total fee income for the year.

Table 2 Summary of Income for sample authorities

	2004/05		2005/06		2006/07		Total	
	£m	%	£m	%	£m	%	£m	%
Premises Fees	0.2	64%	23.2	84%	3.4	17%	26.8	56%
Annual Fee	–	–	0.1	0.5%	14.9	74%	15.0	31%
Personal Licences	0.1	36%	3.6	13%	0.7	3%	4.3	9%
Temporary Event Notices	–	–	0.3	1%	0.7	3%	1.0	2%
Other	–	–	0.3	1%	0.6	3%	0.9	2%
Total	0.3	100%	27.5	100%	20.2	100%	48.0	100%

Totals differ from Table 1 as income breakdown not available for all licensing authorities. Totals may not sum due to rounding.

- 6.14 There were reportedly significant differences in the level of income received by licensing authorities around the country. One of the significant variables is the different mix of properties in the higher bands D and E for the premises licence.
- 6.15 **Chart A2 in Annex B** shows the significant variation in the level of higher fee earning bands D and E. These premises range from under 1% to 44%, which makes a considerable difference to the level of licensing fees that have been received by individual authorities.
- 6.16 A regional analysis of the proportion of properties shows some differences, with London having a higher level of Band D and E fee properties. The variation is shown below.

Chart 2 Regional analysis of premises by band



- 6.17 Where properties did exist in Bands D and E, some authorities identified difficulties in applying the multiplier¹¹, due to the interpretation of the legal definition of when the multiplier should be applied. While not all properties in these bands would pay a multiplier, there was a significant difference between authorities in the proportion of properties where the multiplier had been applied. The quality of the sample returns seemed to reflect some of this misunderstanding and may have over-inflated the number of multipliers recorded. As such, we are unable to determine the exact extent to which the multiplier has been applied. We believe, however, that the multiplier may have been applied to around half the pubs in Bands D and E during Transition. We understand that this is generally in line with the Government's original assumptions. The significant variation between authorities in the application of the multiplier is illustrated in **Chart A3 at Annex B**.

¹¹ In setting the current fees regime, the Government included specific flexibilities which they said would address disproportionate costs expected to arise in respect of certain classes of premises. One of these is large premises engaged exclusively or primarily in the sale of alcohol for consumption on the premises and which, they say, generates disproportionately high enforcement costs to which it would be unreasonable to expect other businesses to contribute. Accordingly, a multiplier was applied to town and city centre pubs, falling in Band D (twice the fee) and Band E (three times the fee).

Costs

6.18 The cost data collected in the phase 3 returns gave the following summary analysis of costs between 2004/05, 2005/06 and 2006/07. The majority of costs in 2004/05 were attributed to set up costs; around half in 2005/06 were classed as Transition and half were classed as ongoing running costs. All estimated costs in 2006/07 had to be returned as on-going running costs. The estimated running costs reported for 2006/07 of £37m were only 8% lower than the running and transitional costs estimated for 2005/06.

Table 3 Summary of Cost for sample authorities

	2004/05	2005/06	2006/07
	£m	£m	£m
Set-up costs	11.8	–	–
Transitional costs	4.2	20.0	–
Ongoing running costs	–	20.1	37.0
Unallocated	1.2	3.1	0.9
Total	17.2	43.2	38.0

Totals differ from Table 1 as income breakdown not available for all LAs. Totals may not sum due to rounding.

- 6.19 An important element of the phase 3 returns was to try to identify the likely level of ongoing running costs. Information that we have received and research undertaken after the returns were submitted indicates that the level of ongoing running costs in 2005/06 may understate the underlying level of ongoing activity, although the extent of the understatement is not known. One reason for this is that some authorities indicated that they had to reduce the level of inspection and ongoing activities to help with the processing of licences by the deadlines. However, it became clear from information provided subsequently from some individual authorities, that elements of transitional costs were still estimated to occur in 2006/07, which means that the figures reported as 'ongoing running costs' in 2006/07 are likely to overstate the level of ongoing revenue costs. In some cases the extra transitional costs may be significant. This leads to considerable uncertainty about the real level of ongoing running cost.
- 6.20 What is clear to us is that there is a significant reported excess of cost over income in 2004/05 and 2005/06 and a significant reported estimated excess of cost over income in 2006/07 and that much of this relates to set up and transitional costs.
- 6.21 The phase 3 return also gave an indication of what areas of activity the costs related to. The information that was returned in phase 3 is summarised in **Chart A4** in **Annex B**. Direct employee costs accounted for 57% of overall costs and included staff employed by the authority as well as agency staff. Indirect staff support such as Legal, Finance and Human Resources services was included in Support Services Employees and in some cases contracted IT support and costs and fees for contracted services appeared in Supplies and Services. The majority of costs were therefore related to direct and indirect employment of people, which reflects the nature of the activity.

- 6.22 The phase 3 returns also gave an indication of the estimated spend on activities of the Responsible Authorities¹² involved in licensing (excluding fire and police authorities). Whilst the quality and completeness of the returns for Responsible Authorities varied greatly, that information covering the three year period is summarised below and gives an indication of what areas of activity the costs related to. This information is presented in **Chart A6**, in **Annex B**.
- 6.23 There is a considerable variation in the reported cost of licensing activity between authorities, which is not explained by the size of authority or by the number of licences that the authorities had to process. Our visits to authorities helped to identify some of the reasons why there was an excess of costs over income and why they varied so significantly. Some of the costs related to external factors over which the authority had little control. These included:
- the geographical characteristics of an area, for example where reaching businesses that are distant or isolated – bringing with it extra (sparsity) costs;
 - the varying impact of the late laying of the fee regulations – laid on 20 January 2005, only a few weeks prior to the first date that applications could be made to authorities on 7 February 2005, and the details on plans and forms provided on 17 January 2005;
 - the proportion of smaller/independent businesses as opposed to larger businesses in the area. In some cases, applicants that can least afford the higher fee actually create the greatest level of cost for authorities. Overall authority costs often derive from a proportionately small number of applicants;
 - differences in the need to communicate the new arrangements, including the need for translation arrangements (ongoing education);
 - different responses from applicants and interested parties, resulting in different numbers of appeals and hearings.
- 6.24 There also appeared to be differences in cost due to differences in local policy, general approach and specific operational decisions taken by the individual authorities, and events that had occurred; examples included :
- different local instructions about cost control;
 - differences in the timing of the recruitment of staff to manage and process the applications;
 - different approaches to IT solutions to record and administer the new arrangements, including some IT implementation problems;
 - different approaches to proactive engagement with interested parties,
 - differences in the approach to mediation to resolve issues, both from the authority and partner organisations such as the police;

¹²Responsible authorities are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. These include: the police, local fire authority, local enforcement agency for health & safety, local agency for environmental health, local planning authority, and bodies responsible for protection of children from harm.

- differences in the approach to implementation of the regulations/ guidelines and in the interpretation of the guidance; and
- differences in the approach to enforcement arrangements and practices, which resulted in significantly different levels of enforcement and cost (see paragraphs 6.27 to 6.33 below).

6.25 In authorities with very low costs, it was generally found that things had gone well and that any issues that had emerged had been addressed in a very pragmatic way, often by very experienced managers and staff. Cheaper solutions had been found for dealing with issues and problems in some cases with a view to keeping within tight financial constraints. In some cases, it appeared that solutions were pragmatically aimed at getting the job done. There were generally fewer appeals and hearings, sometimes as a result of early communication or mediation, which either avoided more controversial applications being submitted in the first place or objections being resolved without the need for more expensive hearings. Hearings were managed in ways that reduced costs. In some cases, authorities felt that in order to keep within tight financial guidelines, they had to stop other enforcement or inspection activity and restrict the level of activity that they would have wished to carry out. In some cases the reported costs did not reflect the full additional cost of the activity. Very low costs may therefore reflect a risk-based targeted approach to inspection and enforcement. In others, it was because authorities may have understated the true cost of implementing the new arrangements.

6.26 In authorities with higher costs there appeared to be a range of reasons for this, some of which were beyond the control of the individual authority and some which were the result of policy or operational decisions by the authorities themselves. From our visits to authorities, higher numbers of hearings and higher levels of inspection and enforcement action appear to be key factors. Specific examples of issues that resulted in higher costs are :

- applicants not acting as expected and authorities reacting differently to those circumstances.
- staff resources being put in place in good time to ensure successful implementation of the new legislation, were then not immediately required because, for example, applicants were not in a position to make their applications due to the late laying of the regulations prior to the first appointed day, or that they made a decision not to make an early application for other reasons. While staff were often redeployed to other activities this did result in net additional costs.
- some difficulties with the implementation of new IT systems resulted in significant delays and extra cost.
- one authority found the need to undertake considerable additional education and enforcement activity when it found that large numbers of particular premise types had either not applied for licences or were not aware of their responsibilities under the Licensing Act 2003.

- 6.27 From the information collected in our data capture exercise and visits to authorities, it was evident that authorities had each taken a local approach to inspection and enforcement, both in the level of activity and the means that it was applied. Some were looking to visit all premises that made an application, with the involvement of all responsible authorities. Others were targeting certain types of premises.
- 6.28 Paragraph 3.57 of the Secretary of State's Statutory Guidance¹³ to licensing authorities states "The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. The principle of risk assessment and targeting should prevail and inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are more effectively concentrated on problem premises".
- 6.29 The Hampton Report¹⁴ recommends a clear set of principles around which regulatory enforcement should be built. Overall, the report recommends that burdens on business should be reduced by helping interactions between enforcers and business through more co-ordinated, more consistent and better targeted visits. The key findings try to entrench the principle of risk assessment throughout the regulatory system and points out that based on past experience its proposals could reduce the need for inspections by up to a third. By taking this approach, more time would be available for enforcement bodies to provide advice and support. The panel support this approach. We feel the combination of the Secretary of State's Statutory Guidance and the Hampton Report give a fairly clear steer to what might be a reasonable approach. We are also aware that HM Treasury/Cabinet Office Better Regulation Executive published the *Implementing Hampton: from enforcement to compliance* report on 28 November¹⁵.
- 6.30 To better understand the local authorities approach to enforcement, further investigation was undertaken during our visits to the selected authorities listed above. This reinforced the view that each authority was taking its own approach to enforcement; whilst some authorities were targeting enforcement visits at public-houses going to hearings, this appeared to be the only consistent theme. That apart, a wide variety of approaches were being taken which ranged from "joint task force" enforcement using risk assessment as a basis which produced a "top ten" for visits, to a light touch approach with little enforcement, to a decision to visit the majority of premises irrespective of risk. What was apparent was the level of confusion over what areas were already covered by existing legislation. Additionally, certain authorities commented that enforcement under existing legislation fell short as staff resources were redirected into licensing duties.
- 6.31 We also sought evidence from other stakeholders about the level of enforcement activity so far. With the rider that it was early in the process to comment, feedback was relatively consistent. Stakeholders commented that during Transition enforcement was

¹³ The Secretary of State's Statutory Guidance can be found at :

http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/monitoring_and_evaluation/guidance_review.htm

¹⁴ Philip Hampton *Reducing Administrative Burdens – effective inspection and enforcement* HM Treasury March 2005

¹⁵ www.cabinetoffice.gov.uk/regulation/reviewing_regulation/rogers_review

mixed, with some authorities doing little but targeted inspections, whilst others were undertaking high enforcement activity, with licensing seen to be being used to enforce regulations captured under other legislation.

- 6.32 More recently, stakeholders have told us that that enforcement – particularly the enforcement of licence conditions – is now increasing. It is possible perhaps that as local authorities recruited additional staff during the Transition period of the Act, they now have more staff resources and are using them to carry out inspection led (as opposed to complaint led) checks of licenced premises.
- 6.33 It is our view that these variable approaches during Transition were due to a combination of lack of clarity over the exact nature of enforcement under the new licensing laws as opposed to that covered under existing legislation and because of local decision making in levels of activity which were policy or officer led.
- 6.34 Local authorities have always been responsible for the enforcement of public entertainment licences under previous licensing arrangements. Similarly, Trading Standards have always had enforcement powers with regard to weights and measures and food law as well as underage sales. The police too have always had specific enforcement powers relating to licensed premises. Enforcement has always been publicly funded. It is, therefore, perhaps difficult to understand what has changed that requires additional funding through licence fees. While the various enforcement agencies may have extra powers, it does not necessarily mean additional enforcement activity is required. Enforcement should be targeted, efficient and fair – the recent AMEC¹⁶ campaigns are a useful example of such an approach with centrally funded partnership working across the different enforcement agencies.
- 6.35 **We recommend that clearer guidance is given to local authorities as to what enforcement should form part of the ongoing costs of licensing.** We further recommend that authorities have due regard for the work of the Local Better Regulation Office (LBRO), which will be taking forward the better coordination, inspection and enforcement activities for local authority regulatory services; that inspection and enforcement needs to be targeted, proportionate and driven by clear assessment of risk. Any activity above and beyond that level should be down to local discretion with additional costs met from local finances.

¹⁶The primary function of the publicly funded Alcohol Misuse Enforcement Campaigns has been to develop tactics to deal with alcohol-related crime and disorder. There have been four campaigns between summer 2004 – 06. We understand there are no plans for any further AMEC campaigns as the tactics used are being mainstreamed as part of core police activity.

7. The Gap between Income and Expenditure: fees for future years

- 7.1 This section considers what the appropriate level for fees should be for future years, whilst the following section looks back at the difference between income and expenditure during the transitional period when the Act was implemented.
- 7.2 The RIA which accompanied the Licensing Act made clear the intention that fees should allow for full cost recovery of the legitimate and efficient costs of the new licensing regime. The Government has also said that the costs of local authority administration, inspection and enforcement should be met by those choosing to engage in licensable activities (and not by taxpayers).
- 7.3 It is not yet possible to predict with accuracy what the balance between licensing authority income and costs would be from 2007/08 onwards, if fees were left at their current levels. This is because there is no experience at this stage – and hence no actual figures – of running the new licensing regime over a financial year that post-dates the transitional period. During the transitional period, both income and costs were at higher levels than would be expected in the future. While it might be thought that the figures received from licensing authorities for 2006/07 (see **Section 6**) would be indicative, there is strong evidence – including from our visits to meet with licensing authorities – that the total cost in 2006/07 still include a transitional element from work to implement the Act, albeit much reduced from earlier years. For example, we understand that by autumn 2006, a number of authorities had still not issued paper licences to applicants based on decisions made during the Transition period.
- 7.4 In short, the estimates for 2006/07 should not be seen as representing only the ongoing costs of administration, inspection and enforcement. It is reasonable to assume that, once all transitional issues relating to the implementation of the Act have been addressed, the total cost will fall below the level estimated for 2006/07, removing some of the imbalance between income and costs that was estimated by licensing authorities for that year.
- 7.5 If our review of the fees regime is implemented during 2007/08, **we therefore recommend that fee levels should be reviewed again in three years time** (in 2009/10, for implementation in 2010/11), **at which point it will be possible to make a proper and accurate assessment of the ongoing costs, based upon actuals.**
- 7.6 That said, since this would mean a long period elapsing between the initial setting of fee rates and an opportunity to correct any imbalances, there is a case for making an adjustment in the shorter term which acknowledges that some element of the estimated shortfall in 2006/07 may continue and takes some account of the impact of inflation on costs. On this basis, some further analysis was conducted with the data received from licensing authorities.

- 7.7 In line with standard good practice, future fees should be set at a level which assumes that licensing authorities operate efficiently and, indeed, they ought to encourage efficiency. Over time, as the new licensing regime beds down, licensing authorities should be able to streamline their processes and adopt best practice. This will help to ensure that in the words of the RIA, fees do “not place an unreasonable burden on industry or damage current business activity”. This does not mean that licensing authorities cannot take local operational or policy decisions which incur higher costs, but they would need to be prepared to fund these from other sources.
- 7.8 We considered the balance between income and costs estimated by each licensing authority in our sample for 2006/07. There was a significant difference between the authorities in the sample ranging from an authority where estimated expenditure was 47% of forecast income to an authority where the estimated expenditure was 540%. The average was 187% and the mid point of the range was 163%. The average was skewed by larger value authorities at the higher end of the range. It was noted that 15% of the authorities in the sample were estimating that income in 2006/07 would more than cover their costs that year.
- 7.9 We considered the available data at some length and, in line with the accepted approach (as used, for example, by the Audit Commission as a way of ensuring local authorities aspire to improve their performance), decided to focus on the top quartile figures for cost/income on the grounds of securing cost efficiency and to exclude potential outliers that might have distorted the figures and the overall result.
- 7.10 Those with the very lowest and the very highest cost/income ratios – the top and bottom 10% amongst the returns – were therefore excluded from the analysis. Ranking the remainder by their cost/income ratios, the mean point within the upper quartile was then selected as a point that could be said to reflect both efficient practice and the need to discount for some transitional costs. At this point, licensing authority income would need to rise by 7% in order to balance with costs, and at this level some 30 of the 155 sample authorities were estimating that they could cover their costs with income.
- 7.11 We considered the view that because 15% of authorities were covering their costs from existing fee income in full, other authorities may be able to do the same once transitional costs fell out and best practice and efficiency savings could be implemented, and that no increase to overall fees was necessary. On the other hand, many authorities were estimating that they had much higher gaps and it appeared less likely that costs would be brought within the level of estimated income. On balance, therefore, it appeared reasonable to recommend a modest increase in the level of fees.
- 7.12 **We recommend that fee levels should increase for the three year period from 2007/08 by 7%.** Consideration was given to whether this increase should be applied across all types of application and annual fee. From the evidence we have received it has not been possible to determine relative cost in application types, and therefore recommend that all applications should be subject to the 7% increase. This will bring approximately £3 million of additional annual income into the fee system.

7.13 We have considered fully the proposals that have been put to us for an increased fee income for London boroughs in order to achieve full cost recovery, but we are not persuaded by them. These would dislodge our approach which is to continue with a national regime locally applied (as outlined in **Section 5**). We consider that the extra costs incurred by some authorities by virtue of their location are catered for by the Government's contribution to financing local services, through our proposals for a targeted and risk-based approach to enforcement (outlined in **Section 6**), and through the proposal for refining the definition of those premises that are captured by the multiplier (see **Section 9**).

8. The Gap between Income and Expenditure: the transitional period (2004/05, 2005/06 and 2006/07)

- 8.1 **Table 1** identified an overall net excess of cost over income for authorities of approximately £50.7m for the 41% sample authorities for the three year period 2004/05 to 2006/07. Over 90% of all the authorities that responded to our data capture exercise were estimating an excess of cost over income over the three year period.
- 8.2 The results showed that the gap in 2006/07 was estimated to be slightly higher than the gap in 2005/06. These figures are of course estimates and actual information will not be known until the summer of 2007, when the accounts for 2006/07 have been finalised. On the basis of the information available to us, we have concluded that 2006/07 is not a typical year as there are still costs being incurred by authorities that relate to the implementation of the new legislation and events that occurred. We understand, for example, that during autumn 2006, a number of authorities had still not issued licences to applicants based on decisions made during the Transition period. We therefore consider that it is appropriate to consider all three years – 2004/05 and 2005/06 and 2006/07 as being financially affected by transitional arrangements.
- 8.3 It is important to come to a view about the overall national financial position for all authorities. The LGA has estimated a national total deficit for the period at £100 million. This is based on an extrapolation of our data capture survey results that they also have access to.
- 8.4 We have reviewed the information available from the sample authorities and other information from national Government returns covering all authorities. We have also been able to take into account additional information from the phase 1 returns which, combined with the main sample authority data, covered around 72% of licensing authorities. We also considered it reasonable to scale up the data provided. Careful consideration was given to the question of whether those authorities that did not provide any returns were likely to be experiencing an excess of income over expenditure or an excess of costs over income. We decided that for the non-responding authorities a total would be estimated by dividing the sample local authority total by the sample total authority population to give the per capita total. This was then applied to non-responding authorities. We also made adjustments to exclude extreme 'outlying' authorities (with either full cost recovery or very high excesses of cost over income) so as not to over or under inflate the figures when scaling up.
- 8.5 On the basis of available information reported by authorities, we therefore consider that it is reasonable to assume an estimated excess of costs over income of around £97 million for the three year period 2004/05 to 2006/07 financial years based on the sample returns.

- 8.6 Having considered very carefully the issue of funding the excess of costs over income for 2004/05 to 2006/07, we maintain there are a number of options for dealing with this. These include:
- increasing future licence fees to cover all or part of the excess costs over income;
 - leaving local authorities to fund their excess costs from normal running costs (reserves, council tax or reduction in services);
 - central Government providing additional grant to help support all or part of the additional cost of implementing the new legislation; or
 - a combination of the above.
- 8.7 Simply changing the fee regime itself would not enable all authorities to cover their costs unless the national scheme was replaced by a local fee system. Our rationale for maintaining a national system is outlined in **Section 5**.
- 8.8 There are a range of ways of interpreting the mass of information that we have gathered from licensing authorities and there is no universal answer to the level of excess costs over income that should be met locally or funded from fees or Government grant.
- 8.9 It is clear to us, however, that the differences in the levels of excess of cost over income or income over expenditure are partly the result of decisions and local choices made by individual authorities (see **Section 6**). In cases where there has been an excess of cost over income, we therefore consider that it is reasonable for the authorities to bear an element of the cost.
- 8.10 As we have said in **Section 7**, it is general practice to look at top quartile performance when assessing efficiency, effectiveness and value for money. It is reasonable that there will be varying levels of efficiency, effectiveness and best practice during the implementation period of any major new legislation. We have not, therefore, used the same criteria as we did in determining future fee levels. We have instead reviewed costs as percentage of income at the intersection of the third and fourth quartiles. At this point, the data indicates that an excess of cost over income of 41%. When looking at the income received by authorities over the 3 year transitional period, this translates to **an excess cost of around £43 million, which we recommend should be funded by central Government**. Over the three financial years 2004-05 to-2006-07, £43 million translates to approximately 0.02% of Government's contribution to financing local services.
- 8.11 A large number of stakeholders maintain that the additional activity and costs are partly due to the way the licensing arrangements were implemented by the Government (see **section 3**). Information provided to us makes it clear that costs to both fee payers and authorities were generally higher than anticipated. We believe that whilst licensees should pay for on-going costs, Government has a role to play in funding the start-up of the new system. Finally, meeting the estimated excess of costs over income up to £97 million from licences alone would require a significant increase in the level of fees, with an average additional cost £460 per premise; even over three

years this would equate to increases of over 85% each year¹⁷. **Whilst we believe that authorities should also bear an element of costs, it would appear fair and equitable that the Government fund the £43 million as part of the net cost through central grant rather than pass it on to future fee payers.**

- 8.12 The method of distributing additional Government grant between local authorities would need to be discussed with the LGA. Comments that we have received from individual local authorities have highlighted the need for transparency and fairness in the allocation of any additional grant. A specific grant is therefore recommended as a transparent way of allocating the additional funding.

¹⁷Based on the current annual fee for a Band B premise.

9. Other Fee Issues

Multiplier

- 9.1 In setting the current fees regime, the Government included specific flexibilities which they said would address disproportionate costs expected to arise in respect of certain classes of premises. One of these is large premises engaged exclusively or primarily in the sale of alcohol for consumption on the premises and which, they say, generates disproportionately high enforcement costs to which it would be unreasonable to expect other businesses to contribute. Accordingly, a multiplier was applied to town and city centre pubs, falling in Band D (twice the fee) and Band E (three times the fee).
- 9.2 It has become apparent to us that due to interpretation of the legal definition of when a multiplier is applicable, some licensing authorities are reluctant to apply it where it has not been possible to determine, under current arrangements, whether the premises in Bands D and E are engaged exclusively or primarily in the sale of alcohol for consumption on the premises. This has clearly had an impact on the net costs for some authorities. We have also heard evidence that seems to suggest that the new licensing legislation has led to a change in the nature of some businesses which might now need to be included in this definition. **We therefore recommend Government refines the definition of those premises that are captured by the multiplier to include all Band D and E premises in city and town centres that attract large amounts of enforcement and inspection activity which reflects the increased costs that go with that activity.** We acknowledge there are issues with defining levels of enforcement, but we believe that consideration should be given to looking at categories that are determined to be resource intensive, and believe this would make the operation of the multiplier simpler and remove an anomaly.

Proportionality

- 9.3 Some stakeholders have said that they thought the fees were disproportionate and penalising for small businesses, those with a small proportion of sales from alcohol and for those applicants who operate for community benefit or on a not-for-profit basis. Following our interim report we agreed to look further at this issue, as more information became available.
- 9.4 There are a number of stakeholder groups that have made cases to us for reduced fees. We are sympathetic to many of these groups and we would not wish to see them penalised by the new regime.
- 9.5 The question is whether a clear case can be made to reduce the level of fees for certain types of premises. Any such case needs to be both workable and justifiable, since:
- reduced fees for some are likely to be reflected through higher fees for other licence holders;

- a premises type that is given reduced fees, but is poorly defined, could be exploited as a loophole;
- exceptions to the standard fees structure introduce complexity to the system; and
- it may prove difficult to find clear criteria that support reducing fees for some premises types, but not for others.

- 9.6 There is no substantive evidence that suggests that these groups have had to stop operating altogether as a result of the new licensing structure and level of fees. For the reasons given below, we are not therefore recommending a reduction in fees at this time. However, from the evidence we have received, **we recommend that the future fees regime should be de minimis for certain premises types where alcohol activity is peripheral to overall activity, which would include florists and bookshops selling communion wine.** We do not believe that these fee payers should be captured by the new licensing regime until their alcohol trade/activity reaches a certain level. **We also recommend that DCMS should undertake further work to determine what that (reasonable) level should be, and that a suitable definition reflects that alcohol sales are purely incidental to the main purpose of the premises activity.**
- 9.7 We have received proposals for a **reduction in fees for certain business premise types** in line with both Small Business Rate Relief¹⁸ and Charitable Rate relief schemes. We have considered carefully the information which has been presented to us. However, whilst there is merit in considering such groups on an individual basis, because of the inadequacy of data available on how many such businesses would benefit, **we recommend that DCMS should consider this issue further in order to establish the overall effect of such a proposal, but with the view giving licensing authorities the ability to reduce fees for these defined premise types accordingly.**
- 9.8 We reported at our interim review that stakeholders had told us the new licensing fee regime has created a disproportionate administration and financial burden for not-for-profit groups and events and that it was unfair that they should be treated in the same way as commercial premises or activities. It must be recognised however, that the four principles of the Licensing Act 2003 apply equally to these sectors as they do to the commercial sector.
- 9.9 Our terms of reference (in **Section 2**) ask us to give specific attention to community amateur sports clubs, and village and community halls. Having been presented with a number of sector specific alternative approaches at the interim report stage, we agreed to consider them more fully and in the round of the fees regime overall, as more data on impact became available.

¹⁸ Eligible businesses with rateable values of below £5,000 get 50% rate relief on their liability. This relief will decrease on a sliding scale by an estimated 1% for every £100 of rateable value over £5,000, up to £10,000.

Sports clubs

- 9.10 Representative sports club bodies have continued to advise us that the current fees regime is having a disproportionate effect on voluntary sport. They have provided information on impact, a rationale for reducing costs to sports clubs and a range of options for doing so.
- 9.11 All agree that Government cannot be seen to be subsidising the sale of alcohol and that the newly constructed licensing regime must run at full cost recovery. However, stakeholders believe that sports clubs are paying significantly more in licensing fees than the Government originally envisaged because whereas Government maintained that the vast majority of clubs would fall in fee bands A and B, stakeholders do not consider this necessarily to be the case. They believe it is possible to devise a licensing fee scheme that recognises the essential differences between not-for-profit sports clubs and commercial drinking venues – that voluntary sports clubs are established for the benefit of the community as a whole and contribute to the health and quality of life of the locality – and that this difference should be reflected in the scale of fees.
- 9.12 The evidence provided by licensing authorities suggests an impact on all sport clubs under the current fees regime of around £500,000, with the majority of premises in Bands A and B. We have looked at this issue in detail and believe that, should the Government wish to do so, a case could be made for introducing a system whereby all clubs in the Community Amateur Sports Clubs (CASC) scheme could have their licence fee calculated at 20% of their rateable value. We are however uneasy about recommending this discount. We have no evidence that any amateur sports clubs have actually had to discontinue licensable activity as a result of the current levels of licensing fees. In addition, CASCs already benefit from rate relief alongside village and community halls and other not-for-profit facilities. We do not feel therefore that it would be appropriate to single out CASCs for a further discount at this stage but acknowledge that Government may wish to consider this further in the future.

Other not for profit groups

- 9.13 Since our interim report, we have carefully considered all the other evidence, arguments and options that have been presented to us by stakeholders representing the interests of not-for profit activities. These include a national scheme with local exceptions which would include, for example, registered charity events (e.g. shows and theatre) and also a reduction in fees for cultural businesses that are registered charities.
- 9.14 Whilst we are sympathetic to not-for profit groups and cultural businesses, we have not been presented with a coherent argument or solution which we believe currently justifies any further exemptions or reductions in fees for these sectors. What has come through in our research however is more the administrative burden on these organisations. There are arguments for treating village and community halls in a similar way to community amateur sports clubs, but we believe that their concerns would be better addressed through our recommendations for Temporary Event Notices and proposals for the removal of the Designated Premises Supervisor (DPS) requirements (see below).

Temporary Event Notices (TENs)

- 9.15 The TENs regime is designed to be a light-touch and simple system. We recognise that TENs are used by a range of sectors, including the commercial sector, but our primary interest is in the use of TENs by village and community halls and other voluntary activity providers. We are also mindful of the concerns of residents' groups and police relating to temporary event activity and have fully considered the information and proposals they have put to us. TENs arrangements came into force on 10 November 2005.
- 9.16 In our interim report we noted that stakeholders had told us that the TENs limits were too inflexible and restrictive. The issue was primarily about the capacity and willingness of village halls, community facility and other voluntary committees to take on the responsibilities of the Licensing Act. We said we would look at this further as more data became available about the TENs regime after the Licensing Act came fully into force (24 November 2005). Following our data capture exercise with licensing authorities, the following tables provides details of TENs given or projected.

Total number of Temporary Event Notice applications notified up to 30 November 2005

Premise Type	TENs notified
Pubs, Clubs & Bars	587
Registered Members Clubs	114
Hotels, B&Bs & Restaurants	299
Sports Clubs	63
Village and Community Halls	759
Cinemas & Theatre	14
Supermarkets, Shops & Off-Licences	93
Takeaways	45
Others	827
Unknown	722
Total	3,523

Based on sample 155 licensing authorities

For period 24 November – 30 November 2005 only (following commencement on 10 November 2005)

Total number of Temporary Event Notice notifications

Premise Type	2005/06 (actuals plus forecast)	2006/07 (forecast)
Pubs, Clubs & Bars	4,508	7,942
Registered Members Clubs	820	1,638
Hotels, B&Bs & Restaurants	1,486	3,015
Sports Clubs	420	857
Village and Community Halls	3,780	7,102
Cinemas & Theatres	137	217
Supermarkets, Shops & Off-Licences	482	899
Takeaways	270	390
Others	3,884	6,123
Unknown	3,890	9,521
Total	19,677	37,704

Based on sample 155 licensing authorities

- 9.17 Stakeholder organisations representing village and other community facility interests have been assessing the impact of the new licensing arrangements. A survey¹⁹ undertaken by Action with Communities in Rural England (ACRE) between February 2005 and February 2006 suggests that 91% of village halls had acquired a premises licence, with or without sale of alcohol provision, and were confident that they were operating correctly. However, 42% of the sample said that they also needed to make use of TENs; 57% believed that the current limit of 12 TENs per annum was not enough or borderline, and 20% had no full licence but risked exceeding their limit on TENs.
- 9.18 ACRE have also said the sale of alcohol in village and other community halls is an incidental activity but nonetheless an extremely important one that supports many fundraising and social activities in community life. For those halls without a full premises licence, or where the sale of alcohol is not included in their full premises licence, they intended to rely on TENs for events where alcohol is sold. We understand only 33% of those surveyed actually applied to include the sale of alcohol in their premises licence and therefore appointed a Designated Premises Supervisor (DPS). This was because of the accompanying responsibility and cost.
- 9.19 We have also received and considered carefully representations from residents' organisations in relation to the conditions on permitted hours on TENs and public nuisance. They have suggested a new two tier regime: one with a very light touch for

¹⁹ ACRE's Licensing Survey: *The Impact of the Licensing Act 2003 on Village Halls – Second Stage – November 2005 June 2006*

temporary activities/events that only take place during the day and do not extend beyond 23.00, and another for those that do. For the latter, they proposed that the activity should be advertised on the outside of the premises (where the event is taking place) from the day the event is notified to the police, and that the application should also be subject to licensing authority judgement about whether or not the activity meets the four licensing objectives. Also, for temporary events taking place at sites benefiting from a full premises licence, the conditions of the premise licence should also apply to the temporary event. Having considered the proposals carefully, our on balance view is that to impose the same conditions that are attached to a full premises licence is contrary to a light touch simple system. To do otherwise would require a fundamental change to the TENs regime, but it may be one which DCMS might want to consider further.

- 9.20 We are aware that DCMS concluded a formal three month consultation in October 2005 on Permitted Temporary Activities and the TENs Regulations. The consultation was primarily about the forms and procedures and, while it was not about any formal proposals to change the existing limits on the use of TENs, it did however indicate that Ministers would consider views about the limits from all respondents as that would inform their future consideration of the matter.
- 9.21 As a result of that consultation, DCMS announced in July 2006 that in order to mitigate the perceived burden for volunteers involved in village hall and other community work of having to specify a DPS on a premises licence (who has to undertake a recognised training programme to become a personal licence holder), DCMS was considering bringing forward for Parliamentary consideration a proposal for the removal of the DPS requirement for these sectors. The proposal would be subject to the outcome of a public consultation and would form part of a regulatory reform order under the terms of the Legislative and Regulatory Reform Bill which received Royal Assent in November 2006.
- 9.22 **We encourage village halls and other community facility providers to apply for full licences. We therefore recommend that the DCMS proposal to remove the DPS requirement from community and village halls that have a full licence should be implemented by the department at the first opportunity.** There are clear advantages for applicants, licensing authorities and other interested parties – in terms of cost, bureaucracy and risk – if as many community and village halls as possible can be encouraged to obtain the full licence, instead of relying upon TENs.
- 9.23 **We also recommend that the number of TENs that community and village halls (as defined by the DPS exemption above) can obtain during a period of one year should be increased from 12 to 15, with the maximum number of days during which licensable activity can occur remaining at 15.** There is evidence that this modest change would be sufficient for a significant proportion of community and village halls who use TENs where the current number (12) appears to be limiting activity. Equally, a limit of 15, restricted to community and village halls takes account of the concerns about TENs by some residents groups and the police.

Large Events and Festivals

- 9.24 This issue is about where the higher fee is triggered, particularly capturing large not-for-profit/community events in the same bracket as other commercial large events. Under the fees for large events there is a sliding scale for events attracting attendances above 5,000 to over 90,000.
- 9.25 Issues raised with us by stakeholders during the interim review included the waiving of fees for not-for profit events, maintaining the flexibility of licensing authority approach to the application of these large fees in line with the previous PEL regime, applying fees to the proportion of the licenced area and not the whole event site, and fixing fees which reflect the complexity of the event rather than footfall. We agreed to look at this further as more evidence became available for large events after full implementation of the Licensing Act on 24 November 2005. Following our data capture exercise with licensing authorities, the following table provides details of exceptionally large events licences granted or projected.

Total number of 'Exceptionally Large Events' licences granted (full year projections)

Attendance at event	2005/06	2006/07
5,000 to 9,999	38 (55%)	80 (56%)
10,000 and above	26 (38%)	56 (39%)
Unknown	5 (7%)	6 (4%)
Total	69	142

Based on sample 155 licensing authorities

- 9.26 We have no doubt that local authorities will wish to encourage events which support, for example, community activity in their regions. We have considered carefully all the options and proposals that have been put to us and **recommend that licensing authorities should be given discretion to set the level of fee for large events in their areas based on cost recovery, reasonableness and risk. To reinforce this, we also recommend that LACORS should provide guidance for licensing authorities which sets out what might and might not need to be considered in making their assessment of the level of fee charged for an event.** We recognise, however, that implementation of this would present difficulties – not least an act of Parliament – but believe it would significantly improve on the current system and so opportunities should be sought to bring it into law at the appropriate time.

Circuses

- 9.27 We understand the Government decided that regulated entertainment within circus performances should not be exempt from the controls in the Licensing Act 2003 because such performances raise issues in relation to three of the four licensing objectives: public safety; the prevention of public nuisance; and the protection of children from harm. In this context, circuses appear, in their view, indistinguishable from

any other form of theatrical entertainment captured by the Act. We are sympathetic to the needs and concerns of circuses and would not wish them to be penalised by any unintended impact of the new legislation.

9.28 In our interim report, we recorded stakeholder concerns about the financial burden for circuses of having to apply for a full licence with the associated costs every time a circus performs at a new venue. We said we would look further at the impact of new regime on circuses as more actual data became available.

9.29 Stakeholders have told us that the current licensing legislation does not properly take account of the practicalities of licensing 'portable' structures such as circuses and other touring entertainment providers. Also, that the TENs system does not really work for them because of the 96-hour limit. We understand that the circus season lasts up to 40 weeks, that most circuses do not go to the same sites each year – and in some instances could take up to three years to do a complete circuit. Smaller circuses are likely to use two venues a week and up to 80 sites, requiring up to 80 licences in a season.

9.30 We have been advised about three specific issues:

- a) the practicality of having to display 'Blue Notices' around prospective sites. Regulations²⁰ include a requirement that a brief summary of the application setting out matters such as the proposed licensable activities should be clearly displayed on an A4 size notice (Blue Notice) immediately on or outside the premises for the period during which representations may be made. Stakeholders advise that licensing and other authorities do police the system in order to ensure that the notices are put up correctly and, as importantly, stay up during the period when representations may be made. They say this creates significant problems for circuses and other touring entertainment providers that may not be performing near to the locality where the licence is required at the point when the notice is due to be displayed, and also in ensuring that notices subsequently remain in position.
- b) reported problems for circuses in posting a notice at strategic and appropriate places around a potentially large area of land (e.g. a park) in comparison with, for example, placing the notice on a building.
- c) the prescribed wording of newspaper adverts. Stakeholders have said that the prescribed wording of newspaper adverts should be more succinct in order to reduce costs. Costs could also be reduced by advertising in the 'entertainments column' rather than 'public notices column' where, they say, prices have been exploited by local newspapers.

9.31 We understand there is no requirement in the regulations about which column in a newspaper the advert should be placed. As part of our interim report in November 2005 (see **Annex A**), we recommended that consideration is given to simplifying the application process by introducing alternative methods of advertising applications other than newspapers that is effective both in cost and impact. The Government has said that it has considered the possibility of simplifying the application process by

²⁰The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

introducing alternative methods of advertising applications. It will consult on options when considering any possible amendments to regulations.

- 9.32 Activity during the 2006 season, the first under the new licensing regime, has only recently wound down. We are not aware at the time of this report of any firm evidence either way about the effect the new regime is having on circuses but we understand that circuses are generally engaging in the new licensing processes. **We do however recommend that the matter is kept under review by DCMS.**
- 9.33 **We are aware that DCMS has established a central register of licenced public spaces in England and Wales in order to help event organisers and touring entertainment providers determine whether their event could take place in a particular local authority area on pre-licenced land. We welcome this approach by local authorities, and where they have not yet done so we would encourage other authorities to also adopt this approach.**
- 9.34 In order to minimise the burdens currently being experienced by circuses and other touring entertainment providers that do not use licenced public land, **we recommend that Government fully reviews and reconsiders the arrangements for the posting of Blue Notices.** For example, once circuses have put up their Blue Notice, it would be more practical for licensing authorities to undertake occasional passing checks to ensure that the notices have not been removed or become detached. That would eradicate circuses' concerns that they are responsible for going back to the sites and checking the notices are in place when they are not currently performing in that location.

Application Forms

- 9.35 During our initial research, stakeholders told us about concerns relating to the complexity and number of application forms required. Stakeholders have also suggested to us that the application forms as currently drafted waste space; where sections of the form are not applicable to an individual application and that these sections currently need to be photocopied additionally seven times to responsible authorities, wasting time and paper.
- 9.36 Some have said that the use of electronic forms would create less of a problem; if the forms could be submitted electronically to both the licensing authority and other responsible authorities (as long as they do not need to be printed out) the problem of length and layout is dramatically reduced. We are aware however that current DCMS forms guidance says that applications should be made to the relevant licensing authority in writing and it is for licensing authorities to take their own view on whether to accept applications received electronically. Responsible authorities will decide independently whether to accept electronic applications. Other stakeholders have suggested to us that there should anyway be a wholesale redesign and presentation of the forms in order to reduce space and their length. We understand that DCMS are considering the scope and requirements for application forms as part of their Better Regulation Simplification Plan which identifies areas to help reduce the administrative burdens arising from the Licensing Act 2003.

- 9.37 We agree that the length and complexity of forms generally and the dead weight of the total application for different types of applicants need reducing – in particular for smaller organisations and the voluntary and community sectors that may not have access to electronic facilities.
- 9.38 Whilst acknowledging that it will only be beneficial to those applicants that are able to make applications by electronic means, in order to remove the requirement for applicants to make their applications in writing and in line with the Government's e-government strategy²¹, **we recommend that it is made mandatory for licensing authorities and responsible authorities to accept application forms electronically, should applicants choose to submit them in that format. This should include scanned plans and electronic signatures.**
- 9.39 Whatever the outcome of our recommendation on electronic forms, we believe there is a desire to reduce the size, complexity and therefore cost associated with the application form process and we have therefore made **a number of other detailed recommendations to simplify and shorten the application forms which are included at Annex C.**

²¹ The e-Government Strategic Framework, published in April 2000, required all Departments to produce e-business strategies showing how they planned to implement electronic government and service delivery.

Annex A: Interim Report – November 2005

Our interim report, focusing mainly on the transitional period, was presented to Government in November 2005 and published by them in December 2005. During the review, our work involved engagement with around 70 stakeholder organisations.

In our Report we identified four immediate recommendations for Government and nine areas of activity that we wished to consider further during the next stage of our work.

We said at the time that whilst we appreciated that a number of stakeholders were hoping to see more immediate solutions coming from the report, and we had been mindful of that throughout the review process, it had not been possible then to reach a decision on a number of issues. One of those was licensing authority income and costs under the new regime. A great deal of information had been gathered by authorities and their representative bodies, but unfortunately and for a variety of reasons, it had not been possible to assemble information which was either comprehensive or could be proven to be representative so that a firm view could be taken at that time on the net cost to licensing authorities of the new licensing arrangements. We did agree however that during the remainder of the review we would continue to work with authorities to assemble that information as a matter of priority.

Interim Recommendations

Our four recommendations for Government were that:

- Central guidance should be provided for fee payers and licensing authorities about what the Licensing Act 2003 means for them.

The Government has confirmed that this will be completed shortly.

- Consideration should be given to simplifying the application process.

The Government has said that it has considered the possibility of simplifying the application process by introducing alternative methods of advertising applications. It will consult on options when considering any possible amendments to regulations. As part of the initial review of Statutory Guidance to licensing authorities, Government has already clarified the position on premises plans.

- There should be no impediment to licensing authorities making their monitoring, enforcement and administration more efficient and cost effective.

The Government has clarified the position for licensing authorities on the development of collective working practices and is exploring good practice in this area for wider dissemination.

- There should be a single date for the annual fee for premises licences and club premises certificates with incentives for timely payments, and facility for automated payments.

The Government has said that licensing authorities can already accept automated payments, though were this to be made compulsory it would require a change to the primary legislation and it would, through consultation, have to consider the balance between statutory requirement and burdens placed upon authorities.

The Government has also agreed in principle our recommendation for a single date for payment of the annual fee. It is considering the technical aspects (such as transitional arrangements) and the options for which date to adopt. It has said that licence holders will be given notice before new arrangements are brought in and that, in the meantime, they should continue to pay their annual fee as the current law requires. The Panel still consider that a single date should be introduced.

Future Work

The nine areas of activity we identified for further consideration during the next stage of our future work, culminating in this our final report are:

- **Licensing Authority income and costs**
To identify as accurately as reasonably possible the overall net costs for licensing authorities during Transition and estimate the ongoing annual net costs, and to clarify and understand the reasons for differences between authorities in order to assess the level of costs that would be reasonably be incurred to efficiently and effectively to deliver the statutory licensing function.
- **Licensing Authority Inspection and Enforcement regimes and variability of Licensing Authority approaches**
To look further at the issue of local authority inspection and enforcement in the context of the Better Regulation Executive's implementation of the recommendations of the Hampton Review of Regulation, and best practice licensing authority approach in order to determine what is reasonable efficiency.
- **Model for calculating fees**
To consider universally applicable alternative methods or mechanisms for calculating fees as part of broader considerations which seek to set out a system that is transparent, fair to different types of licence holder and also provides for licensing authorities to recover costs.
- **Apportionment/Hereditament**
To look further at stakeholder concerns about where i) licensable activity is only a small area of a much larger premises and ii) where there are low volume alcohol sales in relation to total business activity, and to explore this issue with the Valuation Office Agency.
- **Simplification and Number of Application Forms**
To look at stakeholder concerns relating to the complexity and number of application forms required for authorities and the number of responsible authorities to whom the applications are submitted.
- **Temporary Event Notices**
To look further across all the activity to which TENs regime applies as more data become available after the Second Appointed Day (24 November 2005).

- Not-for Profit groups/events
To consider more fully and in the round of fees regime overall, a number of alternative approaches presented in relation to proportionality of the fees against the level of risk.
- Circuses
To look further, as more actual data becomes available prior to the new season, at the impact of the new regime on circuses that have to apply for a full licence at each new venue.
- Threshold for Events and Festivals
To look further at events triggering the higher fee, particularly those capturing large not-for-profit/community events in the same bracket as other commercial large events, as more impact data is available once applications for large events have been made after the Second Appointed Day – 24 November 2005.

Our full interim report can be found at: <http://www.culture.gov.uk/NR/rdonlyres/F044AF48-EC89-4D8F-BA3B-5516C1F353E4/0/IndependantLicensingFeesReview.pdf>

Annex B: Licensing Authority Data: Additional Information

Table A1 Breakdown of sample by region and type of local authority

	Sample		All Authorities	
	Number	Percentage	Number	Percentage
By Region				
East Midlands	14	9%	40	11%
East of England	19	12%	48	13%
London	20	13%	33	9%
North East	7	5%	23	6%
North West	17	11%	43	11%
South East	31	20%	67	18%
South West	18	12%	45	12%
Wales	8	5%	22	6%
West Midlands	13	8%	34	9%
Yorkshire & Humberside	8	5%	21	6%
Total	155	100%	376	100%
By LA Type				
London Borough	20	13%	33	9%
Met District	16	10%	36	10%
Shire District	94	61%	238	63%
Unitary Authority	17	11%	47	13%
Welsh Unitary	8	5%	22	6%
Total	155	100%	376	100%

Chart A1 Three Year Cost as a % of Income for each Authority

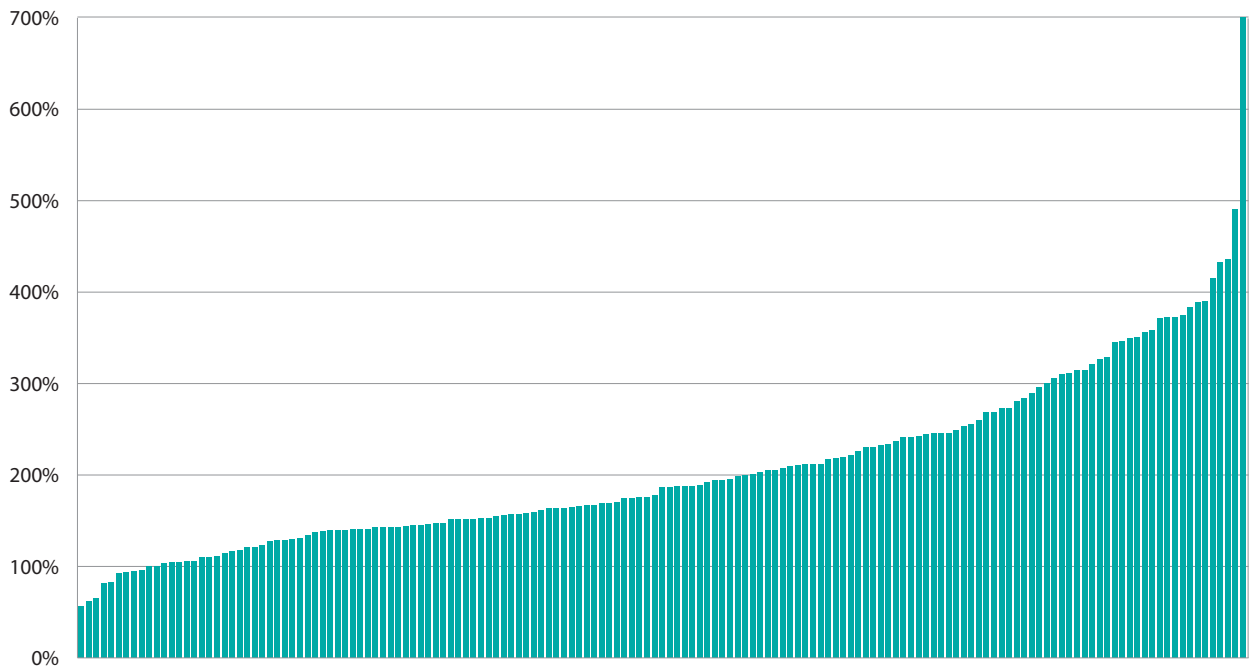


Chart A2 Proportion of Premises in Bands D and E for each authority

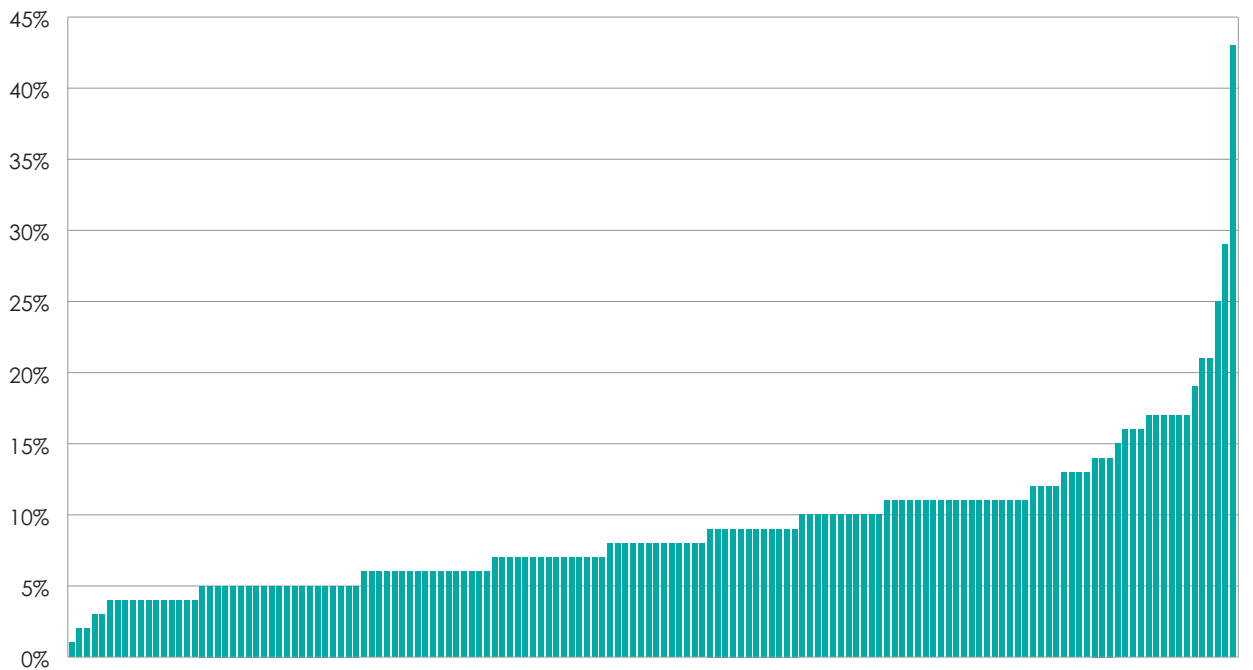


Chart A3 Variation in the Proportion of Pubs in Bands D and E that had multipliers applied for each authority

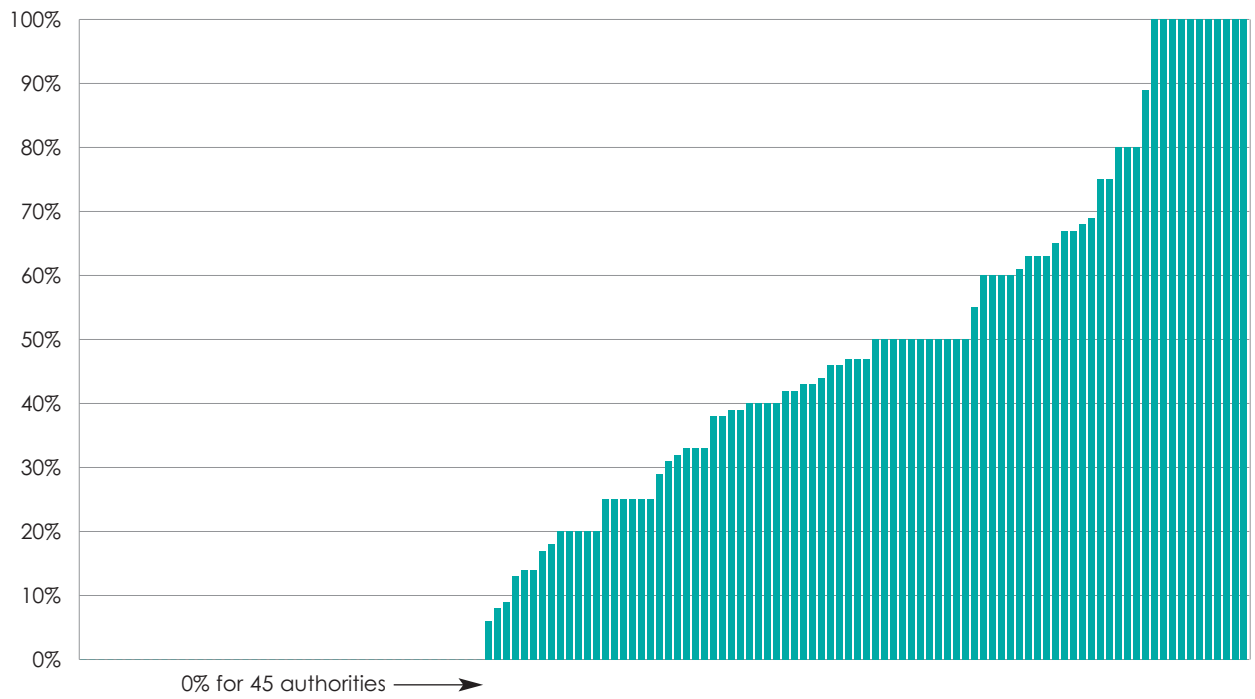


Chart A4 Licensing Costs Analysed by Type of Expenditure over 3 years

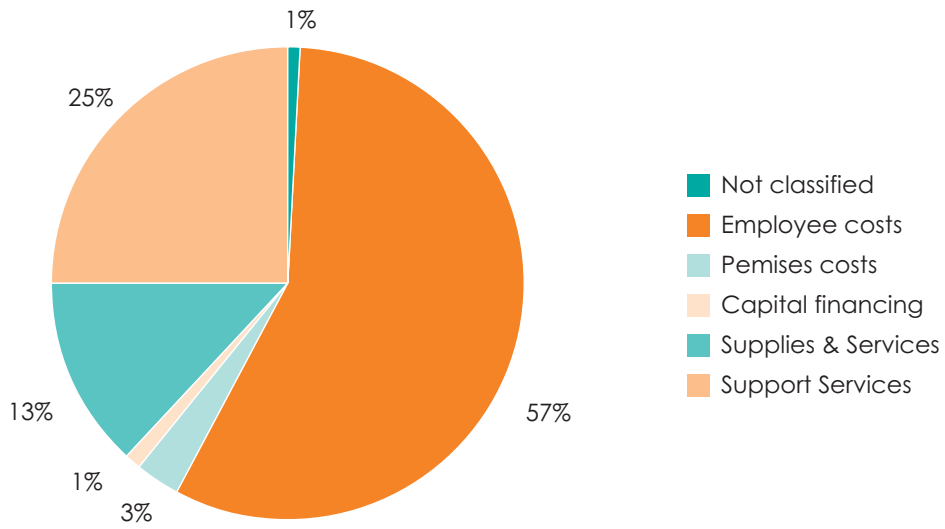
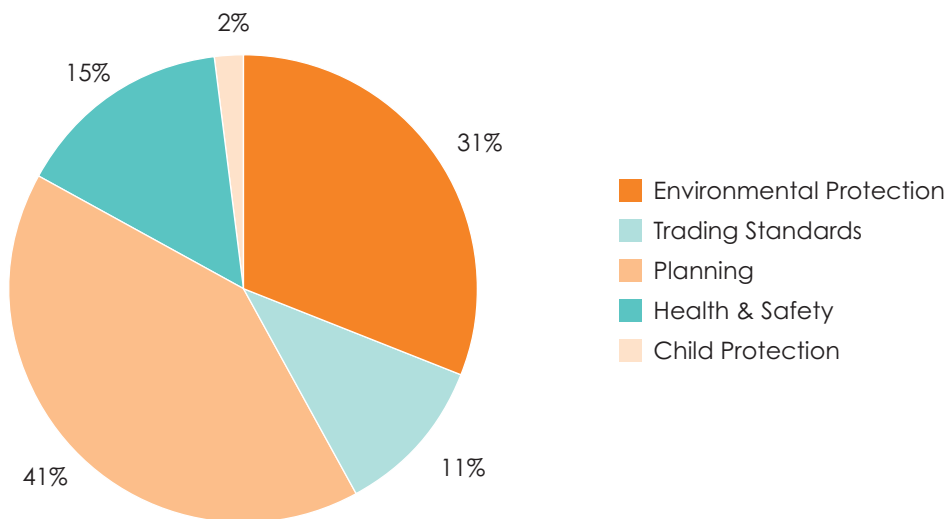


Chart A5 Responsible Authority Spending Analysed by Activity over 3 years



Annex C: Application Forms

Detailed Recommendations

1. Stakeholders have reported that the application forms for Premises Licence, Provisional Statement, and Premises Licence Transfer all take considerable space to identify the type of applicant. They have questioned whether it is really necessary to identify all the different types of applicant in the way that these forms currently require.

In attempting to make the Premises Licence, Provisional Statement, and Premises Licence Transfer forms as short as possible, we recommend that:

i) the forms need to identify only a) individuals b) companies c) partnerships and d) 'others' – a description of which can be written in by the applicant (a list of the other organisations could be provided in a list included in the notes to the form if necessary). Also, as well as the address, there should be a place to state the name of the premises which helps authorities to determine the type of premises.

ii) the tick box for declaring whether you are over 18, should be replaced with the applicant's date of birth. Stakeholders have advised us, and we agree, that to conduct any meaningful checks into an applicant, both the police and social services need a date of birth.

2. Stakeholders have said that the 'Variation of DPS' application form should not require a description of the premises because it is unnecessary and possibly misleading. The form also requests the premises licence number and a copy of the relevant part of the premises licence. Through this information and the Licensing Register, the Licensing Authority already has at its disposal a description of the premises. They say the request for the description on the form is therefore a duplication and that any police objection to the change of DPS must be related to both the applicant DPS and the circumstances of the premises. They say that neither of these would be served by a simple description of the premises as this would not give details of circumstances that could lead to an objection.

Stakeholders have also suggested that the DPS consent form be subsumed into the Variation of DPS form.

It is unclear to us the reasoning behind the current requirement to provide a description of premises in the 'variation of DPS' form and we therefore recommend that, if there is no added value, it should be removed. We also agree that the DPS consent form be subsumed into the Variation of DPS form. The variation of DPS form will therefore require i) the signature of the applicant DPS or his duly authorised agent and ii) the signature of the premises licence holder.

In order to allow stakeholders to rotate their DPSs more easily and to make it easier for licensing authorities to administer a DPS changeover, we also recommend that DPS changes can be applied in advance by altering the current form to include the option of either having the application take immediate effect (as now) or taking effect on a specific date. The form could be re-drafted along the following lines:

'I would like this application to have immediate effect under section 38 of the LA 2003'

or:

**'I would like this application to take effect on the following date'
(delete as appropriate)**

3. Stakeholders have said that there is continuing confusion between the disclosure of the convictions declaration and the CRB check; personal licence holders often consider that because they are in receipt of one, they do not require the other. By combining the two forms, the repetition of needing to write names and addresses would also be reduced and the end result would be a shorter form. We have carefully considered this proposal. However, it would seem the inevitable consequence is that a personal licence applicant would have to disclose any convictions they have had in a publicly available document. We do not therefore consider that it would be advisable to combine the disclosure and application forms in this way.

4. Stakeholders have said that the timescale for an Interim Authority Notice is too short and should be extended to 28 days. Their reasons for that include :

- Insolvency; 28 days gives a proper chance for interested parties to make an application to transfer (if they find out about the act of insolvency). We understand that this was clearly seen with the recent collapse of a large pub chain.
- Death; during first 7 days following a death the last thing on the mind of the family is what form they need to fill in to retain the deceased's premises licence. Those who may need to remind the family are prohibited by sensibility from raising the issue so soon, probably before the funeral if the current law is to be complied with.
- Scotland is in consultation on their regulations. They, presumably, considered the English experience and have provided for 28 days in which to act following death/incapacity or insolvency of the premises licence holder. Where there is inconsistency between England & Scotland there will be a divide.

We agree, and recommend that Government review and reconsider a more sympathetic timescale for an Interim Authority Notice.

Responsible Authorities

5. Stakeholders have said the part of the application process which gives rise to the most administration and unnecessary loss of time is the requirement to send paper copies of the form to each responsible authority. Some have suggested that this requirement should be placed upon the local authority as the responsible authorities are frequently a subdivision of that local authority and distribution can be facilitated through internal communication methods; that this would be a more efficient system than requiring each individual applicant to find out what the responsible authorities are.

6. Other stakeholders have advised us that responsible authorities e.g. Child Protection are uncertain about their role in the whole process. It is their view that, in many cases, a notice of application would be sufficient. This notice could state the personal details of the applicant,

the premises details, and what they are applying for. In their view, the form would (providing the appropriate bodies were consulted) provide all the information that the department required at a fraction of the cost. During our visits to a number of licensing authorities, two-thirds suggested that some responsible authorities did not need to receive a full application. That almost universally included Child Protection.

Whilst acknowledging that this position would improve, to some degree, by the ability to submit applications forms electronically (see recommendation in main report), we recommend that the Government undertake a full review to reconsider whether it is necessary for all responsible authorities to receive all the forms, or whether a notice of application would be adequate for all or some responsible authorities. This is of course particularly relevant to those applicants that are not able to make applications by electronic means.

Forms Guidance

In light of all the recommendations and proposals listed above relating to application forms process, we suggest that it would also be logical for the Government to review and make appropriate revision to all the guidance notes that accompany the forms. We are confident that it would be helpful to applicants to ensure that the forms guidance is not ambiguous and where possible that instructions are precise. For example, phrases which indicate that the applicant 'could do this or that' or 'you may wish to consider' are generally unhelpful.

Annex D: List of Stakeholders

Action with Communities in Rural England	Department for Culture, Media & Sport
Alnwick District Council	Licensing Policy Team
Arts Council England	Doncaster Metropolitan Council
Association of Chief Police Officers	Federation of Licenced Victuallers
Association of Circus Proprietors of GB	Federation of Licenced Victuallers (Wales)
Association of Convenience Stores	Federation of Small Businesses
Association of Leading Visitor Attractions	Gordon Marsden MP
Association of Licenced Multiple Retailers	Greater London Authority
Association of Small Direct Wine Merchants	Guild of Master Victuallers
Bath & North East Somerset Council	Hammersmith & Fulham Borough Council
Bar Entertainment & Dance Association	Hampton Review Implementation Team
Better Regulation Commission	(Cabinet Office)
Birmingham City Council	Hillingdon Borough Council
Bledlow Ridge Horticultural Society	Historic Houses Association
Bracknell Forest Borough Council	HM Treasury
Brent Council (London Borough)	Hounslow Borough Council
Brighton & Hove City Council	Inner Temple
British Association of Leisure Parks, Piers & Attractions	Interflora
British Beer & Pub Association	Isles of Scilly Council
British Holiday & Home Park Association	Isle of Wight Council
British Hospitality Association	Kensington & Chelsea (Royal) Borough Council
British Institute of Innkeeping	Council
British Marine Federation	Knockhatch Adventure Park
British Retail Consortium	Leeds City Council
Broadland District Council	Live Music Forum
Business in Sport & Leisure	Liverpool City Council
Caistor District Council	Local Authority Co-ordinators of Regulatory Services
Camden Borough Council	Local Government Association
Cardiff Council	London Councils
Castle Wines	Ludlow Music Society
Central Council for Physical Recreation	Manchester City Council
Chichester District Council	Memorable Cheeses
Chorley Village Hall	Middle Temple
Churches Main Committee	Mole Valley District Council
Cinema Exhibitors Association	Musicians Union
Circus Arts Forum	Myddle Village Hall
Committee of Registered Clubs Association	National Association of Kebab Shops
Community Matters	National Association of Local Councils
Country Landowners Association	National Campaign for the Arts
Croydon Borough Council	National Operatic & Dramatic Association
David Sykes	Network of Residents Associations
Department for Communities & Local Government	New Forest District Council
	Northamptonshire Licensing Consortium

Northamptonshire Police	Tower Hamlets Borough Council
Nottingham City Council	University of Bristol
Oswestry Borough Council	Vale of Glamorgan Council
Open All Hours	Valuation Office Agency
Pavilion Court Sports & Social Club	Visitor Attractions Forum
Romiley Cricket Club	Wandsworth Borough Council
Rural Shops Alliance	Warrington Borough Council
Sandwell Metropolitan Borough Council	Waverley Borough Council
Small Business Council	Wealden District Council
Somerset County Council (Trading Standards)	Welsh Council for Voluntary Action
South Bucks District Council	Welsh Local Government Association
South Kesteven District Council	Welsh Music Foundation
St Cassian's Centre	Westminster City Council
Tameside Metropolitan Borough Council	Weymouth & Portland Borough Council
Theatrical Management Association/Society of London Theatres	White Roding Social & Sports Club
Tourism Alliance	Wine & Spirits Trade Association
	York (City) Council

In addition, all licensing authorities in England and Wales, including those listed above, were invited to contribute to the Panel's data collection exercise in January-April 2006.

Annex E: Panel Member Details

Sir Les Elton (Chair)

Sir Les Elton is Visiting Professor in the Business School and Member of the Council at the University of Newcastle upon Tyne, a non-executive Director of the Port of Tyne Authority and advisor to several firms and public bodies (including DCLG Select Committee). From 1984 – 2004 he was the Chief Executive of Gateshead Council & Clerk to the Northumbria Police Authority.

Clive Allen

Executive Head of Corporate Services, Surrey Heath Borough Council (Camberley). Duties range through the finance functions of Council Tax, National Non-domestic Rates, financial management, audit as well as legal and support – a service which includes licensing. Clive Allen was previously Borough Finance Officer, Woking Borough Council, and Assistant Chief Internal Auditor, London Borough of Camden. Clive is also President of the Society of District Council Treasurers.

Duncan Bowdler

Head of Trade Liaison, the Co-operative Group – the UK's largest co-operative retailer operating 1,800 food stores, nearly all with liquor licences. He is also Chair of the Co-operative Retail Legislation Group and chair of the Association of Convenience Stores Government Relations and Campaigns Committee.

Francis Patton

Francis Patton is Customer Services Director at Punch Taverns, the UK's largest pub company. He is responsible for the companies' relationship with key stakeholders including retailers, the City, the media and government. He is also the companies' representative on the national committee for Pub is the Hub, Business in the Community and key trade bodies such as BBPA, BII and ALMR. Recently, he has worked with Leeds Metropolitan University on a project looking at rural pubs in tourist areas. Francis Patton was formerly Commercial Director at Punch having started his career with Allied Domecq as an Area Manager responsible for leased and managed public houses in the Yorkshire region.

Brian Wilson

Director of Thematic Studies and Inquiries at the Commission for Rural Communities (CRC), which has three roles as: a national voice and advocate for rural communities; a source of expert advice on rural issues; and an independent rural watchdog. Previously he was at the Countryside Agency, including spells leading the development of the CRC, overseeing the Agency's policy work on rural services, housing, transport and social inclusion, and developing 'rural proofing'. Brian Wilson started as a professional researcher, where he dealt with a wide variety of rural development and urban regeneration issues.

Paul Woods

City Treasurer, Newcastle City Council. Paul Woods is also Treasurer to the Tyne & Wear Passenger Transport Authority, and a non-executive Director of NEXUS (Tyne & Wear Passenger Transport Executive) and also Treasurer to the Newcastle Theatre Royal Trust. He is the Chair of Finance Group of the Association of North East Councils. He has significant technical experience of capital strategy and programme management and technical work with Revenue Support Grant distribution formulae.

