



department for
**culture, media
and sport**

Proposal to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices.

Licensing Act 2003

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Chapter 1: Introduction

Summary

1.1 The consultation document seeks your views on three separate simplification proposals relating to the Licensing Act 2003 (the Act). The Government proposes to simplify the requirements for:

- the revision of licensing statements;
- making an interim authority notice (IAN) or applying for reinstatement on transfer (RT) following the death, incapacity or insolvency of the licence holder; and
- the notification of temporary event notices (TENs).

1.2 The consultation also seeks your views on the draft Order, Impact Assessment (published as a separate document and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx) and draft amendments to the Statutory Guidance under s.182 of the Act.

The Legislative Burden

1.3 In general, the burdens imposed by the Act are justified by the need to prevent potential adverse impacts on the four licensing objectives: the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm. However, stakeholders have identified the detailed requirements of the Act with regard to these processes as being unduly restrictive and burdensome. The Government agrees that they can be simplified, as described below, without any adverse impact on the licensing objectives.

The Government's proposal

1.4 The Government proposes:

a) Licensing statements

- To remove the requirement that licensing authorities determine and publish a Licensing Statement every 3 years; and
- To allow licensing authorities to consult only those stakeholder groups likely to be affected, rather than the full list of mandatory consultees, when conducting a revision of a licensing statement.

b) Interim Authority Notices (IANs) and Reinstatements on Transfer (RTs)

- To extend the period during which specific persons may notify interim authority following the death, incapacity or insolvency of the licence holder from 7 to 28 consecutive days;
- to extend the period during which a person may apply for an RT following the death, incapacity or insolvency of the licence holder from 7 to 28 consecutive days;
- to extend the period during which the police may object to an interim authority notice from 48 hours to 2 working days; and
- to extend the period during which interim authority has effect from 2 months to 3 months.

c) Temporary Event Notices

- To extend the period during which the police may object to a TEN from 48 hours to two or three working days; and
- to give a new power to the police to allow a late notification (i.e. fewer than ten working days before the first day of the event) by notifying the licensing authority. This will be referred to as 'police confirmation'.

Administrative savings and other benefits

1.5 We estimate that these simplification measures could save the organisations and businesses involved between £9.2m and £24.1m per year. There will be a small additional cost to the police and licensing authorities, as they will make assessments of late TENs that were not previously necessary. The estimated annual cost to licensing authorities is £19K- £29K (divided amongst 378 LAs in England and Wales). The cost to the police is estimated at £25K to £99K. All of these estimates are described in detail in the Impact Assessment (published as a separate document and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx), and comment is invited. The extension of the deadline for interim authority will also give the relatives and business associates of licence holders who have died, become incapable, or been made insolvent, more time to put the affairs of the premises licence holder in order before having to apply for interim authority.

Who will be affected by the proposals?

1.6 The proposals will affect:

- those wishing to notify interim authority or reinstatement on transfer of the licence (e.g. close family members and business associates);
- licensing authorities (who are responsible for reviewing licensing statements); organisations that are mandatory consultees for revisions of licensing statements; (such as licensed trade associations, club associations, victuallers associations; and other business representatives) and
- in relation to TENs, those who give TENs (including schools and parent teacher organisations; licensed premises and clubs; and third sector organisations); licensing authorities (who issue acknowledgements of TENs); and the police (who may object to a TEN).

Implementing the proposals

- 1.7** We propose to introduce these simplification measures by means of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006 (LRA). See Chapter 3 and Annex E for more details of the LRO process.

Chapter 2: How to Respond

- 2.1** The closing date for responses to this consultation is 9 February 2010. If you would like to respond to this consultation, please email your response to licensingconsultation@culture.gov.uk

If you prefer, you may submit a hard copy by post to:

Shelley Mickleburgh
Licensing Team
Sport and Leisure Directorate
2-4, Cockspur Street
London SW1Y 5DH

- 2.2** If you have any queries about this consultation, or require additional copies, please contact the Licensing Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380.
- 2.3** However, if you have any questions or complaints about the process of consultation on this paper, please contact the DCMS enquiries team at enquiries@culture.gov.uk or by post to Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.

Disclosure

- 2.4** Normal practice will be for responses to this consultation document to be disclosed, and for respondents to be identified. While the LRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LROs. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances. You should note that:
- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymize it.

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- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

2.5 Please identify any information that you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality.

Confidentiality and Freedom of Information

2.6 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. *An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.*

Chapter 3: Legislative Reform Order Preconditions and General Questions

Legislative Reform Orders

3.1 The Government proposes to introduce these simplification measures by means of a Legislative Reform Order under section 1 of the Legislative and Regulatory Reform Act 2006. The draft Order is at Annex C. This consultation is being conducted in accordance with the provisions of section 13 of the LRRRA and the terms of the Government's Code of Practice on Written Consultations. Views are invited on all aspects of the consultation paper, including the specific questions set out in this document and summarised in Chapter 8. All responses should be received by 9 February 2010. Subject to the outcome of consultation and Parliamentary scrutiny, we propose that the changes are implemented from Spring 2010.

Legislative Reform Order-making powers

- 3.2** The LRRRA confers powers on a Minister of the Crown, with the approval of Parliament, to make legislative reform orders for purposes which include (under section 1) the removal or reduction of burdens falling directly or indirectly on any person from any legislation.
- 3.3** Section 1(3) of the LRRRA defines a burden as a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
- 3.4** An order may not impose, abolish or vary any tax nor may it create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits. This proposal will not do so.
- 3.5** The 2006 Act specifies, under Section 3, that an Order must satisfy six preconditions. These are whether the Order has a non-legislative solution; is proportional to the policy objective; strikes a fair balance; does not remove necessary protections; does not prevent the exercise of rights and freedoms; and is not of constitutional significance. These are discussed in Chapter 3, and under each proposed measure in Chapters 4-6.
- 3.6** It should be noted that even where the preconditions of Section 3 of the LRRRA are met, an LRO cannot:
- deliver 'highly controversial' proposals;
 - remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
 - confer or transfer any function of legislating on anyone other than a Minister; persons that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;

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- impose, abolish or vary taxation;
- create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- amend or repeal any provision of Part 1 of the LRRRA;
- amend or repeal any provision of the Human Rights Act 1998;
- remove burdens arising solely from common law.

Devolution

3.7 The LRRRA imposes certain restriction regarding LROs and the devolution agreements:

- Scotland – A Minister cannot make an LRO under Part 1 of the LRRRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an LRO under Part 1 of the LRRRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.

3.8 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedures is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- Negative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made and the Committee has not vetoed the proposal.
- Affirmative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- Super-Affirmative Resolution Procedure – This is a two stage procedure during which there is opportunity for the draft LRO to be revised by the Minister:
 - Parliament is given 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.
 - After the expiry of the 60 day period (during which evidence may be sought from stakeholders and the Minister or officials by the Committees of each

House), recommendations on the LRO are made by the Committees, and the Minister must lay a revised or unrevised LRO for further scrutiny (15 days for unrevised, 25 days for revised). After this second scrutiny period, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both Committees.

- 3.9** Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.
- 3.10** The Department for Culture, Media and Sport believes that the **affirmative resolution process** should apply to these LROs on the grounds that it amends the Act.
- 3.11** This consultation document contains a series of questions to which responses are invited. A list of all questions can be found at Chapter 8.
- 3.12** Comments are also invited on the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx).
- 3.13** The consultation document follows the format recommended by the BRE for all such proposals. The criteria applicable to all UK consultations under the BRE Code of Practice on Consultation are at Annex D.
- 3.14** This consultation document is available from the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6498.aspx and through the Business Link website at www.businesslink.gov.uk/consultations.
- 3.15** Under Section 3(2) of the LRRRA, the Minister of the Crown must be satisfied that certain preconditions have been met before presenting to Parliament a proposal to make a legislative reform order. For this reason, we would particularly welcome your views on whether and how each aspect of the proposed changes in this consultation meets the following preconditions:
- (a) the policy objective intended to be secured by the order could not be satisfactorily secured by non-legislative means;
 - (b) the effect of the provision is proportionate to the policy objective;
 - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
 - (d) the provision does not remove any necessary protection;
 - (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise; and
 - (f) the provision is not of constitutional significance.
- 3.16** Preconditions (a) and (f) are addressed below, with accompanying questions. Preconditions (b), (c), (d) and (e) are addressed separately in the context of each proposed measure. There is a summary list of all questions in Chapter 8.

Precondition (a): non-legislative solutions

- 3.17** The legal requirements relating to interim authority notices and notification on transfer; licensing policy statements; and notification of temporary events are set out in the 2003

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Act. The proposed changes to the Act summarised cannot be made through secondary legislation (other than legislative reform orders).

3.18 Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act or seek to influence the decisions of prosecuting authorities. In addition, the police (and other RAs) need have no regard to it.

3.19 The Government is satisfied that these proposals cannot be achieved by means of:

- any voluntary agreements between central government, licensing authorities and the police;
- changes to the statutory Guidance that the Secretary of State issues under section 182 of the 2003 Act; or
- changes to the regulations made by the Secretary of State under their powers in the 2003 Act.

3.20 The Government is therefore satisfied that the measures proposed cannot be achieved by non-legislative means.

Question G1: Do you consider that any, or all, of the proposed simplification measures can be achieved by non-legislative means? Yes/No

If you consider that a proposed simplification measure can be achieved by non-legislative means, please provide your reasons.

Precondition (f): constitutional significance

3.21 We consider that the proposals have no constitutional significance, because they make minor changes to processes under the Licensing Act 2003 without changing the principles of the Act.

Question G2: Do you consider that any of the simplification measures is of constitutional significance? Yes/ No

If you consider that a measure would have constitutional significance, please provide your reasons.

Chapter 4: Licensing Statements (Proposal A)

Current arrangements

4.1 Under section 5(1) of the Licensing Act ('the Act'), each licensing authority (LA) is required to determine and publish a 'statement of licensing policy' (licensing statement) for each three-year period. This statement must be published before the LA carries out any function in relation to applications or notifications under the Act. The LA must consult the stakeholders set out in section 5(3) of the Act before determining licensing policies. Under section 5(4), the LA must also keep the licensing statement under review and make appropriate revisions in the interim between the 3-year periods. If it intends to make any revisions, it must consult the same consultees.

4.2 The stakeholders listed at 5(3) are:

- the chief officer of police for the licensing authority's area
- the fire authority for that area;
- such persons as the LA considers to be representative of holders of premises licences issued by that authority;
- such persons as the LA considers to be representative representatives of holders of club premises certificates issued by that authority;
- such persons as the LA considers to be representative representatives of holders of personal licences issued by that authority; and
- such other persons as the LA considers to be representative of businesses and residents in its area.

Proposal to remove the requirement to review licensing statements every three years

4.3 LAs have told us that the current requirement to review licensing statements every three years, or indeed at the end of any set period, is unnecessary and burdensome. For example, the LA may have carried out a revision in the interim, and no further changes may be needed. Or the LA may know that a further amendment will be required in the next few months, for example, to take account of forthcoming changes in legislation. The cost to LAs of reviewing licensing statements is substantial – around £7,550 for each review (see Impact Assessment, which is published as a separate document, and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx).

4.4 Consultees also incur costs in reading and responding to review consultations. Some national trade associations, such as the British Beer and Pub Association (BBPA), may be asked to consider and comment on hundreds of licensing statements at the same time at an average cost of £270k – £539k every 3 year cycle. Our research also shows

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that some consultees are deterred from contributing to reviews at all because of the time and costs involved and therefore lose the opportunity to influence licensing policy.

4.5 In view of these arguments and the evidence gathered from LAs and consultees, the Government proposes to remove the current requirement for LAs to revise licensing policy statements every 3 years. There will still be a requirement for LAs to keep licensing statements under review and carry out revisions as necessary. For the determination of a completely new policy (for example, because of boundary changes), LAs will still be required to consult all of the statutory consultees).

Question A1: Do you agree that the existing requirement to review licensing statements every three years should be removed? Yes/ No.

If no, please state your reasons.

Proposal to remove the requirement to consult all statutory consultees for all revisions

4.6 LAs may make revisions to licensing statements following changes to, for example:

- local circumstances;
- the Licensing Act, associated Regulations or statutory Guidance;
- other national legislation; or
- the policies and practices of a Responsible Authority.

For some changes, such as the introduction of a cumulative impact policy, it may be appropriate to consult all statutory consultees. However, other changes may be of limited scope and may not be of interest to all stakeholders. For example, changes to contact details or a change made to reflect a minor change in the policy of a responsible authority. In these cases, it may be unduly burdensome, to both LAs and consultees, to require consultation with all statutory consultees. There is also some evidence that the requirement to consult all statutory consultees may act as a disincentive for LAs to carry out interim revisions to their licensing statements. This may result in licensing policy statements being out of date or incomplete. The Government therefore recommends that LAs should only be required to consult those statutory consultees that will be affected by the proposed revision.

Question A2: Do you agree that the existing requirement for LAs to consult all statutory consultees for all revisions should be replaced by a requirement for the LA to consult those statutory consultees that will be affected by the proposed revision. Yes/ No.

If no, please state your reasons.

Policy objectives

4.7 The policy objectives are:

- to remove unnecessary costs for LAs and consultees;
- to ensure an appropriate level of stakeholder involvement in the development of licensing policies; and
- to encourage LAs to keep licensing statements up to date.

Administrative cost savings

4.8 We estimate that there will be total savings of around £0.44m- £1.8m to LAs and consultees from this proposal. Detailed costs estimates can be found in the Impact Assessment, (published as a separate document, and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx) and comment is invited.

Is the proposal proportionate to the policy objective?

4.9 The proposal will not impose new costs on LAs or on consultees. However, it will help ensure that licensing statements are kept up to date at a reduced administrative cost.

Question A3: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees is proportionate to the policy objective? Yes/ No.

If no, please state your reasons.

Does the proposal strike a fair balance between persons adversely affected and the public interest?

4.10 The Government does not consider that any person will be adversely affected by this proposal. There would be an adverse effect on licensing stakeholders if licensing authorities failed to keep their statements up to date, or failed to consult adequately. However, failure to do either would be a breach of section 5 of the Act (as revised). Although the requirement to revise statements every three years would be removed, the proposal will help ensure that licensing statements are up to date by reducing the administrative cost of small amendments. The public interest lies in ensuring that the Act is administered efficiently without unnecessary burdens on consultees, whilst ensuring the appropriate level of stakeholder involvement in the development of licensing policies.

Question A4: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees strikes a fair balance? Yes/ No.

If no, please state your reasons.

Does the proposal remove any necessary protection?

4.11 The Government does not consider that the proposal removes any necessary protections. The requirement for LAs to keep licensing statements under review and revise them as appropriate in consultation with consultees that will be affected will ensure that necessary protections for residents, the licensed trade and other licensing stakeholders are retained. If residents and local businesses are dissatisfied with aspects of their Licensing Authority's Licensing Policy Statement, they can ask their ward Councillor to consider referring the matter for consideration under the Councillor Call for Action (CCfA) process that came into force on 1 April 2009. While LA decisions on individual licence applications are excluded from the scope of the CCfA, licensing statements are not. Through the Local Democracy, Economic Development and Construction Bill, Government is also set to introduce a mechanism for local people to express their collective concerns through petitions to their local authority. Local

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petitions may therefore be used to invite an authority to consider revisions to their licensing statement.

Question A5: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees does not remove any necessary protection? Yes/ No.

If no, please state your reasons.

Does the proposal prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise?

4.12 The proposal means that statutory consultees listed will not have the opportunity to contribute to the development of licensing statements every three years. However, they will continue to be consulted on revisions where they have an interest.

Question A6: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/ No.

If no, please state your reasons.

Chapter 5: Interim Authority Notices and Reinstatements on Transfer (Proposal B)

Current arrangements

5.1 Under section 27 of the Act, a licence lapses following the death, incapacity or insolvency of the licence holder. Under section 47, it is reinstated if the licensing authority receives an 'interim authority notice' (IAN) from someone connected with the business or the licence holder within seven consecutive days of those events. The applicant must also copy the IAN to the Chief of Officer of Police, who can object to an IAN within 48 hours of receiving it on crime prevention grounds. If the police object to an IAN, the LA must hold a hearing to consider it (unless all parties agree a hearing is unnecessary) and, if they agree with the police objection, cancel the notice. Otherwise, the licence is reinstated and is extant for 2 months (or earlier if it is terminated by the person who gave the IAN). Alternatively, a person may apply for a Reinstatement of the Licence on Transfer (RT) under section 50. Likewise, this type of application must be made within seven consecutive days.

Proposal to extend the period during which an IAN can be issued or a RT applied for to 28 consecutive days

5.2 Representatives of premises licence holders and licensing authorities have suggested that seven consecutive days is not always a realistic timescale to apply for an IAN or an RT. For example, it takes time to appoint an insolvency practitioner or to put a licence holder's affairs in order following their death or incapacity. Also, the deadline can seem unjust, particularly after bereavement. If the deadline is missed, the relative or business associate of the premises licence holder must apply for a new licence, with an average administrative cost of £385 - £950 (in addition to the fee). Applicants must then wait at least 28 days for a decision from the licensing authority, incurring loss of earnings during that period and, potentially, long-term loss of business as customers seek new venues. The Government therefore proposes to extend the period during which an IAN can be issued or RTs applied for to 28 consecutive days. It is unlikely that a longer period will be required, as the licence will remain lapsed during this period.

Question B1: Do you agree that the period during which an Interim Authority Notice can be issued should be extended to 28 consecutive days? Yes/ No

If no, please state your reasons.

Question B2: Do you agree that the period during which a Reinstatement of Licence on Transfer can be applied for should be extended to 28 consecutive days? Yes/ No

If no, please state your reasons

Proposal to change the deadline for the police to object to an IAN to two working days

5.3 Under section 48 of the Act, the police may cancel an IAN within 48 hours. The 48 hour objection period may be an obstacle to the efficiency of the IAN process, and potentially give rise to crime and disorder, because it does not always give the police sufficient time to consider the Notice. For example, if an IAN is delivered to an unmanned police station on a Friday night and is not actually received by the Chief Officer of Police until the following week, the 48 hour objection period will have elapsed. The Government therefore proposes to change the police objection period to two working days. In the vast majority of cases, this change will have no affect at all on the interim authority, but will ensure that any crime prevention issues are identified.

Question B3: Do you agree that the period during which the police may cancel an IAN should be changed to two working days? Yes/ No

If no, please state your reasons.

Extension of the period during which IAN has effect from two to three months

5.4 The Government also wishes to receive comments on whether there should be a consequent extension of the interim authority period from two months to three months. This would ensure that the interim authority holder has sufficient time to resolve their affairs and, for example, come to a decision about whether to apply for a transfer of the licence. For cases of insolvency, a maximum period of three months will also bring IANs into line with the Insolvency Service's proposal to extend the maximum time limit for court sanctioned moratoriums on creditor action.

Question B4: Do you think that the interim authority period should be extended to three months? Yes/ No

Please state your reasons.

Policy objectives

5.5 The policy objective is to ensure that anyone wishing to make an IAN or apply for a RT has time to do so, subject to police scrutiny on crime and disorder grounds. The advantages may include:

- licensed activities recommencing with reduced loss of earnings and long-term business;
- administrative savings to businesses through the removal of the need to submit a new licence application, whilst ensuring that the licensed activity continues to be conducted responsibly;
- the removal of the potential injustice of a relative having to issue an IAN or apply for a RT within a week of bereavement or the incapacity of the personal licence holder;
- ensuring that there is sufficient time after the issuing of an IAN to take decisions about the future of the business; and

- ensuring that there is sufficient time for the police to scrutinise IANs on crime and disorder grounds.

Administrative cost savings

5.6 We estimate that there will be total savings of around £5.52m- £10.52m to licence holders from this proposal. Detailed costs estimates can be found in the Impact Assessment (published as a separate document and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx), and comment is invited.

Is the proposal proportionate to the policy objective?

5.7 We consider that the proposal will not impose any new costs on applicants or other stakeholders.

Question B5: Do you agree that the Government's proposal to amend the deadlines for IAN and RTs is proportionate to the policy objective? Yes/ No

If no, please state your reasons.

Does the proposal strike a fair balance between persons adversely affected and the public interest?

5.8 We do not consider that any person will be adversely affected. The public interest lies in businesses carrying out licensable activities being able to operate temporarily under an IAN, or to transfer a licence (subject to the appropriate police assessment) after the death, incapacity or insolvency of the licence holder.

Question B6: Do you agree that the proposal to amend the deadlines for IAN and RTs strikes a fair balance? Yes/ No.

If no, please state your reasons.

Does the proposal remove any necessary protection?

5.9 We do not consider that this proposal would remove any necessary protections. The restrictions on those people who may make IANs and apply for RT; and the appropriate police assessment (within the proposed extended timescale); should ensure that licensed activities continue to be run responsibly. Failure to comply with the licence conditions can be addressed through enforcement action, closure and/ or review of the licence.

Question B7: Do you agree that the proposal to amend the deadlines for IAN and RTs will not remove any necessary protections? Yes/ No.

If no, please state your reasons.

Does the proposal prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise?

5.10 We do not consider that this proposal would prevent any person from continuing to exercise any right.

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Question B7: Do you agree that the proposal to amend the deadlines for IAN and RTs does not prevent any person from exercising a right that might reasonably expect to continue to exercise? Yes/ No.

If no, please state your reasons.

Chapter 6: Temporary Event Notices (Proposal C)

Current Arrangements

6.1 The Licensing Act 2003 provides for a light touch authorisation under which any person may submit a notification to the licensing authority (LA) to conduct licensable activities on a temporary basis (i.e., for a period not exceeding 96 hours). The Temporary Event Notice (TEN) must be given to the licensing authority and the police at least 10 working days in advance of the planned event. The licensing authority issues an acknowledgement to the event holder if it is satisfied that the TEN is within the statutory limits (e.g. for the number of events that can be held at one premises) and has been submitted within the 10 day notification period. Otherwise it must issue a counter notice. Only the police can object to a TEN, on crime prevention grounds. The police have 48 hours after receipt of the TEN to object to the event taking place by giving an objection notice to the LA and premises user. The LA must hold a hearing to consider any objection and, if it decides that the objection is valid, it must issue a counter notice to the applicant at least 24 hours before the beginning of the event to prevent it going ahead.

Proposal to allow the police to issue a ‘confirmation’ of a late TEN

6.2 The ten day notification period is reasonable in most cases, but there are times when it may be too rigid, for example:

- when a premises user wishes to arrange a low risk event at fewer than ten working days’ notice, (e.g., due to another venue cancelling); or
- when an event that was due to be held under a TEN is cancelled because of the weather and the premises user wishes to reschedule it (perhaps for the following weekend). A firework display or a circus might be affected by the weather in this way.

6.3 There may be a cultural loss to the community, as well as a financial loss to the organiser, if an event cannot proceed as planned. In particular, events held under TENs (such as those held by Parent-Teacher Associations) often raise money for good causes. The Association of Chief Police Officers (ACPO) has said that the police would like to have discretion to allow late notifications for TENs for this type of low risk event and the Local Authorities Coordinators of Regulatory Services (LACORS) agrees. The Government therefore proposes that the police are given discretion to allow TENs to be given without the current mandatory notice of ten working days. (However, the Government also proposes that there would be an absolute minimum notice period of three working days: see below).

6.4 In each particular case, the police would signal their assent to a late TEN by issuing a “police confirmation” to the licensing authority. The LA would then check that the statutory limits have not been exceeded and issue a section 102 acknowledgement or

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a section 107 counter notice as appropriate. The s.102 acknowledgement would confirm that the TEN has been issued in accordance with the requirements, including payment of the fee, and has not exceeded the statutory limits. If it did not comply with the statutory limits (by, for example, exceeding the maximum 12 events per year at a particular premises) the LA would instead issue a counter notice (s.107), no later than 24 hours before the beginning of the event (as currently).

- 6.5 The Statutory Guidance issued under s.182 of the 2003 Act (see chapter 7), and the guidance to applicants, will emphasise that the deadline of 10 working days still applies and that premises users should make all efforts to give TENs within that deadline, as there is no guarantee that the police will exercise their discretion. In addition, the guidance to applicants will make it clear that the police are more likely to exercise their discretion if they are informed of a reason why the TEN could not have been given on time.

Question C1: Do you agree that the police should be able to decide (at their discretion) to permit licensed activities under a late TEN, by issuing a confirmation to the licensing authority? Yes/ No

If no, please state your reasons.

Absolute limit of three working days

- 6.6 If the police issue a confirmation to a licensing authority to authorise a late TEN, the authority will then have to check that the TEN complies with the statutory limits. To ensure that there is sufficient time to conduct these checks, and send a s.102 notice or s.107 notice as required, the Government proposes the police can only issue a confirmation of a late TEN up to three working days before the proposed event commences. TENs received after this point will not be able to benefit from police discretion to allow late TENs. Although it is unlikely in most cases that the police will consider that TENs issued close to this absolute limit will be suitable for confirmation, they will be able to do so if they consider it appropriate.

Question C2: Do you agree that the latest a TEN may be confirmed by the police should be three working days before the proposed event commences? Yes/ No? If no, please state your reasons.

Police to issue a Confirmation within two working days

- 6.7 If a TEN is given late, the premises user and the local authority should be made aware as soon as possible that the police have decided to use their discretion to confirm the TEN. This will enable premises users to go ahead with their arrangements for the event. The Government therefore recommends that the police confirmation should be issued within two working days of receipt of the TEN.

Question C3: Do you think that a police confirmation should be issued within two working days of receiving the TEN? Yes/ No

Please state your reasons.

Proposal to change the police objection period from 48 hours to two working days

- 6.8 There is evidence to suggest that, in some circumstances, the current 48 hour objection period does not give the police the time intended, and that this may sometimes limit, or prevent, the police from making a proper assessment of the risk of crime and disorder. An extreme example is when a TEN is delivered to a police station (which may be unmanned) on a Friday night, but not actually received by the chief officer of police until the following week, by which time the objection period will have elapsed.
- 6.9 Replacing 48 hours with two working days would be a small change that should ensure the police have sufficient time to consider TENs properly, even when they are received outside working hours. This is unlikely to result in a significant increase in police objections, but will ensure that any objections made are properly targeted at high risk events.

Question C4: Do you agree that the period during which the police can issue an objection to a TEN should be changed to two working days? Yes/ No

If no, please state your reasons.

Extending the police objection period to three working days

- 6.10 Some police representatives consider that a longer period is desirable for the police to be able to give more full consideration to TENs. In particular, if an event goes ahead under a TEN and it emerges that there is a risk of crime and disorder (or actual crime and disorder), then the alternative mechanisms available to enforcement agencies to prevent or stop the event can be expensive and burdensome both to the enforcement agencies and to premises users. There may, for example, be a risk of diverting police resources from other priorities. As is the case with the proposal to move from 48 hours to two working days, this change is unlikely to result in a significant increase in police objections. However, it would allow the police more time to make a risk assessment of temporary events and, if necessary, have discussions with event organisers about matters of concern. It will therefore give further assurance that any police objections are properly targeted.
- 6.11 A deadline of three working days may have two potential disadvantages. Firstly, if a TEN that is subject to an objection is submitted to the police with the current minimum of 10 working days notice, the existing timescale available for the required hearing is already tight, and this would mean that there is one day fewer available for all involved in the process. Secondly, all premises users (not just those subject to an objection) will have one extra day of uncertainty as to whether their event will be subject to a police objection. It should be noted that the Parliamentary committees which scrutinise legislative reform orders may consider that this extension does not serve the purpose of reducing a burden or an overall burden. Therefore, if there is strong support for this proposal, the Government may have to seek a further legislative opportunity to implement this option (whilst seeking to bring forward a change to two working days in the interim). We would therefore welcome your views on whether the deadline for a police objection to a TEN should be extended to three working days.

Question C5: Do you consider that the period during which the police can issue an objection to a TEN should be extended to **three** working days? Yes/ No

Please state the reasons for your answer.

Policy Objectives

6.12 The policy objectives are to:

- ensure that the police have sufficient time to properly assess events, particularly when they receive notification out of hours;
- reduce the risk of crime and disorder at events.
- enable low-risk events to go ahead as often as possible, even if arranged or rearranged at late notice;

Administrative cost savings

6.13 We estimate that there will be total net savings of around £3.25m- £11.77m to premises users from this proposal. Detailed costs estimates can be found in the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx), and comment is invited.

Is the proposal proportionate to the policy objectives?

6.14 We do not consider that this proposal will place substantial burdens on any stakeholder. The proposal to allow the police discretion to allow TENs issued without the mandatory minimum notice period of ten working days will complicate the TENs system slightly, as the police confirmation notice would represent an additional process. However, this will not be disproportionate to the policy aims as the TENs regime will remain light touch and relatively simple to administer. The police would only exercise their discretion when they have had the opportunity to assess the risk of crime and disorder. To ensure that there is no confusion amongst those wishing to hold events, guidance to premises users should continue to indicate firmly that the minimum notice period of ten working days still applies and should be adhered to, even if there is a mechanism for police to accept late notices at their discretion. The change to the period during which the police may give an objection notice will ensure that they have sufficient time to properly assess all TENs and will further reduce the risk of crime and disorder at events. As described above, we do not think that it will result in an increase in objection notices overall.

Question C6: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days is proportionate to the policy objectives? Yes/ No.

If no, please state your reasons.

Question C7: Do you consider that the extension of the deadline for the police to object to a TEN to **three** working days would be proportionate to the policy objectives? Yes/ No.

Please state your reasons.

Does the proposal strike a fair balance between persons adversely affected and the public interest?

6.15 We do not consider that any person will be significantly adversely affected. The public interest lies in enabling the police to exercise discretion in the case of late TENs, and in ensuring that the police have sufficient time to consider each TEN.

Question C8: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days strikes a fair balance? Yes/ No.

If no, please state your reasons.

Question C9: Do you consider that the extension of the deadline for the police to object to a TEN to **three** working days would strike a fair balance? Yes/ No.

Please state your reasons.

Does the proposal remove any necessary protections?

6.16 We do not consider that the proposal removes any necessary protection. The same oversight will apply to TENs that are issued late. If the police are unable to conduct the necessary assessment in time, then they will not exercise their discretion to issue a confirmation notice.

Question C10: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days or three working days does not remove any necessary protections? Yes/ No.

If no, please state your reasons.

Does the proposal prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise?

6.17 We do not consider the proposal prevents any person from continuing to exercise any right.

Question C11: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days does not prevent any person from continuing to exercise any right which that person might reasonably expect to continue to exercise? Yes/ No.

If no, please state your reasons.

Question C12: Do you consider that the extension of the deadline for the police to object to a TEN to **three** working days would not prevent any person from continuing to exercise any right which that person might reasonably expect to continue to exercise? Yes/ No.

Please state your reasons.

Chapter 7: Proposed amendments to Statutory Guidance

Guidance issued under s.182 of the Licensing Act 2003

This chapter contains amendments to the Statutory Guidance to reflect the changes proposed in this consultation document. Only the sections of the Guidance that we propose to amend are set out here. The full Guidance (last amended in July 2009) is available on the DCMS website at http://www.culture.gov.uk/reference_library/publications/6287.aspx

Licensing statements (Proposal A)

Paragraph 1.9 to be **amended** to read as follows: Section 5 of the Act requires a licensing authority to prepare and publish a statement of its licensing policy, *to keep it under review, and to make revisions to it as necessary*. The policy must be published before the authority carries out any licensing function in relation to applications made under the Act.

Paragraph 13.2 to be **amended** to read as follows: “13.2 Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the 2003 Act. *Initially, the legislation demanded that licensing statements be revised at the end of every three year cycle. This is no longer the case.*”

Paragraph 13.3 to be **replaced** with: “*Duty to keep under review*” “13.3 *However, the policy must be kept under review and the licensing authority must make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the statutory objectives are being met. Where revisions to this section 182 Guidance are made by the Secretary of State, it will be for the licensing authority to determine whether revisions to its own licensing policy statement are appropriate.*”

Paragraph 13.4 to be **replaced** with: “*Consultation on Policies*” “13.4 *Before determining a new policy, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:*

- *the chief officer of police for the area;*
- *the fire and rescue authority for the area;*
- *persons/ bodies representative of local holders of premises licences;*
- *persons/ bodies representative of local holders of club premises certificates;*
- *persons/ bodies representative of local holders of personal licences; and*
- *persons/ bodies representative of businesses and residents in its area.*

When making a revision to its policy, the licensing authority must consult such of the persons listed in s.5(3) as it considers may be affected by the revision.

Paragraph 13.5 to be **replaced** with: *“Full Revisions” “13.5 In some circumstances, the licensing authority may consider that the changes that are necessary are so substantial that a thorough revision of the licensing statement is required. This could be, for instance, because of feedback from the local community that the statutory objectives are not being met, or because the authority considers that the statement has become out of date. In this case, the Government would expect the licensing authority to consult with all of the listed consultees.*

Paragraph 13.6 to be **replaced** with: *“Other Revisions” “The licensing authority may, however, determine that a proposed change affects only some of the statutory consultees. This could be the case, for example, where it considers that changes to licensing legislation; to the policy of a Responsible Authority; or to revisions made by the Secretary of State to this section 182 Guidance necessitate changes to the statement that are of limited scope or effect. In these cases, the authority must only consult those bodies and persons that may be affected by the proposed revision. For some revisions, such as a purely factual change to an address, it may not be necessary to consult at all.”*

Paragraph 13.7 to be **amended** as follows: *“13.7 The views of all the persons or bodies consulted should be given appropriate weight when the policy is determined. It is recognised that in some areas, it may be difficult to identify persons or bodies that represent all parts of industry affected by the provisions of the 2003 Act, but licensing authorities must make reasonable efforts to do so.*

Paragraph 13.8 to be **amended** as follows: *“13.8: Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons before determining or revising their policies. For example, the Government recommends that Licensing Authorities consult Crime and Disorder Reduction Partnerships (CDRPs). Certain authorities may also consider it essential to consult, for example; the British Transport Police; local Primary Care Trusts; bodies representing consumers; local police consultative groups; or those charged locally with the promotion of tourism. They may also consider it valuable to consult local performers; performers’ unions (such as the Musicians’ Union and Equity); and entertainers involved in the cultural life of the local community. In London, boroughs should consider consulting the Mayor and the Greater London Authority.”*

Paragraph 13.9 to be **shortened** as follows: *“13.9 Beyond the statutory requirements, it is for each licensing authority to decide the full extent of its consultation and whether any particular person or body is representative of the group described in the statute. Whilst it is clearly good practice to consult widely and to follow the Consultation Guidance published by the Cabinet Office, this may not always be necessary or appropriate.”*

Paragraph 13.10 to be **deleted**: [13.10 Similarly, where a licensing authority has recently revised its policy within a three year period following a full consultation exercise it may not consider that further changes are necessary when determining the policy for the next three year period. As such, it may decide on a simple consultation with those persons listed in section 5(3) of the 2003 Act.]

Paragraph 13.11 to be **amended and renumbered as 13.10**: “13.10 However, licensing authorities should consider very carefully whether *a more widespread consultation is appropriate*, as a limited consultation may not allow all persons sufficient opportunity to comment on and influence local policy. For instance, where an earlier consultation was limited to a particular part of the policy.”

Paragraph 13.12 to be **renumbered as 13.11, and subsequent paragraphs to be renumbered in consequence**.

Paragraph 13.27 (now paragraph 13.26) to be **amended** as follows: “13.27 After considering the available evidence and consulting those individuals and organisations *it considers appropriate*, a licensing authority may be satisfied that it is appropriate and necessary to include an approach to cumulative impact in the licensing policy statement. In this case, it should indicate in the statement that it is adopting a special policy of refusing new licences whenever it receives relevant representations about the cumulative impact on the licensing objectives which it concludes after hearing those representations should lead to refusal (see paragraphs 13.28 – 13.31 below).”

Box following Paragraph 13.28 (now paragraph 13.27); fourth bullet to be amended as follows: “Consult with those of the statutory consultees specified in section 5(3) of the 2003 Act *as it considers may be affected by the proposal*, and, subject to the outcome of the consultation

Interim Authorities and Reinstatements on Transfer (Proposal B)

Paragraph 8.97: Amend reference to ‘seven days’ to ‘28 consecutive days’; amend reference to ‘seven day period’ to ‘period of 28 consecutive days’.

Paragraph 8.99: Amend reference to ‘two months’ to ‘three months’.

Paragraph 100: Amend reference to ‘7 day period’ to ‘period of 28 consecutive days’. Amend reference to ‘48 hours’ to ‘two working days’.

Paragraph 8.102: Amend reference to ‘7 days’ to ‘28 consecutive days’.

Temporary Event Notices (Proposal C)

Paragraph 7.3: To be **amended** as follows: In general, only the police may intervene to prevent such an event taking place, to agree a modification of the arrangements; *or to exercise their discretion in relation to late notices for low risk events*. The system is characterised by an exceptionally light touch bureaucracy. The licensing authority may only ever intervene of its own volition if the statutory limits on the number of temporary event notices that may be given in various circumstances would be exceeded. Otherwise, the licensing authority is only required to issue a timely acknowledgement.

Paragraph 7.17: To be **amended** as follows: Although 10 working days is the minimum notice period that may be given (*unless the police choose to exercise their discretion in*

relation to late events), licensing authorities should publicise locally their preferences in terms of forward notice and encourage notice givers to provide the earliest possible notice of events likely to take place. Licensing authorities should also consider publicising a preferred maximum time in advance of an event that applications should be made. For example, if an application is made too far in advance of an event, it may be difficult for the police to make a sensible assessment and could lead to objections that could be otherwise avoided. *Licensing authorities may also wish to remind notice givers that they should not rely on the police exercising their discretion in relation to late events, as there is no guarantee that they will do so. In particular, the police are more likely to exercise their discretion in relation to events where there is an explanation for the late notice.*

New paragraph 7.19 (subsequent paragraphs are renumbered): LATE NOTIFICATIONS

When a TEN is given without the mandatory notice of ten working days, the police have discretion to issue a 'police confirmation' to the licensing authority. This authorises permitted temporary activities that would otherwise not be authorised because of inadequate notice. The police will only do this if they are satisfied that the proposed event does not undermine the crime and disorder objective. This discretion may be used, for example:

- *when a premises user wishes to arrange a low risk event at fewer than ten working days' notice, (e.g., due to another venue cancelling); or*
- *when an event that was due to be held under a TEN is cancelled because of the weather and the premises user wishes to reschedule it (perhaps for the following weekend).*

The police may choose to exercise their discretion in relation to a late TEN up to a minimum of three working days before the event is due to commence. On receipt of the police confirmation, the licensing authority should conduct the checks described in paragraph 7.20 below, as for any other TEN, and issues an acknowledgment or counter notice as appropriate.

Paragraph 7.22 (formerly paragraph 7.21): Where the application is not within the statutory parameters described earlier, the licensing authority will issue a counter notice (*under s.107*) to the person giving the notice – the premises user. Where the temporary event notice is in order, the fee prescribed by the Secretary of State paid, the event falls within the limitations in the Act, and there has been no police intervention on crime prevention grounds, the licensing authority will record the notice in its register and send an acknowledgement to the premises user. *In the case of a late TEN, the licensing authority will conduct these checks and issue an acknowledgement or counter notice (as appropriate) only if it receives a police confirmation in relation to that TEN.*

Paragraph 7.28 (formerly paragraph 7.27): – Change both references to 48 hours to *two working days* and remove sentence following first reference. (“This 48 hour period includes..”).

Question SG1: Does this draft Guidance provide sufficient advice to assist licensing authorities in their administration of the Licensing Act? Yes/ No

If no, please provide reasons.

Chapter 8: List of Questions

General Questions:

Question G1: Do you consider that any, or all, of the proposed simplification measures can be achieved by non-legislative means? Yes/No

If you consider that a proposed simplification measure can be achieved by non-legislative means, please provide your reasons.

Question G2: Do you consider that any of the simplification measures is of constitutional significance? Yes/ No

If you consider that a measure would have constitutional significance, please provide your reasons.

Proposal A: Licensing Statements:

Question A1: Do you agree that the existing requirement to review licensing statements every three years should be removed? Yes/ No.

If no, please state your reasons.

Question A2: Do you agree that the existing requirement for LAs to consult all statutory consultees for all revisions should be replaced by a requirement for the LA to consult those statutory consultees that will be affected by the proposed revision. Yes/ No.

If no, please state your reasons.

Question A3: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees is proportionate to the policy objective? Yes/ No.

Yes/ No.

If no, please state your reasons.

Question A4: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees strikes a fair balance? Yes/ No.

If no, please state your reasons.

Question A5: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees does not remove any necessary protection? Yes/ No.

If no, please state your reasons.

Question A6: Do you agree that the proposal to remove the requirement to review licensing statements every three years and require LAs to consult only relevant statutory consultees does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise Yes/ No.

If no, please state your reasons.

Proposal B: Interim Authority Notices and Reinstatements on Transfer:

Question B1: Do you agree that the period during which an Interim Authority Notice can be issued should be extended to 28 consecutive days? Yes/ No

If no, please state your reasons.

Question B2: Do you agree that the period during which a Reinstatement of Licence on Transfer can be applied for should be extended to 28 consecutive days? Yes/ No

If no, please state your reasons

Question B3: Do you agree that the period during which the police may cancel an IAN should be changed to two working days? Yes/ No

If no, please state your reasons.

Question B4: Do you think that the interim authority period should be extended to three months? Yes/ No

Please state your reasons.

Question B5: Do you agree that the Government's proposal to amend the deadlines for IAN and RTs is proportionate to the policy objective? Yes/ No

If no, please state your reasons.

Question B6: Do you agree that the proposal to amend the deadlines for IAN and RTs strikes a fair balance? Yes/ No.

If no, please state your reasons.

Question B7: Do you agree that the proposal to amend the deadlines for IAN and RTs does not prevent any person from exercising a right that might reasonably expect to continue to exercise? Yes/ No.

If no, please state your reasons.

Proposal C: Temporary Event Notices:

Question C1: Do you agree that the police should be able to decide (at their discretion) to permit licensed activities under a late TEN, by issuing a confirmation to the licensing authority? Yes/ No

If no, please state your reasons.

Question C2: Do you agree that the latest a TEN may be confirmed the police should be three working days before the proposed event commences? Yes/ No? If no, please state your reasons.

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If no, please state your reasons

Question C3: Do you think that a police confirmation should be issued within two working days of receiving the TEN? Yes/ No

Please state your reasons.

Question C4: Do you agree that the period during which the police can issue an objection to a TEN should be changed to two working days? Yes/ No

If no, please state your reasons.

Question C5: Do you consider that the period during which the police can issue an objection to a TEN should be extended to **three** working days? Yes/ No

Please state the reasons for your answer.

Question C6: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days is proportionate to the policy objectives? Yes/ No.

If no, please state your reasons.

Question C7: Do you consider that the extension of the deadline for the police to object to a TEN to **three** working days would be proportionate to the policy objectives? Yes/ No.

Please state your reasons.

Question C8: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days strikes a fair balance? Yes/ No.

If no, please state your reasons.

Question C9: Do you consider that the extension of the deadline for the police to object to a TEN to **three** working days would strike a fair balance? Yes/ No.

Please state your reasons.

Question C10: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days or three working days does not remove any necessary protections? Yes/ No.

If no, please state your reasons.

Question C11: Do you agree that the proposal to allow the police to issue a 'confirmation' of a TEN issued out of time and to change the deadline for the police to object to a TEN to two working days does not prevent any person from continuing

to exercise any right which that person might reasonably expect to continue to exercise? Yes/ No.

If no, please state your reasons.

Question C12: Do you consider that the extension of the deadline for the police to object to a TEN to **three** working days would not prevent any person from continuing to exercise any right which that person might reasonably expect to continue to exercise? Yes/ No.

Please state your reasons.

Draft Statutory Guidance

Question SG1: Does this draft Guidance provide sufficient advice to assist licensing authorities in their administration of the Licensing Act? Yes/ No

If no, please provide reasons.

Impact Assessment

Question IA1: Do you broadly agree with estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at www.culture.gov.uk/reference_library/consultations/default.aspx)? Yes/ No

If not, please say which estimate you disagree with, and provide any evidence that supports an alternative estimate.

Draft Legislative Reform Order

Question LRO1: Do you think this draft Order accurately reflects the changes proposed in chapters 4-6?

Annex A: List of Consultees

Respondents are invited to contact us with the names of any other stakeholders groups not on this list who they feel might be able to contribute.

Action in Rural Sussex
Action with Communities in Rural England
Alcohol Concern
Arts Council in England
Arts Council of Wales
Association of Chief Police Officers
Association of Circus Proprietors of Great Britain
Association of Convenience Stores
Association of Directors of Social Services
Association of Inland Navigation Authorities
Association of Licensed Multiple Retailers
Association of Show and Agricultural Organisations
Bar Entertainment and Dance Association
BII
British Beer & Pub Association
British Board of Film Classification
British Holiday and Home Parks Association
British Hospitality and Restaurant Association
British Marine Federation
British Retail Consortium
Business in Sport and Leisure
Campaign for Real Ale
Central Council for Physical Recreation
Charity Commission
Chartered Institute of Environmental Health
Chief Fire Officers' Association
Children's Society

Chinese Takeaway Association UK
Cinema Exhibitors Association
Circus Arts Forum
Civic Trust
Commission for Rural Communities
Committee of Registered Clubs Associations
Community Matters
(DEFRA) Rural Communities Buildings Network
English Heritage
Enterprise Directorate, Department for Business, Enterprise and Regulatory Reform
Federation of Licensed Victuallers
Federation of Licensed Victuallers (Wales)
Federation of Private Residents' Association
Federation of Small Businesses
Federation of Wholesale Distributors
Fire and Rescue Authorities in England
Fire and Rescue Services in Wales
Greater London Authority
Guild of Bangladeshi Restaurateurs
Guild of Master Victuallers
Historic Houses Association
Independent Street Arts Network
Insolvency Service
Institute of Licensing
Interfaith Network
Justices Clerk Society
Licensing Act Active Residents Network
Licensing Authorities in England and Wales
Local Authorities Co-ordinators of Regulatory Services
Local Government Association
London Councils
Magistrates Association
Maritime and Coastguard Agency
Musicians Union
National Association of Kebab Shops
National Association of Local Councils
National Campaign for the Arts
National Farmers' Retail & Markets Association

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National Federation of Fish Friers
National Federation of Retail Newsagents
National Neighbourhood Watch Association
National Operatic and Dramatic Association
National Organisation of Residents Associations
National Village Halls Forum
One Voice Wales
Open all Hours
Passenger Boat Association
Patersons Licensing Acts
Police Federation
Police Superintendents' Association
Rural Shops Alliance
Society of Local Council Clerks
Society of London Theatre and Theatrical Management Association
Tourism for All
Trading Standards Institute
United Kingdom Film Council
United Kingdom Warehousing Association
Voluntary Arts Network
Welsh Assembly
Welsh Council for Voluntary Action
Welsh Local Government Association
Welsh Music Foundation
Wine Spirits Trade Association

Annex B: Impact Assessment Question

Question IA1: Do you broadly agree with estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at

www.culture.gov.uk/reference_library/consultations/default.aspx)? Yes/ No

If not, please say which estimate you disagree with, and provide any evidence that supports an alternative estimate.

Annex C: Draft Order

STATUTORY INSTRUMENTS

2010 No. 0000

REGULATORY REFORM

LICENCES AND LICENSING

The Legislative Reform (Licensing) (Miscellaneous Amendments) Order 2010

<i>Made</i>	_____	2011
<i>Laid before Parliament</i>	_____	2011
<i>Coming into force</i>	_____	2011

The Secretary of State for Culture, Media and Sport makes the following Order in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006(a).

He considers that the conditions referred to in section 3(2) of that Act are, where relevant, satisfied in relation to each provision made in the Order.

He has consulted in accordance with section 13(1) of that Act.

He has laid a draft of the Order and an explanatory document before Parliament in accordance with section 14(1) of that Act.

Pursuant to section 15 of that Act, the affirmative resolution procedure (within the meaning of Part 1 of that Act) applies in relation to the Order.

Citation, commencement and extent

1.—(1) This Order may be cited as the Legislative Reform (Licensing) (Miscellaneous Amendments) Order 2010 and comes into force on the day after the day on which it is made.

(2) This Order extends to England and Wales only.

Statements of licensing policy

2. The Licensing Act 2003(b) is amended as set out in articles 3 to 6 of this Order.

3. For section 5, substitute—

“5 Statement of licensing policy

(1) Each licensing authority must have a published statement of its policy with respect to the exercise of its licensing functions (a “licensing statement”).

(2) Where a licensing authority does not, or ceases to have a licensing statement it must as soon as practicable determine its policy and publish such a statement.

- (3) Before determining its policy pursuant to subsection (2), a licensing authority must consult each of the persons referred to in subsection (6).
- (4) A licensing authority must keep its policy under review and make such revisions to its licensing statement, at such times, as it considers appropriate.
- (5) Before making any revision to its policy a licensing authority must consult such of the persons referred to in subsection (6) as it considers may be affected by the revision.
- (6) The persons are—
- (a) the chief officer of police for the licensing authority’s area,
 - (b) the fire and rescue authority for that area,
 - (c) such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
 - (d) such persons as the licensing authority considers to be representative of holders of club premises certificates licences issued by that authority,
 - (e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
 - (f) such other persons as the licensing authority considers to be representative of businesses and residents in its area.
- (7) Where revisions are made, the licensing authority must publish a statement of the revisions or the revised licensing statement.
- (8) Regulations may make provision about the determination and revision of policies, and the preparation and publication of licensing statements, under this section.”.

Reinstatement of premises licence following death etc. of licence holder

4.—(1) In section 47—

- (a) in subsections (2) and (7)(a) for “seven day” substitute “28 day”;
- (b) in subsection (10)—
 - (i) for the definition of “initial seven day period” substitute—

““initial 28 day period”, in relation to a licence which lapses as mentioned in subsection (1), means the period of 28 days beginning with the day after the day the licence lapses;”;
 - (ii) in paragraph (a) of the definition of “interim authority period” for “two months” substitute “three months”.

(2) In section 48 of the Act—

- (a) in subsection (1)(b) for “seven day” substitute “28 day”;
- (b) for subsection (2) substitute—
- (c) “(2) The chief officer of police must, before the end of the second working day following the day on which the he receives the copy of the interim authority notice, give the relevant licensing authority a notice stating why he is so satisfied.”.

(3) In section 50(3)(a) of the Act, for “seven days” substitute “28 days”.

Temporary event notices

5.—(1) For section 98, substitute—

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“98 Meaning of “permitted temporary activity”

(1) A licensable activity is a permitted temporary activity by virtue of this Part if paragraph (2) or (3) applies in relation to the activity.

(2) This paragraph applies if—

- (a) the activity is carried on in accordance with a notice given in accordance with section 100;
- (b) the requirements of section 102 (acknowledgement of notice) and 104(1) (notification of police) are met in relation to the notice;
- (c) the notice has not been withdrawn under this Part; and
- (d) no counter notice has been given under this Part in respect of the notice.

(3) This paragraph applies if—

- (a) the activity is carried on in accordance with a notice given in accordance with section 100(1) to (6) and (7)(b);
- (b) the premises user has given a copy of the notice to the relevant chief officer of police;
- (c) the requirements of section 102A (acknowledgement where confirmation notice received) are met in relation to the notice;
- (d) the notice has not been withdrawn under this Part;
- (e) no counter notice has been given under this Part in respect of the notice; and
- (f) a confirmation notice given pursuant to section 104A(2) has effect in respect of the notice.”

(2) After section 102, insert—

“102A Acknowledgement where confirmation notice received

(1) This section applies where—

- (a) a licensing authority receives a confirmation notice from a chief officer of police pursuant to section 104A(2), and
- (b) the authority has not sent or delivered a notice under section 102(1) in respect of the temporary event notice to which the confirmation notice relates.

(2) If the authority are satisfied that the temporary event notice was given in accordance with this Part (disregarding, for this purpose, the time limit in section 100(7)), they must acknowledge receipt of the notice by sending or delivering one notice, together with a copy of the confirmation notice, to the premises user—

- (a) before the end of the first working day following the day on which the confirmation notice was received, or
- (b) if the day on which the confirmation notice was received was not a working day, before the end of the second working day following that day.

(3) The authority must mark on the notice to be returned under subsection (1) an acknowledgement of the receipt of the notice in the prescribed form.

(4) Subsection (2) does not apply in relation to a temporary event notice in respect of which the authority are required to give a counter notice under section 107.”

(3) For section 104(3), substitute—

“(3) The objection notice must be given before the end of the second working day following the day on which the chief officer of police is given a copy of the temporary event notice under subsection (1).”

(4) After section 104, insert—

“104A Confirmation by the police

(1) This section applies where a chief officer of police receives a copy of a temporary event notice pursuant to section 104(1) fewer than ten working days before the day on which the event period specified in the notice begins, but no later than three working days before the day on which that period begins.

(2) Where the chief officer of police is satisfied that—

- (a) the notice does not appear on its face to contravene 100(1) to (6) or (7)(b), or section 101, and
- (b) allowing the premises to be used in accordance with the notice would not undermine the crime prevention objective,

he may give a notice to that effect (“a confirmation notice”) to the relevant licensing authority.

(3) A confirmation notice given pursuant to subsection (2) must be given no later than two working days after the day on which the copy of the notice was received as mentioned in subsection (1).”

Other amendments

6. In section 197(3), omit paragraph (a).

7. In Schedule 1 to the Fire and Rescue Services Act 2004(a), omit paragraph 98(3)(a).

Transitional provision

8.—(1) A licensing policy that has effect immediately before the commencement of this Order is to be regarded as a policy of the kind referred to in section 5 of the 2003 Act as substituted by article 3 of this Order.

(2) A licensing statement that has effect under section 5 of the 2003 Act immediately before the commencement of this Order is to be regarded as a licensing statement of the kind referred to in section 5 of that Act as substituted by article 3 of this Order.

(3) In this article—

“the 2003 Act” means the Licensing Act 2003(b);

“licensing policy” means a policy of the kind referred to in section 5(1)(a) of the 2003 Act;

“licensing statement” has the same meaning as in section 5(1)(b) of that Act.

(a) 2004 c. 21.

(b) 2003 c. 17.

Question LRO1: Do you think this draft Order accurately reflects the changes proposed in chapters 4-6?

Annex D: BRE Code of Practice on Consultations

The consultation is being conducted in line with the BRE Code of Practice on Written Consultation. The consultation criteria are listed below. More information can be found at:

<http://www.berr.gov.uk/files/file47158.pdf>

The Consultation Criteria

1) When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2) Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3) Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4) Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5) The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6) Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7) Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any questions or complaints about the process of consultation on this paper, please contact Tony Dyer, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH tony.dyer@culture.gsi.gov.uk

Annex E: Legislative Reform Orders – Parliamentary Consideration

Introduction

1. These simplification proposals will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals in relation to simplification as measures that might be carried forward by a LRO.

Legislative Reform Proposals

2. The starting point for LRO proposals is thorough and effective consultation with interested parties, as reflected by this consultation and previous discussion with stakeholders. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

i) explain under which power or powers in the LRRRA the provisions contained in the order are being made;

ii) introduce and give reasons for the provisions in the Order;

iii) explain why the Minister considers that:

- there is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- the effect of the provisions are proportionate to the policy objective;
- the provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- the provisions do not remove any necessary protection;
- the provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- the provisions in the proposal are not constitutionally significant; and
- where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

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v) identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and

vi) give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the BRE's website at:

<http://www.berr.gov.uk/whatwedo/bre/>

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

(a) appear to make an inappropriate use of delegated legislation;

(b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);

(c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);

(d) secure a policy objective which could not be satisfactorily secured by non-legislative means;

(e) have an effect which is proportionate to the policy objective;

(f) strike a fair balance between the public interest and the interests of any person adversely affected by it;

(g) do not remove any necessary protection;

(h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;

(i) are not of constitutional significance;

(j) make the law more accessible or more easily understood (in the case of provisions restating enactments);

(k) have been the subject of, and takes appropriate account of, adequate consultation;

(l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;

(m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

Regulatory Reform Committee (in the Commons):

http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm

Delegated Powers and Regulatory Reform Committee (in the Lords):

http://www.parliament.uk/parliamentary_committees/dpr.cfm

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the address set out in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

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16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571

DPDC@parliament.uk

Regulatory Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020 7219 2830/2833/2837
Fax: 020 7219 2509

regrefcom@parliament.uk

Non-disclosure of responses

17. Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Better Regulation Executive

Department for Business, Innovation and Skills