



## **ALCOHOL STRATEGY CONSULTATION**

### **A SUBMISSION BY THE ASSOCIATION OF LICENSED MULTIPLE RETAILERS**

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to submit written evidence to the Home Office consultation on Government policies to cut alcohol related crime and anti-social behavior. The *ALMR* has been actively involved in discussions about implementation of Coalition pledges in this area, and specific policy initiatives on elements of the Strategy and reform of the licensing regime for the past three years, and this response builds on previous submissions and input via technical working groups.

By way of background, between them our 153 member companies operate just over 13,500 outlets, employing 325,000 staff. These outlets are primarily pubs and bars but also include casual dining outlets, restaurants, licensed accommodation providers and nightclubs. As the only national trade body dedicated solely to representing the needs and concerns of the broad range of licensed hospitality operators, in particular the late night sector, we are well placed to comment on the potential impact of any changes in the law.

Licensed hospitality is one of the UK's primary economy sectors. It has a turnover of £21 billion, and in the past year its contribution to GDP increased by over 8% – the average GVA each pub makes to its local community is £190k per annum. Around half a million people are employed directly in pubs and bars alone, with jobs in all regions for all ages and all skill levels. Crucially, the sector provides the first taste of work for many young people and generated 1 in 6 of all new jobs for 18-24 year olds in the last year.

It is, however, an industry made up of small businesses, many of them independently owned and managed. With low net profit margins, these businesses face higher than average compliance costs and struggle with ever increasing levels of red tape. Two-thirds of our members are small independent companies operating 50 outlets or fewer under their own branding, predominantly suburban community outlets. These are valuable social and economic assets – community centres, tourist attractions and significant revenue generators – as well as providing a well regulated and controlled environment for people to enjoy alcohol responsibly and socially.

Recent policy pronouncements by the Prime Minister and Home Secretary at the time of launching the Alcohol Strategy last year reflected this. They spoke of the need to promote responsible consumption in a supervised environment and of British pubs being the 'safest and friendliest place to drink'. National Planning Policy also requires local authorities to plan positively for the development of a modern industry and the Government Response to the Portas Report recognizes the role the sector plays on the high street. All three strategy papers emphasise the need to encourage, nurture and support collaborative, consensus initiatives such as BIDs, BBN and Crime Reduction Partnerships as the most effective means of tackling alcohol-related harm.

We are disappointed that this positive note is missing in this consultation, and that an opportunity has been lost to take forward measures to encourage people back to drinking in the safe, supervised environment of the pub. The consultation is also silent on how encouragement of personal responsibility – a critical element in the Alcohol Strategy - is to be addressed.

#### **Summary Overview**

The Ministerial Foreword states that the objective of the reforms is to “end the culture of excessive drinking” that fuels alcohol related crime and disorder and harm. Whilst we believe that there is much that is of merit in the proposals, we do not believe that they are sufficiently widely drawn to deliver this objective and that there may be unforeseen consequences for those responsible retailers Government says it wants to support.

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- **Market Dynamics:** The most significant change directly attributed to the introduction of the Licensing Act is the increasing volume of alcohol sold through the off-trade channel. Since then, pub prices have increased by around 40% whilst off trade prices have declined in real terms and around 70% of alcohol sold is now consumed away from licensed premises. Prior to 2005, no supermarket could sell alcohol beyond 11pm, sales had to be made from a separate area of the store and there were controls on sales in wholesale quantities. The removal of all these legal requirements has meant it is now commercially viable to use alcohol as a footfall driver and significant loss leading on the category first emerged in 2006. The Government has rightly recognized that the off-trade cannot regulate its own behavior and that commercial advantage has been allowed to override legitimate public policy concerns. **On their own, minimum unit pricing and a ban on multi-buy deals will not address Ministerial concerns that “cheap alcohol is too readily available”. More can and must be done to re-regulate the off-trade** and subject those retailers selling alcohol to the same generic controls as already apply to pubs and bars.
- **Adverse impact on pubs:** Whilst the main policy lever to tackle the ready availability of pocket money priced alcohol is control of off-trade promotions, the other side of the coin is measures to encourage consumption back in a supervised environment, where consumption can not only be monitored, but is also controlled through sale in clear unit quantities. Whilst we recognise that this consultation is not designed to take forward that more positive agenda, **care must be taken to ensure that further costs are not imposed on the on-trade.** We note, for example, the anticipated cost of introducing health as a licensing objective for CIPs is over £12 million, a cost borne almost exclusively by the on trade; in contrast MUP is estimated to cost off trade retailers £1 million. This is an overburdened industry already under strain and these **costs will be passed onto our customers, further increasing the price differential between supervised consumption on licensed premises and off licence purchases, increasing the incidence of pre-loading, drinking on the streets between licensed premises and at home drinking generally, wiping out any potential benefit of MUP and promotional controls may have in closing it.**
- **Evidence-base:** The consultation and RIA’s appear to be based on out of date assessments of alcohol related harm; figures are quoted selectively, with no attempt to present trends or to place in context. The latest British Crime Survey shows alcohol related violent crime down falling at a greater rate than overall crime; it now accounts for 44% of violent crime and 855,000 incidents. It also shows that perceptions of drunken anti-social behaviour rate as less of a concern than litter, drug dealing and gangs. The figures are significantly different if police reported incidents are used - 325,000 are alcohol-related – and Local Alcohol Profiles show alcohol-attributable recorded crime falling by about a quarter in England in the past 5 years. Equally, a North West Health Observatory consultation on methodology reveals that the alcohol-related admissions figure cited in the consultation significantly over-estimates the scale of the problem, including as it does a very wide range of secondary diagnoses which may be alcohol-related but are equally influenced by other lifestyle factors. It suggests that just 17% of the 1.2 million admissions quoted have alcohol as the primary diagnosis and that applying more accurate methodology would see alcohol related admissions rising by 49% over the past decade, not 130%. It is vital that there is a **robust, clear and agreed methodology for the evidence base as a benchmark against which to assess effectiveness, efficacy and impact of all measures in going forward.**
- **Holistic Approach:** The RIA’s accompanying the consultation significantly under-estimates the impact on business as they look at each measure in isolation and also fail to take account of other changes to the licensing regime which will take effect this year, in particular EMROs, the Late Night Levy and changes to licensing fees, but also potential changes to the Mandatory Code – raised only in consultative meetings. Equally, there is no attempt to understand what effect removing one element of the package or taking forward one aspect in isolation would have on the delivery of the overall policy objectives. **It is vital that the links between the measures set out in the consultation are explicit and taken forward as a whole.**

## Response to Consultation Questions

### Turning the Tide on Irresponsibly Priced Alcohol

The consultation document rightly recognises that the ready availability of very cheap alcohol is undermining the attainment of public policy objectives to tackle alcohol related harms. It fails to recognise and act on the clear causal link between the total deregulation of licensing controls for supermarkets and the proliferation of cheap alcohol, however.

Applications for off-licences, particularly 24 hour permissions, have exploded over recent years, whilst on license numbers remain static and the pub universe continues to decline. Unlike pubs and bars, supermarkets are not required to justify their proposed selling hours, specify their sales space and are not subject to mandatory regulation of promotions advertising and retail behaviour. We believe all alcohol sales should be subject to the same rigorous conditions which currently apply only to bars and pubs.

A MUP would be reinforced and measures to tackle alcohol related disorder would be made more effective if accompanied by the following complementary reforms to re-regulate off sales:

- Reverse the presumption that shops should be allowed to sell alcohol whenever they are open and that off trade opening hours should not be challenged – there should be a requirement for each case to be assessed on its merits and for all applicants to be required to demonstrate that their proposed hours for the sale of alcohol will not adversely impact the licensing objectives.
- A reintroduction of siting controls to require the sale of alcohol to be made from a separate area of the store which can be controlled and sealed off.
- New mandatory condition for all off-trade businesses alcohol banning irresponsible promotions and extension of guidance on responsible retailing extended to off-trade.
- Inclusion of a mechanism to prevent the incentivising of bulk or volume purchases, either through linear pricing or a requirement to provide smaller pack sizes.
- A prohibition on the use of price as a major feature in alcohol advertising

Most of the above are non-legislative solutions and can be taken forward by means of revisions to Government Guidance to Licensing Authorities to clarify that off and on trade premises should be treated equally in the application of law. At a commercial level, they will significantly reduce the incentive to loss-lead on alcohol and reinforce statutory controls. Failure to tackle this issue now will continue to frustrate the successful delivery of policy objectives to reduce excessive consumption and associated crime and disorder.

#### **1. Do you believe that an MUP of 45p will achieve the aim of being targeted and proportionate whilst achieving a significant reduction in harm**

Whilst this question asks whether MUP would achieve the Government's aims, it is not clear how these aims are precisely defined and what measurement will be used to determine success. Is a 'significant reduction of harm' defined in terms of whole population consumption, levels of harmful consumption or place of consumption, and how will these be isolated from the overall downward trends over the past decade? Equally, will the measure of success be a reduction in health related harms or crime and disorder, and against which benchmark? As noted above, there are two different measures of alcohol related hospital admissions and alcohol-related crime. It is impossible to determine whether the proposals are proportionate and targeted without this information.

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We believe that a whole trade measure which applies a MUP to both on trade and off trade may undermine the efficacy of the measure as it will do nothing to alter the price differential between the two channels and hence will encourage continued unregulated consumption in the home. Pubs cannot sell alcohol as cheaply as supermarkets because, unlike them, they have no option but to pass VAT and duty onto the consumer. If the MUP applies equally to both the on trade and the off trade, you just perpetuate the status quo. As MUP increases, so the price of a pint in the pub to the consumer increases – the price differential does not close. If you apply MUP just to supermarkets and other retailers, then you close the price differential between the two supply chains. It also undermines support for the Government's measures amongst on-trade retailers.

If the objective is to reduce harmful consumption and encourage more responsible consumption in a supervised environment, then MUP should apply to the off trade and not the on trade. It would then be more precisely targeted and proportionate.

## **2. Should other factors or evidence be considered when setting a minimum unit price for alcohol?**

We believe it is helpful to review and take into account existing long- and medium-term trends in alcohol consumption. These are falling against every measure.

The latest General Lifestyle Survey published by the Office for National Statistics in February 2012 which states that between 2005 and 2010 average weekly consumption of alcohol fell steadily from 14.3 units to 11.5 per adult. The proportion exceeding the recommended weekly limit fell from 31 per cent to 26 per cent (men) and 21 to 17 (women). Those admitting to heavy drinking fell by about a third. Whilst we recognise that we have to tread carefully with statistics around self-reported behavior these figures are supported by alcohol sales data. This has fallen, in both value and volume, from about 11.6 litres of pure alcohol per adult per year in 2004, to about 10 litres in 2011.

These long term trends will have a knock on effect on alcohol related admissions. Those who present with chronic liver disease represent the consequences of excessive alcohol consumption over a number of years. There is every reason to suppose that figures will fall over the long term as the consequence of falling alcohol consumption. Indeed, the latest figures from the ONS show alcohol-related deaths at their lowest level since 2002, falling from a peak in 2008. This highlights the considerable time lag in delivery against certain key indicators.

We also believe that care must be taken with assumptions that consumption will shift back to the on-trade as a result of MUP. The latest research by YouGov suggests that just 0.36% of people who currently drink at home expect to drink more in the pub as a result of MUP. More worryingly, 4 out of 10 people say it will actively deter them from drinking in a pub. At home drinking was always part of a longer-term trend, it was simply accelerated as a result of Government policies on licensing, taxation and smoking and we see no sign of it being reversed without significantly dramatic intervention and proactive incentives to drink in a supervised environment.

## **3. How do you think the level of minimum price set by the Government should be adjusted over time?**

Noting that an MUP should only apply to off-trade in order to be targeted at the source of the problem, we accept that it should be kept under periodic review in order to ensure that it remains effective.

Whilst we accept the need to keep the policy under review, we are not in favour of automatic indexation or a fixed term review period. This will only result in regulatory creep and inflationary pressures. Any review should be needs based and against clearly defined criteria and success measures.

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**4. Do you think that there are other people, organisations or groups that could be particularly affected by a MUP for alcohol?**

We are concerned that the consultation does not appear to accurately reflect the impact of the proposed measure on pubs and bars. Whilst we know of no on-trade outlet selling below the proposed MUP, the introduction of any regulatory intervention in the market will have ramifications across the whole market. This is why we believe the measure should only apply to the off-trade market.

We do not believe the levels of price intervention being considered will be sufficient to deliver any switch in consumption towards consumption in licensed premises, let alone the significant shift envisaged in the RIA. The average price of a pint of beer in a pub is £2.90 and, even with minimum pricing, that will still be almost four times more expensive than buying in a supermarket. There is anecdotal evidence to suggest that drinkers will, however, switch to different drinks; notably from beer to spirits, particularly vodka.

The latest research by YouGov suggests that just 0.36% of people who currently drink at home expect to drink more in the pub as a result of MUP. More worryingly 4 out of 10 people say that MUP will actively deter them from drinking in a pub. This may in part be because they assume all alcoholic prices will increase as MUP covers both supply chains. Given the RIA is premised on delivering a shift in place of consumption – and that we believe that will be key to delivering a reduction in overall consumption – it is vital that the assumptions are revised and reassessed.

**5. Do you think there should be a ban on multi-buy promotions involving alcohol in the off trade?**

We absolutely support the introduction of a ban on multi-buy promotions but only as part of a package of measure to re-regulate the off-trade. This is one policy but in and of itself it will not end all irresponsible promotions. We continue to believe, therefore, that the Mandatory Condition relating to irresponsible promotions should be extended to apply to both supply channels (see section below).

**6. Are there any further offers which should be included in a ban on multi-buy promotions?**

We note that a multi-buy ban introduced ahead of MUP in Scotland has resulted in supermarkets voluntarily restricting single unit sales, allowing them to charge what they want for bulk deals. Equally, unless there is a requirement to sell in the smallest pack size and other measures to carefully circumscribe and define a ban, it may be ineffectual.

**7. Should other factors or evidence be considered when considering a ban on multi-buy promotions?**

A key driver of cheap alcohol is the ability to buy large quantities in bulk. Again, this is a relatively new phenomenon as, prior to the Licensing Act 2003, bulk purchases were only available through wholesale providers. We are therefore disappointed that the consultation does not go further in this area and get a grip on bulk sales, price led advertising and in-store promotions. There is nothing here which will stop supermarkets continuing to sell wholesale quantities of alcohol to the public at prices some pubs cannot buy it. The consultation itself acknowledges that there will be net benefit to the off-trade.

We believe a MUP and multi-buy ban would be reinforced by the inclusion of a mechanism to prevent the incentivising of bulk or volume purchases, either through linear pricing with the price per unit increasing the greater the volume purchased. Alternatively, a requirement to always provide the smallest unit size and a cheaper unit price for purchasing smaller pack sizes.

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We note that Treasury/HMRC were also looking separately at measures to licence those selling in wholesale quantities as part of measures to tackle duty fraud and recommend that the Home Office makes reference to any proposals when developing their policy recommendations on this matter.

**8. Are there any other groups that could be particularly affected by a ban on multi-buy promotions?**

Providing it is properly constructed and defined, with potential loopholes identified above closed, we believe that a multi-buy ban could help to reduce the volume of alcohol people have in their homes. This is again a significant cultural shift which has taken place over the last 5-7 years as a result of deregulation of alcohol sales and the commercial imperative towards volume sales.

This not only means that adults are more likely to drink on a more frequent basis, but that they drink more on each individual occasion. DoH research shows that at-home drinkers routinely under-estimate the measures they pour – with most pouring a triple measure of spirits or a 250ml glass of wine, and believing it to be one unit. It also means alcohol is more readily available and accessible to young people than ever before. The NatCen prevalence survey shows that the home remains the single largest source of alcohol for young people, and it is a source which has increased over time. Amongst pupils who drank the most, 45% said that they took it from their own home and 49% said from a friend's home without permission; this is in addition to the 56% who were given it by parents. The very fact that a lot of families now have a large volume of beer and wine in the house makes it less likely that parents will spot teenage drinking.

**Tackling Alcohol-related Harms – Mandatory Code**

We remain convinced that measures to reduce alcohol related crime and disorder and excessive consumption will not be successful if they are focused solely on increasing controls and costs on late night businesses. Urgent action is required now to re-regulate supermarket sales and subject them to the same controls and obligations as apply to pubs and bars. Failure to do so will not only undermine the implementation of effective pricing controls but also exacerbate health and disorder issues as consumers are effectively discouraged from visiting pubs and drinking alcohol in a responsible, supervised environment.

We note that the introduction and the Alcohol Strategy both state that the Government will “consult on whether the mandatory licensing conditions should apply to all sectors involved in the sale of alcohol, when they are relevant”. We can see no specific consultation question which refers to this and would therefore like to take this opportunity to state our strong and clear support for such a move. We firmly believe that there should be a levelling up to match the very strong controls which are imposed solely on pubs and bars at present.

We are concerned that a number of additional proposals have been raised in technical working groups but have not been subject to full public consultation which would impose significant additional burdens on business. These include insertion of messages in menus or on public notices, new public notice requirements as well as minor changes in wording to existing conditions. We have seen no evidence of harm which would justify such a move, assessment of business impact and consideration as to whether the proposed measure would address any perceived harm. We would remind the Government that a Mandatory Condition applies to all on-trade premises and that there should be clear evidence of harm arising in the whole population to justify any further action. We would urge the Government not to proceed absent this or a detailed impact assessment.

**9. Do you think the mandatory licensing conditions are effective in promoting the licensing objectives?**

We believe that the introduction of the mandatory conditions has been effective in promoting the licensing objectives and regulating commercial behaviour in the on-trade. The failure of the Code to

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regulate off-trade promotional activity and behaviour, however, militates against any positive impact it may have on preventing crime and disorder in particular.

**10. Do you think mandatory licensing conditions do enough to target irresponsible promotions in pubs?**

We do believe that the mandatory condition provides an effective deterrent against not just irresponsible promotions but irresponsible retail practice more generally within the on-trade. The very fact that it refers not to specific promotions – as is proposed for the off-trade – but to all forms of promotional and marketing activity which is not being run in a responsible manner gives enforcers greater leverage and control and means that operators have had to interpret its provisions more widely too. As a result, it has had a far greater impact than originally envisaged when introduced. It is difficult to quantify precisely the positive impact the Code has had as it is almost impossible to prove a negative – the Code being observed by an absence of behaviour – but operators have reported that it acts as a deterrent and effective check on commercial activity and is cited in enforcement visits. We note that there have been few prosecutions under the Mandatory Code, but action is more routinely taken through review proceedings. The implications of the latter are so serious that usually the threat of review – and the wide grounds on which it is able to be taken forward - is sufficient to alter marketing or promotional behavior.

Our members do report, however, that there is inconsistent enforcement and application of powers across the country. Some police forces take a very stringent approach to promotions and are effective at policing and controlling activity. This suggests that there is no need to amend the Mandatory Condition itself, but to share best practice and update Guidance.

**11. Are there other issues which could be tackled through a licensing condition?**

The introduction of the Mandatory Code has undoubtedly increased burdens and costs to business, estimated by our members to be £1230 per premises in the first year and £915 every year thereafter. We would not be supportive of any measures to increase this cost burden or further regulate the on-trade.

We note that any change to existing Mandatory Conditions or the insertion of new ones would necessitate the reissuing of all premises licences, at considerable cost to business, local authorities and Responsible Authorities. As the Mandatory Code is a whole population measure, there would need to be very clear evidence of harm arising across the whole industry which cannot be adequately addressed by the very wide suite of regulatory and enforcement measures which already exists.

**12. Do you think that the current approach, with five mandatory licensing conditions applying to the on-trade and only one to the off-trade is appropriate?**

No, we do not believe it is appropriate to have such a disproportionate burden of regulation on one side of the supply chain. It is wrong that those retailers which are least able to supervise and regulate consumption enjoy the greatest commercial flexibility and the net result is that public policy objectives to tackle alcohol related harms remain unmet. There is an urgent need to level up the playing field and subject off trade retailers to the same requirements as pubs and bars where relevant.

In particular, we believe that the current condition in the Mandatory Code which bans any promotion which is run irresponsibly or results in harm should apply to all retailers selling alcohol. We note that voluntary guidance has been available and covered the on-trade for the past decade, demonstrating the responsible approach our sector has taken to regulate commercial behaviour; this is continuing through the Portman Group. No equivalent effort at self-regulation has been made by the off-trade. Equally, the

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requirement to sell in the smallest unit size should also apply to all. This would mean that where a supermarket wished to put on a volume promotional offer eg 3 cases of 24 cans of beer for £15, they would also be required to sell a single can or the smallest multi-pack eg 4 cans alongside the case. This is the only way to ensure that a multi-buy ban and MUP is effectively enforced and that no loopholes exist.

## **Alcohol Related Health Harms**

We responded to the consultation on Rebalancing the Licensing Act in 2010 making clear that we were fundamentally opposed to including prevention of health harm as a licensing objective. This remains our position and we are not supportive of an attempt to introduce a partial new licensing objective by the back door. We note that CIPs have no basis in statute, being introduced by means of Guidance to the Licensing Act, and have not been subject to detailed parliamentary scrutiny and debate. We therefore believe it is inappropriate to extend them – and the Primary legislation itself - in this way.

Health concerns may already be taken into account at a strategic and policy level following the decision to make PCTs and local health boards Responsible Authorities. This allows general health trends to be reviewed and considered at the most appropriate level. We believe that the factors resulting in harm to health are complex and long-term, whereas licensing is about acute harms arising immediately at the point of consumption. Whilst health is a material public policy and strategic consideration, it is not one which can be addressed through licensing controls on individual premises. We further note that the Regulatory Impact Assessment accompanying the proposal suggests a net cost to business – largely on-trade premises – of £12.2 million, whereas the cost of MUP is £1 million. We therefore believe that this proposal may be a disproportionate response when there is no clear evidence that relevant health considerations are not being taken into account.

The consultation also talks about the link between density and need. Notwithstanding that the links between density and consumption or harm are far from clear cut in a market where the vast majority of alcohol is drunk away from place of purchase – alcohol may be bought in a shop in one Authority but consumed in another and any harm addressed in A&E in a third - questions of ‘need’ have no place in the licensing regime. This is rightly a matter for planning consideration, which has primacy, and it is perhaps more appropriate to consider in that context.

### **13. What sources of evidence on alcohol-related health harm could be used to support the introduction of a CIP?**

Our opposition to the proposal to include health as a licensing objective for the purposes of CIP is partly predicated on the difficulty in understanding what health data may be helpful to the decision-making process (over and above that which may already be taken into account) and whether the licensing authority has the skills and ability to accurately interpret and apply it. This is particularly important given that there is a lack of clarity about the methodology to be used to calculate alcohol-related admissions.

A consultation published last year by the North West Health Observatory makes clear that the existing methodology for determining alcohol related health harms significantly over-estimates the number of alcohol related admissions and conditions by including a very wide range of secondary diagnoses which may, or may not, have a causal link to alcohol but may equally be caused by a range other lifestyle factors. For example, using the current methodology, 34% of alcohol related admissions are hypertension which can be caused by salt, obesity etc.

The outcome of this consultation will have a material effect on assessments of the size and scale of the problem and the evidence which should be taken into account. The current methodology shows 1.2 million alcohol-related hospital admissions with a 130% increase in numbers over the past decade. The



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NW Health Authority's proposed revised methodology shows a lesser rate of increase of 49% and attributes this partly to better diagnosis and reporting, not necessarily an increase in co-morbidity. It also makes clear that just 200,000 admissions (17% of the total) are directly and clearly alcohol-related.

A further complicating factor arises from the fact that the estimates of consumption which are used to determine alcohol-attributable fractions for the purpose of calculating admissions are significantly out of date. These are currently based on the 2005 Household Survey and have not been revised since then despite a significant decrease in all consumption indicators over that period. The average amount consumed has dropped more than 19%, with levels of harmful drinking down by more than a third.

The consultation concludes by stating that "care should be taken to reduce the risk of misinterpretation and ensure the debate is well informed" and that the current broad methodology results in an over-estimate of harm and a misleading picture. That is precisely the danger that this proposal opens up at a central and local government level. Until this matter is resolved, we cannot see how health data can be a useful tool to support robust decision-making. We therefore recommend that this proposal is not taken forward at this time.

**14. Do you think any aspects of the current cumulative impact policy process would need to be amended to allow consideration of data on alcohol-related harms?**

We believe that this is the wrong question to ask. The consideration should not be whether processes need to be amended, but rather whether or not it is appropriate for them to be. We do not believe that there is any justification for amending the CIP process.

The evidential requirements for CIPs are designed to ensure that action is only taken if there is persistent evidence of problems and a clear causal link between the identified problems and the operation of premises in that area. This is a necessary check and balance introduced in recognition of the fact that a CIP is a direct intervention in the normal operation of the market and can have an impact on competition. The effect of a CIP is to create a rebuttable presumption that applications will be refused unless an operator can demonstrate that their application will create no negative cumulative impact. This is a high evidentiary threshold for operators to meet and few do so. It is therefore right that it is balanced by an equally high evidentiary threshold for those seeking to constrain commercial activity.

We believe that a change in the evidentiary threshold could open CIPs to challenge – especially as there is no basis in law for their introduction – and would increase the burden on applicants and local authorities alike. We also question whether there is any justification for a weakening of requirements in this area. Around a third of licensing authorities have successfully introduced a CIP and there is no evidence of problems in applying the policy once adopted.

Given that a clear causal link between premises, consumption and harm is required under a CIP, this will inevitably limit the data which is relevant to a consideration of policy – either its introduction or its application. It is clear from looking at alcohol-related death trends that health harm is a lagging indicator. Consumption which took place either many years ago or over many years may result in a patient presenting with an alcohol-related condition in a different temporal and geographic market. It cannot be right for these cases to be taken into account in setting current licensing policies.

**15. What impact do you think allowing considerations of data on alcohol-related health harms when introducing a cumulative impact policy would have if it were used in your local area?**

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The lack of precision around the proposal as a whole, the evidence which may be taken into account and the way in which it may be applied makes it almost impossible to answer this question. If the proposal is drawn very widely, then we could see a significant increase in requests for CIPs, their implementation and legal challenge to their application. We have no evidence, however, to suggest that the imposition of an artificial cap on the market for retail will have any impact on consumption or harm in a different location.

## **Freeing up responsible businesses**

We note that the Government has now increased the red tape challenge to require two burdens to be removed for every one which is imposed. We have yet to see any material shift in the regulatory burden despite successive changes to the licensing regime over the past two years and the substantive increase in regulatory control, cost and burden imposed on the on-trade in particular. We would very much welcome seeing the removal of regulation arising from the implementation of the Police Reform and Social Responsibility Act before any new regulatory controls are imposed.

We also note that the majority of the deregulatory proposals set out in the consultation document are for the removal of regulation from businesses not currently subject to the licensing regime. There are few proposals to remove burdens from the businesses that are subject to the greatest level of control and it is disappointing that consideration has not been given to the proposals put forward by these businesses in response to consultations on PRSR Act, EMROs and Levy implementation and the Red Tape Challenge generally. We would urge the Home Office to give equal consideration to the measures put forward by business themselves.

### **16. Should special provision to reduce the burdens on ancillary sellers be limited to specific types of business and/or be available to all types of business providing they met key criteria?**

We are not in favour of proposals to introduce a new category of 'ancillary sales'. These types of considerations have been introduced in the past in planning terms and have always led to greater legal wrangling and debate and exploitation of potential loopholes, with the potential for detriment to community amenity. The Government has decided, rightly, that alcohol is a product which requires regulation and that sales of it should be controlled wherever they take place. That clear message will be undermined as a result of this proposal.

It appears from the consultation process that it is the cost and complexity of the application process which puts off incidental sellers. The answer would therefore be to reduce both - removing unnecessary costs such as newspaper adverts, requirements for physical certified copies to be sent to all Responsible Authorities and by streamlining the application form and enabling electronic payment and submission - thereby reducing the regulatory burden for all applicants. Guidance could also direct licensing authorities to adopt a light touch when considering applications from these types of businesses.

### **17. If special provision to reduce licensing burdens on ancillary sellers were to include a list of certain types of premises, do you think it should apply to the following?**

We are opposed to a new process based on type of premises. We are in danger of deregulating to benefit businesses that are not currently bearing any burdens and undermining the interests of responsible businesses who comply in full. This is open to abuse and the recent case of a furniture store in Farnham attempting to evade licensing controls is an example of what may happen as a result.

We note that there is nothing to prevent these types of premises using the TENs route if sales of alcohol or events are genuinely occasional.

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**18. Are there any other types of business to which such special provision could apply?**

We do not support this proposal

**19. Do you support a qualification criteria based on amount of alcohol sold?**

We are opposed to a new process based on amount of alcohol sold. This is open to abuse and will result in confusion and a lack of protection for consumers, residents and competing businesses. We believe it will result in protracted legal debate. Again, TENs provide a route for occasional events to be licensed.

**20. Do you think that these proposals would significantly reduce the burdens on ancillary sellers?**

We are opposed to the creation of a new category of licence allowing a premises to be classified as ancillary sellers. We note that this question only asks about the removal of burdens from ancillary sellers, not other interested parties. We believe that there will be no reduction in the burden for ancillary sellers as these businesses are not currently licensed and are either selling/supplying alcohol outside the scope of licensing control or operating a different business model. There will, however, be an increase in burdens for Responsible Authorities and it will potentially reduce the protection afforded to local residents and businesses.

If the decision is taken to proceed with a new category of applicant, then it is vital that the requirement for a premises licence is retained. The only acceptable approach would be to allow a larger number of premises than currently to be exempt from the requirement to have a personal licence holder. We note that this may be able to be done without the need to create a new category of applicant.

**21. Do you think that these proposals will impact adversely on the licensing objectives?**

Yes. Allowing the sale of alcohol without due controls and regulation may impact adversely on the licensing objectives.

**22. What other issues should be taken into account when taking forward proposals for a lighter touch authorisation?**

As noted above, there will be an increase in burdens for Responsible Authorities who will need to assess, monitor and enforce a greater range of applications and businesses. In addition, there will be an impact on any activity to identify and prosecute unauthorised sales. We believe that the scope for abuse is such that this proposal could significantly reduce the protection afforded to local residents and businesses.

**23. Do you agree that licensing authorities should have the power to allow organisers of community events involving licensable activities to notify them through a locally determined notification process?**

As the consultation paper acknowledges, this could “create loopholes or make processes more bureaucratic locally”. For this reason, the national TEN process would also continue and we think that this may undermine the potential benefits arising from any new regime. The answer should be to provide better guidance to police and licensing authorities on the processing and handling of different types of events, clarifying that there is nothing to stop them from subjecting notices from community events to a fast track process internally.

We note that there is nothing, in principle, which prevents anyone notifying events in advance. If this aspect of the proposal is taken forward it should apply to all applicants. It may also be sensible to review, simplify and streamline the TEN notice form eg remove the requirement for NI numbers.

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**24. What impact do you think a locally determined notification would have on organisers of community events?**

This is far from clear, given that the local process is discretionary and the national process will continue.

**25. Should the number of TENS which can be given in respect of individual premises be increased?**

Prior to the General Election, DCMS carried out a detailed consultation on proposed reform of the TENS regime. This included a number of sensible suggestions, including many which would have made the regime more responsive to business needs. Indeed it proposed expanding the number of TENS per premises per annum and streamlining the procedure for applying for them. These proposals were evidence based and attracted support from many groups. We therefore urge the Government to press ahead with this proposal – which would genuinely reduce business burdens for a wide range of community pubs and bars, as a matter of urgency.

Despite representations made in consultations and technical working groups, this proposal would have no adverse impact on the licensing objectives given the additional controls and restrictions which have been placed on the operation of TENS through the PRSR Act. TENS can be and are routinely denied or challenged by many police forces.

TENS are not just used to trade into the early hours of the morning, they are used for early opening breakfasts during sporting events, to add a licensable activity or to extend hours in a very limited way eg from 11pm to midnight. It must also be borne in mind that TENS were originally introduced as a grandfather right to mirror the Special Orders of Exemption which pubs and bars could notify to the magistrates' court to extend their hours. The number of these per premises was unlimited.

There is no clear evidence that the current TEN regime is being abused or misapplied – if it is, then those businesses will have future permissions denied - and therefore no evidence to deny responsible businesses a small degree of additional flexibility. Whilst there may be a case for arguing that businesses should include exceptional cases in their operating schedules, many are positively deterred from doing so on a speculative basis as police like the certainty of knowing which events to plan for and equally residents have a guarantee of what constitutes normal trading.

**26. If yes, please select one option to indicate which you would prefer:**

We support the maximum flexibility for responsible businesses and an increase to 18 TENS per premises per year.

**27. Do you think that licensing authorities should have local discretion around late night refreshment in each of the following ways?**

We are concerned that a local approach to late night refreshment could cause confusion and impact adversely on town centre investment in some areas. Whilst late night refreshment premises do not sell alcohol, they are an integral part of the late night economy and can contribute to late night crime and disorder, public safety concerns and public nuisance. Despite this, they are outside the scope of the late night levy: it would be wholly inappropriate for them to also be outside the scope of the licensing regime.

**28. Do you agree that motorway service areas should receive a nationally prescribed exemption from regulations for the provision of late night refreshment?**

We agree that any exemptions or policy change should be at national not local level. We therefore support this limited exemption.

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## 29. Are there any other premises to which you think a nationally prescribed exemption should apply?

We can see no need for a pub, club or bar which is licensed for the sale of alcohol to require late night refreshment to be separately specified on their premise licence. In some cases, members have had to apply for a TEN to offer this as part of a function or special event eg New Year's Eve or Diamond Jubilee. A nationally prescribed exemption could apply to late night refreshment served during the hours alcohol is allowed to be sold as part of a premises licence.

## 30. Questions 30, 31 and 32?

We support the proposal to **remove the requirement to advertise applications** and variations in local newspapers. This serves no material benefit as there is no evidence that interested parties use newspaper adverts to find out about applications; it also has no impact on the licensing objectives. It does, however represent a significant cost to business – on average £500, although it is not unusual for multiple adverts to be required should the application change – and is a delay on investment and the application itself as administrative processes have to be managed around advertising deadlines. We also note that this in itself would help address concerns about over-regulation of ancillary sales. Removal of this particular piece of red tape was first proposed in the Elton Report in 2006 and should be taken forward as a matter of urgency.

We support the proposal to remove the requirement for **personal licences** to be renewed every 10 years. Managed pub operators will pay for the training and licensing of their staff and have a vested interest in ensuring that they keep this investment under constant review. There are over 600,000 personal licence holders at present – more than are employed in the whole of the pub and bar industry – and many of these will not be in day-to-day control of premises. The personal licence is a portable qualification not necessarily a permission to sell.

Renewal is a significant additional cost and burden not just for the individual applying, or company employing them, but also the licensing authority that need to process them and the police who need to scrutinise them. There is no real justification for this, given that anyone who is involved and using their personal licence in an operational capacity – either as DPS or additional personal licence holder – is subject to a separate and subsequent degree of scrutiny. In addition, if problems arise, then action can be taken at individual and company level. These controls mean that there is no risk in allowing personal licences to run in perpetuity.

When renewable personal licences were first proposed by the industry in 1999, it was on the basis that the link between premises and a named individual would be significantly amended; the analogy of driving licence and car was used, with both being separately licensed but no explicit link between the two. During the course of the debate, this was altered to require a named individual, a DPS, to be linked to the premises licence, with checks and balances in place before they took up their post. This includes a police and CRB check. The fact that this would remain the case even if the personal licence was granted in perpetuity means that the change can be made with no adverse impact on the licensing objectives.

During discussions in technical working groups, concern was raised that personal licence holders may not be notifying local authorities of change of details or criminal record checks. This argues for, not against deregulation of renewal requirements as this is not preventing responsible authorities from taking action against individuals where appropriate or where there is evidence of harm. It should be noted that the requirement to notify the licensing authority falls on the court, not the individual and that more can be done to encourage this to take place.

33. In addition to the suggestions outlined above, what other sections of or processes under the 2003 Act could in your view be removed or simplified in order to impact favourably on businesses without undermining the statutory licensing objectives or significantly increasing the burdens on licensing authorities?

- **Annual Fees:** at present all annual fees - administrative payments only, not renewals - are payable on anniversary of grant and there is no requirement for the local authority to send a reminder or statement to the business. The major managed multiple chains which we represent all say that they have one person employed within their licensing department whose sole responsibility it is to monitor these payment dates and make sure that they are paid on time and correctly processed. Equally, licensing solicitors who handle licensing for small and medium sized companies will have someone dedicated to this task. This is not just a matter for national companies, it affects any multi-site operator, even those with just two or three pubs and is one more piece of administration to keep track of.

The burden and need for due diligence has been compounded recently by the change in the law which means that, if the business is late in paying this fee, then the licence may be suspended. In one case, recently brought to our attention, the licensing authority misallocated the fee payment and presumed the business had not paid; enforcement officers were sent to the pub in question late at night to close it down and cash payment was demanded from the manager. When it was realized an error had been made by the licensing authority, the money was set aside for a future year's payment. Equally, the addition of levy payments may be a further complicating factor.

The cost and red tape implications for operators were recognised by the Elton Review in 2006 and recommendations made to move to an annual fee payment date as a result. This has since appeared in Government Red Tape progress reports, but has not been progressed. We appreciate that there are implications for local authorities in terms of processing payments, but this may be able to be overcome through planning of resources and local authorities do handle other large payment runs. Equally, it will remove the burden on local authorities of invoicing, checking and chasing payment throughout the year.

**Electronic Applications:** it would be helpful if all licensing authorities were obliged to accept electronic applications and payment. This would further reduce the problem of annual fee payments being mis-reconciled.

- **Under Age Sales/Primary Authority:** there are outstanding BRDO recommendations, first proposed in 2010 as part of the Red Tape Challenge, for simplification of the law on under age sales and extension of the Primary Authority scheme to alcohol which could be taken forward. Whilst I appreciate that much to do with licensing needs to be handled at an individual level, there should be scope to apply a Home Authority approach to potential safeguards or standard operating practices. This could be used, for example, in TENs and areas where there has been deregulation or scope for different approaches to be applied eg deregulation of entertainment and could result in better protection and common practice.
- **Transfer of licences:** amusement machine permits for pubs are not issued separately but are attached to and an integral part of the premises licence. Under the terms of the Licensing Act, on-licensed premises have an automatic entitlement to amusement machine permits and may apply for more; they are not separately regulated under the Gambling Act. When the premises licence is transferred, some local authorities insist that the machine permit is separately renotified at an additional cost of £50 over and above the licence transfer charge. Where only the automatic entitlement is used, we believe that the

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transfer should be effected at the same time and not require separate notification. This has been raised with DCMS as part of the gaming red tape challenge and initial DCMS advice when they covered both alcohol and gambling was that one transfer application should cover both permissions.

Equally, there is scope for clarifying the notification arrangements for amusement machine permits as there is a wide variation in approach at local level which introduces considerable bureaucracy and cost for no specific benefit or gain. Some local authorities say that you just need to state the number of machines eg 2 machines; some say that you must specify the Category machines present eg 4 machines, both Cat C, D and SWP and others say that you have to precisely indicate the number and category of machine. If either of the two latter approaches are adopted, then operators must submit renotifications to amend the alcohol premises licence. We believe national rules should be applied for consistency.

Finally, we are not clear whether this can be taken forward in the context of licensing or the gaming red tape challenge, but it would give a great boost to community pubs in particular to increase the number of automatic permissions attached to a premises licence as of right. The average density of machines has declined considerably since the introduction of the Act and the shift to an application process for additional machines. There is evidence that community pubs choose to restrict machine numbers rather than face a full licensing hearing to get one more amusement machine on site.

We would also welcome clarification that pubs and bars positioned airside at airports – which are outside the Licensing Act – can benefit from the automatic entitlement provisions.

## Conclusion

In summary, therefore, whilst we support the strategic aims and objectives of the proposed reforms, we are concerned that, in practice, they may actually introduce unjustified and unsustainable costs on pubs and bars.

Furthermore, the successful attainment of those objectives will inevitably be constrained by the fact that the proposals do not go far enough to regulate the supply of alcohol through the off-trade channel and thereby reduce overall levels of consumption and alcohol related crime and disorder.

It is vital that, going forward, action is focused on all businesses and activities involved in supplying alcohol – at whatever time and through whichever channel. Moreover, controls and costs should be targeted specifically at the irresponsible minority rather than penalising the responsible majority.

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