



Department
for Business
Innovation & Skills

**FOCUS ON ENFORCEMENT
REGULATORY REVIEWS**

Focus on Enforcement Pubs
Review

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FOCUS ON ENFORCEMENT PUBS REVIEW

EXECUTIVE SUMMARY

This review was carried out during 2012 and involved discussions with a range of stakeholders including regulators, licensees, pub owners and lawyers. Everyone welcomed the fact that the review was taking place. There were some very consistent messages coming out of the process and some specific issues being raised. We also heard many examples of good practice – the challenge is in making that good practice more widespread.

The body of this report includes details of the feedback received and the issues raised. However, the main findings from our perspective were:

- There is generally a lack of trust between regulators and licensees. There are examples where this has been overcome but this takes time and resource. The industry believes that better levels of trust would help when there are issues to be dealt with.
- The need for a risk based approach was frequently cited by industry (with reference often made to the Hampton Principles¹) but there are examples where this isn't followed. Industry would welcome greater recognition by regulators of the need for risk-based and proportionate regulation, including smaller scale and less frequent inspections of lower-risk pubs which would allow them to get on with running their businesses.
- The tone of the current guidance from the Home Office on under-age drinking is considered to be a particular barrier to a risk-based approach – this was cited both by industry and some enforcing officers. Whilst completely understandable in terms of the objectives of the guidance, it is considered to cause tension and to foster mistrust. Many licensees consider that they are being incorrectly targeted (and that retailers and off license sales do not face the same levels of enforcement).
- Those we spoke to did not think the long-term decline in pub numbers is being driven by over-regulation. The over-whelming feedback was that the primary reasons were the economic downturn and the increase in drinking at home. But the industry did feel that the burdens of regulation were increasing in the sector.
- We also found no evidence that enforcement impacts on community pubs any differently from other pubs – although they can face other, greater challenges.
- A number of 'hygiene' factors cause particular irritation and the industry felt it would be relatively easy to address licensees' concerns about some of these relatively

¹ Sir Philip Hampton's 2005 review, 'Reducing administrative burdens: effective inspection and enforcement' considered how to reduce unnecessary administration for businesses, without compromising the UK's regulatory regime. (See for example: <http://www.bis.gov.uk/brdo/resources/knowledge/better-regulation-principles>)

minor matters. These included both licensing matters and other regulatory requirements, for example on food safety and noise pollution. Examples included: licence fee renewal dates, requirements on how licenses are displayed, and food hygiene report formats.

SECTION 1: BACKGROUND

Purpose of the Focus on Enforcement reviews

1. This paper summarises the interim findings of the Focus on Enforcement review of the Pubs sector. The reviews examine the impact of regulatory delivery and enforcement in particular sectors of the economy. Each review is a short, sharp investigation of stakeholder experiences and evidence; they are carried out by a small review team and typically involve a six week fieldwork phase.
2. The purpose of this paper is to present the initial findings and evidence that the review team heard. The aim of the report is not to make specific recommendations for reform but to identify the impact and consequences of current enforcement practice.
3. The focus of each review is to identify areas of good practice, as well as those elements of the approach to regulatory enforcement that affected companies, and other stakeholders, feel could be improved.

Input to the evidence gathering

4. The review team took evidence through visits and face-to-face discussions and through the Focus on Enforcement website. Input was received from a range of trade bodies, from individual businesses and from the regulators. The fieldwork was carried out in June and July 2012.

Regulatory scope and purpose of the regime

5. The pubs sector is subject to a wide range of regulations, the purpose of which is to ensure that the products and services provided by pubs (principally alcohol and food) are safe for consumers and do not create wider social detriment.
6. The main piece of legislation affecting pubs (and other licensed premises, such as clubs and restaurants) is the Licensing Act 2003, which ensures that only premises that are authorised or licensed to do so can serve alcohol to the public. The Act ensures that pubs are run by a responsible person, who can be held accountable if an offence (such as serving alcohol to anyone under the age of eighteen) is committed.

7. The four objectives of licensing policy are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

8. Other aspects of pubs' business that are regulated include gambling, weights and measures, health and safety, noise, environmental health, food safety and food hygiene, playing of live and recorded music, and planning.

Sector coverage of the review

9. This review focused on the pubs sector, including considering any specific issues faced by community pubs. It did not extend to clubs, restaurants, cafés or off-licences.

10. Although the review covered the entire pubs sector, there was a particular focus on 'community pubs'. For the purposes of the review, 'community pubs' were taken to be those serving a primarily residential customer base rather than passing trade. This includes, for example, rural pubs and those that are diversifying to offer other services to residents (such as those incorporating a post office or grocery store); but could also include urban pubs that have a primarily local, residential clientele. The definition was kept flexible for the purposes of the fieldwork and stakeholders were asked to highlight any issues that they felt were of particular importance to 'community pubs' as they themselves defined them.

11. The pubs sector is diverse, and different issues face individual licensees compared to those facing the large managed chains. Equally, pubs which offer food face different issues from those which are mainly focused on drinks. Just over half of pubs (around 55%) are owned by a pub company or brewery and leased or tenanted to the licensee. Around 30% are freehouses which are owned and managed by the licensee. The remainder (around 15%) are directly managed pubs which are owned by a pub company or brewery, who employ the managers and staff. The balance within the sector has changed over recent years, with the proportion of independent pubs (freehouses) declining, and the proportion of tenanted or directly managed pubs increasing.

Features of the regulatory regime

12. Under the Licensing Act 2003 and related legislation, all pubs are required to:

- hold a premises licence;
- have a Designated Premises Supervisor listed on the premise licence, who must hold a personal licence;

- obtain a permit from the local authority and a licence from HMRC if they have a gambling machine;
- obey food labelling and trading standards rules (e.g. on weights and measures);
- hold an appropriate premises license and a copyright license to play recorded and/or live music;
- register with the Environmental Health department of the local authority if they wish to serve food; and
- avoid making noise that is a statutory nuisance.

13. More details of the regulatory regime can be found in **Annex B**.

The regulators

14. Pubs are regulated primarily by local authorities and the Police, and also have engagement with other enforcing authorities such as the Fire Service on a less frequent basis. Licensing issues are the responsibility of local authority licensing officers, who handle licence applications, routine inspections and enforcement action. Licensing officers will frequently be supported by the Police in the enforcement of certain aspects of the legislation, particularly the prevention of sales of alcohol to those under the legal age. The Police are responsible for dealing with anti-social behaviour inside and outside pubs.

15. The other regulations affecting pubs (see above) are also enforced by local authorities, mainly by trading standards (often working with the police on age-related sales), environmental health (covering food safety and noise) and planning officers.

16. Under the Primary Authority system, businesses operating across multiple local authority areas have the right to form a statutory partnership with a single local authority. That *Primary Authority* then provides robust and reliable advice to the business (assured guidance) and this must be taken into account by other authorities when carrying out inspections or dealing with non-compliance in relation to that business. This is designed to lead to simpler, more consistent regulation, and better compliance. At the time the fieldwork was conducted, multi-site pub businesses were able to enter into Primary Authority partnerships on food safety matters, but the legislation did not allow the scheme to apply to alcohol sales.

Charging in the regulatory regime

17. Pubs are charged fees in order to obtain and retain a license. The main fees charged under the Licensing Act 2003 are as follows:

- Premises license – the fee for a new application or a variation to an existing license varies (depending on the rateable value of the premises) typically ranging from £100 to £635. A higher level (up to £1,905) can be charged to the largest drink-led pubs.

- Annual renewal fee – the fee for renewing a premises license varies (again based on rateable value) from £70 to £350 (or £1,050 for the largest drink-led pubs).

Economic context

18. Around 550,000 people were employed in the UK pubs sector in 2010, representing about 2% of total employment. An average pub has been estimated to inject £80,000 annually into its local economy and the gross value added (GVA) to the UK economy is estimated at around £10bn for the combined pub and brewery sector. Employment in the sector fell in the three years to 2010, and turnover figures in 2010 were the second weakest since 2003.

19. The sector is also experiencing some longer-term pressures. In 2010, there were just over 50,000 pubs in the UK. However pub numbers have been falling steadily for the last two decades and the current size of the sector represents a 25% reduction since 1980.

20. Evidence provided to the review would suggest that this long-term decline in the sector is largely due to economic conditions, changes in the way that consumers spend their free time and disposable income, and increased competition from the off-trade (and in particular the supermarkets). To illustrate that changing pattern: beer sales through pubs (the on-trade) have roughly halved over the last decade. Trading conditions for some have become very tough. A 2012 survey found that roughly half of all publicans say they are struggling financially, and we heard reports of annual incomes of £15,000 sometimes being shared between couples running a pub.

21. Regulation was not reported to be a major driver in the decline of the sector; however, the costs of regulation and the management time associated with compliance were reported to be increasing – and this should be seen against the backdrop of intense pressure on incomes for many in the sector.

Recent history of the regulatory regime

22. There are some prominent public policy concerns that shape the operating environment for pubs, in particular: tackling excessive consumption and anti-social behaviour; and protecting public health. A drive to tackle these issues has largely resulted in a tightening of the regulatory regime governing the sector. These changes, and the current policy direction, are set out principally in the Government's Alcohol Strategy.

23. Specific regulatory changes and powers were introduced through the Police Reform and Social Responsibility Act 2011, which (along with other supporting legislation) made a number of changes to the licensing laws. These included:

- doubling the fine for persistent under-age sales to £20,000 – persistent is defined in the 2003 Act as twice in a three month period at a given premise;

- lowering the evidential threshold required of licensing authorities for the removal of licenses – changing the requirement for the removal to be ‘necessary’ to a requirement for it to be ‘appropriate’;
- enabling local authorities to suspend a licence for late payment of annual fees by a licensed premises;
- allowing the police and environmental health authority longer to assess applications for a Temporary Event Notice;
- also allowing applications for Temporary Event Notices to be made at shorter notice, and for a higher total number of days to be covered by the notices for a single event, or in total for a given premise in a given year;
- introducing a *late night levy* – giving licensing authorities a power to charge premises that have a late alcohol licence, as a contribution to the costs of policing the night-time economy;
- extending *early morning restriction orders* – enabling licensing authorities to restrict the sale of alcohol in designated areas between midnight and 6a.m;
- the removal of the ‘vicinity’ test for those raising objections to new licence applications (whilst maintaining protections against vexatious objections).

24. Under the Live Music Act 2012, which came into force on 1 October 2012, the Licensing Act 2003 was amended to make it easier for pubs and clubs across England and Wales to stage live music. Live unamplified music performed in any location, and live amplified music in on-licensed premises and workplaces for audiences of up to 200 people, no longer need a specific licence between 8am and 11pm. The Government has since introduced further deregulation of entertainment licensing under the 2003 Act (DCMS led) and is in the process of implementing this in stages.

SECTION 2: WHAT WE HEARD

25. This section summarises the key evidence gathered through the review. It brings together input from detailed discussions, website postings and other written submissions.

26. **Annex A** contains a fuller summary of the website postings and written submissions received.

27. This summary deliberately focuses on those areas that were identified as issues and that could therefore present the most fruitful opportunities for change and development. However, the summary also acknowledges the positive feedback that was received and specific examples of good practice that were welcomed by the regulated community.

28. The eight key themes emerging from the review were:

- the sector feels it often afforded little trust by regulators;
- much enforcement activity doesn't feel to the sector like it is risk-based;
- the sector reported inconsistency in enforcement practice and decisions;
- the sector cited examples of heavy-handed enforcement;
- the sector feels that the enforcement of under-age sales can feel disproportionate and confrontational;
- the sector reported that there is an absence of a low cost, non-confrontational appeals mechanism;
- the sector reported gold-plating in enforcement practice – including voluntary good practice becoming licence conditions;
- the sector feels the legal position has become less clear over recent years, following a number of amendments.

29. These themes are reflected in a longer list of points raised as follows:

- the sector welcomes strong working partnerships with the regulators, where these have been established;
- the Licensing Act 2003 was seen as a positive development when first introduced;
- local regulators spoke positively of their lead responsibility on licensing;
- there is no evidence that 'community pubs' are impacted significantly differently from other pubs by regulatory enforcement;
- enforcement activity is not always obviously risk-based and sometimes seems to be carried out without consideration of the impact on the business;
- there is inconsistency in the approaches taken by different regulators, both within and between different local authorities;
- the approach to enforcement can be heavy-handed, enforcing minor rules, requirements and breaches with formal measures;
- common but important processes, such as licensing reviews, are carried out in markedly different ways in different locations;

- enforcement in relation to under-age sales is sometimes over-zealous, not obviously risk-based, and sometimes feels like it is intended to catch out well intentioned traders, rather than catch true rogues;
- the approach to test purchasing is inconsistent, and in some areas pubs are given no feedback on their pass rates;
- there are no simple appeals mechanisms available to the sector – e.g. for them to obtain a second opinion on seemingly arbitrary enforcement decisions;
- inconsistencies in enforcement are costly for companies, they divert staff resources and undermine attempts to deliver compliance (especially across multi-site chains);
- good voluntary schemes of self-regulation (e.g. Challenge 21) are increasingly being made into conditions of the license, undermining industry support, and turning otherwise legal behaviour into regulatory breaches;
- frequent amendments to the legislation and regulatory regime have made it very complicated, posing challenges to licensees and enforcing officers alike;
- many in the sector felt that they were now seen by Government as being a crime and disorder problem, not as making a positive economic and social contribution;
- public policy concerns were felt to be impacting negatively on relationships with some enforcing authorities, with the sector feeling they were afforded a relatively low level of trust;
- enforcement action is seen as confrontational when it is initiated through formal notices and letters without any prior discussion, and the sector reported an increasing trend in the use of this approach;
- there is some inconsistency across the country in how regulators carry out food hygiene inspection visits and communicate the outcome - greater consistency would be welcomed by the sector;
- pub companies that own more than one pub in a local authority area would welcome a better administrative system for paying the annual license fee for all their pubs on one set date;
- a fear that the new late-night levy and early-morning restriction orders will impose significant new burdens on the sector, with doubts raised over whether they would be applied in a properly risk-based way;
- the majority of enforcement officers were seen as meeting a good standard of operation, but the sector reported some distinctly odd experiences; and
- the sector acknowledged many examples of good practice too.

30. These points are explained in more detail below:

- **The sector welcomes strong working partnerships with the regulators, where these have been established** – the relationships between pubs and their regulators are generally at their strongest where regular, open, two-way communication is the

norm. Examples of successful partnership models include structured schemes such as Pubwatch and Best Bar None, pro-active contact between licensees and enforcement officers, and discussion-based resolution of issues (rather than using mechanisms such as written notices as a first step). We heard several examples of good practice and the key lesson seemed to be that two-way communication was highly effective in building trust, a strong working relationship, achieving compliance and resolving issues quickly and effectively as they arose.

- **The Licensing Act 2003 was seen as a positive development when first introduced** – it simplified previous legislation and was felt to have set a fair balance between the sector and the public interest.
- **Local regulators spoke positively of their lead responsibility on licensing** – they felt that this had helped them to build an understanding of, and relationship with, the sector.
- **There is no evidence that ‘community pubs’ are impacted significantly differently from other pubs by regulatory enforcement** – other than in the relatively rare cases where a community pub wishes to provide other services (e.g. post office, groceries), when there can be clashes between the regulatory regime underlying the provision of that service and the regulations surrounding pubs.
- **Enforcement is not always obviously risk-based and sometimes seems to be carried out without consideration of the impact on the business** – we were told of many examples of enforcement action that did not appear to be consistent with the Hampton Principles² of better regulation. In particular, the sector noted the frequency of visits to some premises where there seemed to be no evident problems, and that large teams sometimes arrived at peak trading times checking entirely routine matters that did not relate to safe operation during peak periods. Whilst the sector recognised that regulators should be able to carry out unannounced visits at busy times to check directly relevant issues, they said that often these large teams asked very routine questions that could be better dealt with by making appointments at non-peak times. The sector cited examples of apparently non-risk-based enforcement, including requirements for large numbers of CCTV cameras, security staff on the doors and/or the introduction of a Challenge 25 scheme (rather than a proposed Challenge 21) at a quiet rural pub with no history of anti-social behaviour and with an adult-targeted, food-led offer. The sector also provided numerous examples of seemingly arbitrary and inconsistent decisions being taken in relation to noise abatement.

² As set out in Sir Philip Hampton’s 2005 review, ‘Reducing administrative burdens: effective inspection and enforcement’. See www.bis.gov.uk/brdo/resources/knowledge/better-regulation-principles.

- **There is inconsistency in the approaches taken by different regulators, both within and between different local authorities** – this is an issue that was raised in most of the discussions we had with the sector. We were given examples where different regulators within a single area (e.g. trading standards and environmental health) had widely different approaches to the frequency and methods of enforcement action, creating confusion and uncertainty amongst licensees. More generally, it is clear that different local authorities take very different views on enforcement and can adopt very different approaches. Whilst most in the sector recognised the role of local discretion, many asked if there was scope for this to be done within a framework that provides greater consistency. A frequent call from the sector was for guidance that would encourage (or even require) regulators to act more consistently on appropriate matters. There was also a suggestion from the sector that this could be supplemented by more frequent networking between regulators, which could help through the sharing of good practice.
- **The approach to enforcement can be heavy-handed, enforcing minor rules, requirements and breaches with formal measures** – we were provided with numerous examples of over-zealous and over-bureaucratic enforcement (whilst these may represent a small proportion of overall enforcement practice – they can have a significant impact on individual licensees and have often gained notoriety in a way that has coloured wider perception in the sector). For example, formal enforcement action being initiated where a pub left a window open thus allowing noise to escape (rather than the regulator explaining the problem to the licensee and asking them to close the window), and other businesses being threatened for not displaying on the walls of the premises every page of a multiple page license, even though they displayed the first page and explained that the rest was available upon request.
- **Common but important processes, such as licensing reviews, are carried out in markedly different ways in different locations** – we were given examples of different procedures being used by different local authorities, which makes it difficult for solicitors acting for the nationwide pub companies to prepare for such reviews, and leads to seemingly arbitrary differences in the decisions taken in different areas of the country. The variation included whether or not the licensee or their legal representative was able to represent themselves at a license review hearing; how much input they were able to make, and how that was used to inform the discussion.
- **Enforcement in relation to under-age sales is sometimes over-zealous, not obviously risk-based, and sometimes feels like it is intended to catch out well intentioned traders, rather than catch true rogues** – many in the sector felt that the approach to test-purchasing seemed to punish any mistakes made, as an end in itself; rather than seeking to deal with those premises that are of utmost concern. Regulatory teams that input to the review suggested this was often in response to central

guidance³ which had a very strong tone and had moved towards zero tolerance. The sector felt that this had moved inspections away from a risk-based approach; that it had made penalties less proportionate (as all failures are deemed to be of the same magnitude); and that it had contributed to reduced trust and a worsening relationship. It was also argued by many interviewees that the problem of under-age drinking is not primarily created by pubs, but is more an issue of 'pre-loading' at home and/or the continued availability of alcohol at off-licenses to under-aged persons. The suggestion made was that resources might not be focused on the right problems.

- **The approach to test purchasing appears inconsistent, and in some areas pubs are given no feedback on their pass rates** – the sector suggested that being told of the result of all test purchases (passes as well as failures) would help licensees to reward staff who are being diligent on age-related sales, but would also allow them to understand whether a failure is rare or frequent, which would help them to decide what level of remedial action was necessary.
- **There are no simple appeals mechanisms available to the sector – e.g. for them to obtain a second opinion on seemingly arbitrary enforcement decisions** – short of appealing to a magistrate's court, it appears to be difficult for a licensee with a grievance about an enforcement decision – even one that is clearly misguided – to obtain any kind of 'second opinion'. This militates against natural justice and widens the trust gap between licensee and regulator.
- **Inconsistencies in enforcement are costly for companies, they divert staff resources and undermine attempts to deliver compliance (especially across multi-site chains)** – and in response to these issues we heard calls for an expansion in the volume and scope of Primary Authority from the large company end of the pubs sector. They argued that Primary Authority Partnerships provide an effective means for them to encourage greater consistency of process across their estate, and can also speed up decision making and communications when issues arise. It also delivers greater consistency in enforcement decisions. Where the partnerships are already in place they are generally supported by both the regulators and the licensees.
- **The sector reported that good voluntary schemes of self-regulation (e.g. Challenge 21) are increasingly being made into conditions of the license, undermining industry support, and turning otherwise legal behaviour into regulatory breaches** – we heard many examples of good practice arising from voluntary self-regulatory schemes. However, we also heard that increasing numbers of

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/98110/selling-alcohol-to-children.pdf

local regulators are requiring membership of one of these schemes as a condition of obtaining a license – at which point the scheme clearly ceases to be voluntary. Industry goodwill is likely to fall in such cases, bringing the future effectiveness of such schemes into question.

- **Frequent amendments to the legislation and regulatory regime have made it very complicated, posing challenges to licensees and enforcing officers alike** – we were told that it can be difficult for both licensees and regulators to keep fully up to date with the latest amendments to the regulatory regime, which leads to misunderstandings on both sides. A period of regulatory stability would be welcomed by most of those we talked to.
- **Many in the sector felt that they were now seen by Government as being a crime and disorder problem, not as making a positive economic and social contribution** – and that their positive impacts could be better reflected in both national and local messaging.
- **Public policy concerns were felt to be feeding through into the attitude of some enforcing authorities, with the sector feeling they were afforded a relatively low level of trust** – the sector felt there was a generally low level of trust and often a lack of mutual respect between regulators and licensees, with many licensees feeling that there is a presumption of guilt against them from the start.
- **Enforcement action is seen as confrontational when it is initiated through formal notices and letters without any prior discussion, and the sector reported an increasing trend in the use of this approach** – yet we heard many examples of good practice through partnership working that suggested this could be a more effective way of achieving compliance.
- **There is some inconsistency across the country in how regulators carry out food hygiene inspection visits and communicate the outcome. Greater consistency would be welcomed** – the new food hygiene rating that has been introduced by the Food Standards Agency was broadly welcomed in principle. However, there have been some practical problems in some areas in the use of contractors to carry out the inspections, in the way that some local authorities communicate the results and in the processes for getting re-inspected after performing remedial work.
- **Pub companies that own more than one pub in a local authority area would welcome a better administrative system for paying the annual license fee for all their pubs on one set date** – recent changes to the legislation allow licensing authorities to take action against non-payment of the annual license fee very quickly. However, some in the sector felt that renewal dates were often arbitrary, they reported that renewal notices no longer need to be sent to the pub first, and that some authorities' finance systems are poorly set up to recognise when the payment has been

made. This was reported as causing disproportionate levels of effort and stress to pub companies with multiple sites in a licensing authority's area. We heard several suggestions for how to improve the situation, from putting it on line to allowing payment by direct debit or standardising on a single annual date for all of a pub chain's outlets in the area, so they can pay a single total bill once a year.

- **A fear that the new late-night levy and early-morning restriction orders will impose significant burdens on the sector, with doubts raised over whether they would be applied in a properly risk-based way** – the concerns raised were that they could impose significant burdens on pubs and yet may not be adequately risk-based – the fear expressed was that all pubs in a designated area may have to pay the levy, whether they are part of the problem or not.
- **The majority of enforcement officers were seen as meeting a good standard of operation, but the sector reported some distinctly odd experiences** – for example, we were told of:
 - a London pub that was required during the 2012 London Olympics to make an hourly announcement over the tannoy, warning of recent bag thefts in the locality (but not in the pub);
 - a pub referred for a licence review because a pickpocket had been operating outside the pub (but with no evidence of a link to the premise);
 - a pub being required to display all ten pages of its licence on the walls of its premises, even though many local authorities are happy for a single-page license summary to be displayed;
 - a pub where police officers took a selection of glasses outside and smashed them in the beer garden, under the misunderstanding that the pub was required to have unbreakable glasses as part of its license conditions.

In each of these cases the individuals affected were unable to use an effective appeals procedure (as outlined above).

- **The sector acknowledged many examples of good practice too** – we heard many examples of good practice and of actions (such as more frequent sharing of experiences amongst regulators) that help good practice to spread. For example, we were told of several councils that have moved away from the early use of formal enforcement notices towards informal cautions and greater collaboration. We were told that, in Reading, Trading Standards Officers have met with all the publicans following poor test purchase results in order to drive through change. This has achieved concrete improvements without undermining relationships, and without incurring legal costs. One local authority described how they had moved away from an approach where they routinely used enforcement notices as a first step to one based on dialogue and partnership – saying they didn't think they had issued a formal notice for some years. Interestingly they said that the initial driver for this change in approach was that their own internal legal team started to hard-charge them for their services, rather than

it having been a strategic decision. Nevertheless they felt the new approach was significantly better in securing the desired results of safe and compliant trading.

ANNEX A: WHAT WE WERE TOLD IN WRITTEN SUBMISSIONS

The following is a summary of the postings made on the Focus on Enforcement website, and of comments made in separate written submissions.

Section A.1: Individual postings

Posting 1

- **Planning controls:** tighter planning controls are required to protect pubs from closure.
- **Business rates:** are particularly high and burdensome for the pubs sector.
- **Unfair competition:** supermarkets have an unfair trading advantage over pubs.
- **Inconsistency:** inconsistent decisions by local authorities need to be challenged.

Postings 2-7 (by the same person)

- **Over-zealous enforcement:** as licensees for a pub, we feel victimised by the licensing authority and the Police, and this is giving us health problems.
- **Risk-based enforcement:** we run a village pub, so why do the Police want us to employ door staff and frisk customers on the way in? It will put decent customers off coming to the pub.
- **Responsibility for anti-social behaviour:** we believe that if people decide to get drunk, that is their responsibility. Similarly, if they then decide to have a fight, that is their responsibility, not the pub's.
- **Timing and frequency of inspection visits:** we were visited by seven people from Trading Standards and the Police at 9:30pm on a Friday, one of our busiest times. This created staffing issues – while we were dealing with them, we were taken away from serving customers – and also created the suspicion amongst some customers that there must be a problem with our pub ('there's no smoke without fire'). We have been visited seven times over recent months, on most occasions just to ask trivial questions about our license to which they should already know the answers.
- **Possibly illegal actions by enforcement officers:** on one visit, when we were not present, environmental health officers entered our private premises (which are nothing to do with the pub) without asking for or receiving our consent. Is this legal?

Postings 8 and 12-15 (by the same person)

- **Heavy-handed enforcement:** as the licensee for a pub, I feel that I am being targeted for heavy-handed enforcement in return for trying to be a responsible publican. We have been visited at busy times several times by the licensing authority and the Police. The apparent reason is because we had phoned the Police several times in the previous year asking them for help to deal with antisocial behaviour in the pub. This seems to punish us for trying to prevent antisocial behaviour, rather than to reward us for trying to be a responsible pub. I previously had a responsible job in the Armed Forces yet, as a publican, the regulators seem to assume that I am incapable of acting responsibly.
- **Timing and purpose of inspection visits:** we have been visited by the Police several times when we are very busy, supposedly just on a 'social' call. If they have actually come to inspect the premises, this will necessarily take all our attention, so is best done at a quieter time. If they are not coming to inspect the premises, then their presence at a busy time is very unhelpful as it intimidates our customers. We would ask that the Police are required to be clearer about the purpose of their visit, and schedule routine ones at quieter times so that we can run our business.
- **Over-zealous food safety enforcement:** we recently started selling baked potatoes at our pub. However, EHO have told us that baked potatoes are a high risk food, and have told us to stop serving them. There does not seem to have been any risk assessment of our premises: we think our baked potatoes are entirely safely produced, but we seem to have no form of appeal or redress.
- **Good practice example:** we would like to put on record our thanks to our local Police authority for a recent occasion when, on a busy holiday weekend, they did their job unobtrusively and let us do our without any problems.

Posting 9

- **Unfair subsidised competition from the public sector:** Our local council operates subsidised venues that are in direct competition with the local pubs, taking away our custom. This seems unfair in itself, but in addition, it is not clear that the council-run venues are inspected with the same frequency that we are.
- **Good practice example:** our local licensing authority is good at enforcing the Licensing Act.

Posting 10

- **Unhelpful local council:** we would like to try to expand our client base by publicising our pub using signboards, but our local council (in Wales) is trying to stop us from doing so. Why can they not be more supportive of local businesses?

Posting 11

- **Heavy burden of regulation:** I deal with licensing issues across a large number of authorities. The Licensing Act 2003 imposes significant burdens on pubs, now much larger than under the predecessor regime.
- **Inconsistency:** different local councils are inconsistent in their enforcement of the law. Some are highly bureaucratic and officious, for example sending a warning letter because a window has been left open, rather than simply having a quiet word with the publican.
- **Over-zealous enforcement of age-related controls:** the Police run age-related sting operations that are focused on the pub, rather than on the under-age drinker and their parents. Why?

Posting 16

- **Burden of business rates:** we run a community pub, and we enjoy it. However, it is becoming increasingly difficult to remain profitable due to the increasing costs imposed on us – including business rates.

Posting 17

- **Inconsistent approach to regulation of noise nuisance:** we have run a popular and busy town-centre community pub for years. 18 months ago, new housing was built right next door. We appealed against it, but the Environmental Health Officer said they did not feel noise from the pub would be a problem, so the housing was built. Now the housing is occupied, some residents have complained about the noise and we have been forced to cancel live music, significantly hitting our profitability. It appears that the housing developer wants to have us closed down so he can build more houses, yet we have no means of redress against the EHO, despite the support of our customers.

Posting 18

- **Unsympathetic local authority:** we bought a community pub two years ago (it had been shut for two years beforehand). We have been voted Camra's best local pub two years in a row. However, we are barbers by trade, and operate a barber's shop in the pub to make it profitable. We have asked for help from the licensing authority, as we are not experienced publicans, but they have been completely unhelpful. Why can't the licensing authority try to help, rather than hinder, a responsible business?

Posting 19

- **Inconsistency between regulators within a single area:** I run a pub in Scotland. The levels of enforcement activity vary widely between different regulators within the same local council: alcohol licensing people come round all the time, and have a zero tolerance approach to trivial mistakes in the paperwork, whereas we hardly ever see the weights and measures people. Why can't we have more uniform standards for the regulators?

Posting 20

- **Inconsistent approach to regulation of noise nuisance:** the local council gave our pub planning permission to become a live music venue in 2003. However, in 2008 a nearby resident complained that the noise was preventing them from being able to sell their house. As a result, environmental health officers placed a noise abatement notice on us. We can now hardly ever host live music, and this has hugely hit our profitability. Yet we seem to have no means of appeal or redress.

Posting 21

- **Need for stronger enforcement:** as a pub customer, I think the laws should be enforced more strictly, not less. I have come across instances of smokers in the pub entrance, dogs allowed in the pub, dirty toilets and blocked fire exits.

Posting 22

- **Heavy-handed approach to regulation of noise nuisance through planning:** we have run a community pub for the last 2 years, and we have a planning restriction that stops us using the pub garden after 6pm, regardless of whether our customers would cause noise problems to local residents or not. Why can't any noise problems be dealt

with via our license conditions as and when they arise, rather than imposing a blanket ban through planning, which harms our trade during the hot summer months?

Posting 23

- **Unsympathetic regulators:** a group of us bought our village pub at auction recently. However, before we could take ownership of it, lots of the fixtures and fittings (including air conditioning units, a gas boiler and electrical fittings) were taken away by the previous owner, contrary to the description at auction, leaving the pub in an unsafe condition. How can this be right, and why weren't our local regulators willing to intervene on our behalf?

Posting 24

- **Increasing economic pressures on pubs:** pubs are under increasing economic pressure from supermarkets, from the recession, from above-inflation duty increases and from energy price increases. These pressures are making it increasingly difficult to run a profitable pub, especially for small community pubs.

ANNEX B: ADDITIONAL DETAILS ON THE REGULATORY REGIME

The following is an expanded summary of the details of the regulatory regime covered in paragraph 12 in section 1.

Key features of the regulatory regime for pubs:

B.1 Licensing (Licensing Act 2003)

B.1.1 Personal Licence

Any premises selling alcohol must have a Designated Premises Supervisor, who must hold a Personal Licence. Local Authorities grant Personal Licenses, which are valid for 10 years. They require:

- An Award for Personal Licence Holders certificate, which is awarded by the British Institute for Innkeeping Awarding Body following the completion of a 1-day course.
- A CRB reference check.
- A Disclosure of Convictions & Declaration Form

B.1.2 Premises Licence

Local Authorities grant Premises Licenses, subject to a potentially broad range of conditions determined locally. Under changes in to the 2003 Act introduced in 2010, there are now five mandatory licensing conditions. These are :

- a ban on irresponsible promotions
- a ban on dispensing alcohol directly into customers' mouths
- the mandatory provision of free tap water
- an age verification policy
- the availability of smaller measures (e.g. ½ pints of beer, 125ml glasses of wine).

An application for a new premises licence must include an Operating Schedule, which should set out what licensable activities are proposed. In the case of pubs, this will typically be serving alcohol, but may also potentially be music and dancing or entertainment. It must also outline how the licence holder will ensure the licensing objectives are met. The actions set out are likely to become conditions of the licence.

The four licensing objectives are:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

If a pub wishes to serve drinks to customers outside, for example with an additional bar in its beer garden, then this area must be included in the area licensed. Otherwise a pub will need a licence that allows it to sell alcohol to be consumed off the premises, as well as on the premises, to cover the alcohol consumed in the beer garden.

If a pub has a dance area or wishes to provide live music, this must be highlighted on its premises license application. Alternatively, if such events are held only on an ad-hoc basis, then the pub can apply for a temporary event notice (TEN). A personal license holder may apply for 50 TENs per year .

Where a pub wishes to have tables and chairs on the public highway, it will also need a pavement licence, which must be renewed annually, from its local authority.

LA trading standards officers and police ensure compliance with the licence conditions. Ultimately, the police have powers to close premises, and the local authority can revoke the licence.

B.2 Gambling (Gambling Act 2005)

A pub needs a permit from its Local Authority and a licence from HMRC if it wishes to operate gambling machines on the premises, which must be displayed prominently.

In addition, if the pub maintains the gambling machine(s) itself, rather than contracting this out, it must register with the Gambling Commission.

B.3 Weights and measures (Consumer Protection from Unfair Trading Regulations 2008) and Trading Standards

Pubs (and other establishments serving food) must obey food labelling rules, i.e. descriptions on menus must not be incorrect or misleading. Alcoholic drinks must be served in measured specified by the law (e.g. beer in pints, half-pints or third-pint glasses).

B.4 Music (Licensing Act 2003)

To play recorded music, a pub needs:

- A Premises Licence allowing the playing of Recorded Music
- a Copyright Licence for the musical & lyrical composition of the track (PRS Licence), available from www.prsformusic.com
- a Copyright Licence for the sound recording of the track (PPL Licence) available from <http://www.ppluk.com/>

To host performances of live music, a pub needs:

- A Premises Licence allowing the playing of live Music
- a Copyright Licence for the musical & lyrical composition of the track (PRS Licence), available from www.prsformusic.com

B.5 Health and safety (Health and Safety at Work etc Act 1974)

Pubs must comply with a range of health and safety rules, which are set out in detail on the HSE website and guidance from police. These include, for example:

- conducting risk assessments, setting out, implementing and monitoring plans to control the risks identified
- preparing a statement of safety policy and displaying a health and safety poster
- ensure adequate training, information and equipment are provided to all staff

A statement from the Health and Safety Executive (HSE) and the Local Government Group sets out thirteen principal interventions used by HSE and LAs:

Interventions before and at the point of creation of risk

1. Partnership
2. Motivating senior managers
3. Supply chain
4. Design and supply
5. Sector and industry-wide initiatives
6. Working with those at risk
7. Education and awareness

Interventions at or during exposure to risk

8. Inspection and enforcement
9. Intermediaries
10. Best practice
11. Recognising good performance

Interventions when the consequences of exposure to risk arise

12. Incident and ill-health investigation
13. Dealing with issues of concern that are raised, and complaint

Since April 2011, local authorities should be carrying out joint inspections of Food Safety and Health and Safety, where this is appropriate. “Combined interventions would only be

appropriate where the local authority's food and health and safety intervention programmes coincide."

B.6 Food hygiene (EU Regulation 852/2004 (Article 5))

Premises serving food must be registered with the local authority's environmental health service at least 28 days before opening; registration is free. They also need to have a food safety management system based on the principles of Hazard Analysis and Critical Control Point

Local Authority officers ensure compliance through inspections and prosecutions where necessary.

From April 2011, local authorities should carry out joint inspections of Food Safety and Health and Safety, where this is appropriate. "Combined interventions would only be appropriate where the local authority's food and health and safety intervention programmes coincide."

B.7 Planning

In terms of planning law, pubs are classified as drinking establishments (A4), as distinct from shops or restaurants. Classification depends on the primary use of the premises – e.g. a pub that serves food is still a drinking establishment rather than a restaurant if its primary use is for drinking, regardless of how much space in the pub is given over to food service.

Certain changes of use are designated "permitted change". For example, a pub may convert to a restaurant without consulting the planning authorities (but not vice versa).

Planning permission may also be needed if a pub wishes to place tables on the pavement outside for the first time.

B.8 Noise (Environmental Protection Act 1990)

Pubs must not make noise that is a statutory nuisance – that is, noise that would interfere with an average person's reasonable use of their property. A Local Authority environmental health officer can investigate and determine whether noise is a nuisance. Local authorities will have an enforcement policy which sets out enforcement options and under what circumstances they may be used. Such options may range from informal oral action to seizure of equipment or arrest.

B.9. Appealing decisions made under the Licensing Act 2003

An appeal can be made to any magistrates' court in England and Wales. An appeal has to be commenced within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.

The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.

On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review.

Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

B.10 Minimum pricing

In the Government's response to its consultation on the alcohol strategy in 2013, it was announced that while minimum unit pricing would remain a policy under consideration, it

would not be taken forward at that time. However, a ban on selling alcohol below the cost of duty plus VAT will be implemented in April 2014.

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