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| Title: Policing and Crime Bill: Summary Reviews and arrangements for interim steps IA No: HO 0222 Lead department or agency: Home Office Other departments or agencies: | Impact Assessment (IA) | | |
| | Date: 22/12/2015 | | |
| | Stage: Awaiting scrutiny | | |
| | Source of intervention: Domestic | | |
| | Type of measure: Primary legislation | | |
| Contact for enquiries: Robert Turner 020 7035 8836 | | | |

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|--|-------------------------------------|
| Summary: Intervention and Options | RPC Opinion: EANCB validated |
|--|-------------------------------------|

| Cost of Preferred (or more likely) Option | | | | |
|---|----------------------------|--|------------------------------|--------------------------|
| Total Net Present Value | Business Net Present Value | Net cost to business per year (EANCB on 2015 prices) | In scope of One-In, Two-Out? | Measure qualifies as Out |
| £3.8m | £3.8m | £-0.43m | Yes | Out |

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

Under section 53 of the Licensing Act 2003 the police can apply for an urgent review of a premises licence if the premises are associated with serious crime or serious disorder. The licensing authority (LA) must consider the application within 48 hours and may impose 'interim steps'. It is unclear whether interim steps should remain in place after the review hearing and before the review decision takes effect after 21 days (time allowed to lodge an appeal) or until any appeal hearing or if the interim steps can be amended/withdrawn by LAs. This uncertainty can result in unfair steps being imposed on businesses or unsuitable premises continuing to operate freely for long periods.

What are the policy objectives and the intended effects?

The objective is to ensure the public are protected from premises associated with serious crime and serious disorder in the period between the review hearing and the determination coming into effect, in particular where an appeal is lodged by the licensee, which can delay implementation of the final outcome by several months. We would also like to ensure that businesses subject to summary reviews are treated fairly and that any interim steps remaining in place after the review hearing are proportionate, including when they remain in place for extended periods when an appeal is lodged by either side.

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

Option 1: Do nothing.

Option 2: After review hearing, interim steps automatically cease. Review decision takes effect after the 21 day period for lodging an appeal is over or after appeal is determined. However, LA can decide at the hearing that the determination should have immediate effect which would trigger a right to an expedited appeal to a magistrates' court for all parties.

Option 3 (preferred): requires LA to review interim steps at the hearing and decide what steps should remain in place until the 21 appeal period expires or any appeal is determined. Post hearing, the police and licence holder would have a right to an expedited appeal to a magistrates' court against the interim steps.

Option 3 is preferred as it addresses the ambiguity in the law and protects the rights of businesses. It offers a flexible, fair and proportionate solution for all parties, without creating new loopholes (unlike option 2).

| | | | | | | |
|--|--|--|-----------------------|---------------------|----------------------|---------------------|
| Will the policy be reviewed? It will be reviewed | | If applicable, set review date: 11/2021 | | | | |
| Does implementation go beyond minimum EU requirements? | | | No | | | |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base. | | Micro Yes | < 20 Yes | Small Yes | Medium Yes | Large Yes |
| What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) | | | Traded: | | Non-traded: | |

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

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 2

Description: Interim steps lapse automatically after the review hearing with LA discretion to decide that the final determination should have immediate effect.

FULL ECONOMIC ASSESSMENT

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

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

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

This option was considered as a potential viable solution but as it does not fully meet the policy objectives, the costs and benefits have not been monetised.

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

This option affords licensing authorities little flexibility. There is no option for the LA to exercise its discretion beyond a choice of either letting the interim steps lapse or bringing the final determination into effect immediately. In the first scenario, there is a risk to public safety and neighbouring premises from allowing a premises associated with serious crime or disorder to operate without protective measures. To prevent this, LAs would likely default to bringing in the final decision immediately. In this scenario, businesses would have little or no time to adjust to the decision, particularly if it requires permanent or semi-permanent structural changes such as installing CCTV. There would also be little time for businesses to prepare for appeal, which would disproportionately affect small and micro businesses.

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

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

This option was considered as a potential viable solution but as it does not fully meet the policy objectives, the costs and benefits have not been monetised.

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

The option is based on the provisions in the Gambling Act 2005 and would therefore bring legal clarity for businesses and LAs. It would address ambiguity and be compatible with ECHR law by offering an expedited appeal right to both parties where decisions are brought into effect immediately. The option also limits the number of representations premises can make against the interim steps, which would likely lead to savings for LAs as there is currently no limit.

Key assumptions/sensitivities/risks

Discount rate (%)

There is a risk that LAs will default to bringing the review decision in to effect immediately to ensure some protections are in place. Magistrates' courts are likely to face increasing costs and be placed under increased pressure as the rate of appeals increases.

If the final decision is not brought in, there would be a risk of increased crime and disorder, including the risk of violent crime, as premises associated with serious crime and disorder would be able to operate freely during these periods.

BUSINESS ASSESSMENT (Option 2)

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

Summary: Analysis & Evidence

Policy Option 3

Description: Require LAs to review interim steps at review hearing and decide what steps, if any, should remain or be put in place until appeal period expires/ final appeal disposed of.

FULL ECONOMIC ASSESSMENT

| Price Base Year 2015/16 | PV Base Year 2015/16 | Time Period Years 10 (17/18 start) | Net Benefit (Present Value (PV)) (£m) | | |
|----------------------------|-------------------------|--|---------------------------------------|----------------|--------------------|
| | | | Low: Optional | High: Optional | Best Estimate: 3.8 |

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

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

The annual cost to business of going through the summary review process has been monetised, with the methodology explained in detail in the full appraisal. While there is a gross cost to business from option 3, it presents a net saving on the baseline option (the status quo, Option 1) and is therefore presented as a benefit.

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

Option 3 offers premises an expedited appeal against the interim steps following the review hearing. While there is the potential for costs to LAs and courts from the uptake of this route, it is unlikely that many premises will actually take up this appeal. This is because interim steps will have already been reviewed very recently at the review hearing and therefore any appeals are unlikely to be successful. There is therefore expected to be no additional cost over the baseline option.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|--|---|----------------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | N/Q | 0.4 | 3.8 |

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

Requiring the LA to review the interim steps at the review hearing will lead to more proportionate and robust interim steps. As the interim steps will likely be more in line with the final decisions and therefore more lenient than the original interim steps, option 3 presents a benefit for businesses – while there is a cost to business of £1.9m under this option, this represents a £400k saving on the baseline do nothing option.

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

Unlike the other options, option 3 gives LAs the flexibility to use their discretion in determining interim steps. The option also limits the number of representations premises can make against the interim steps which would likely lead to savings for LAs as there is currently no limit.

| | | |
|---|-------------------|-----|
| Key assumptions/sensitivities/risks | Discount rate (%) | 3.5 |
| The risk of increased appeals and associated rises in costs and burdens on the courts and LAs as a result of the additional expedited appeal right against the interim steps is considered to be minimal. This is because it is unlikely that many businesses will take up this option as it would involve a cost and would be unlikely to be fruitful, given that they would have had the opportunity to put forward their case against any interim steps less than a month prior to lodging the appeal against the steps. | | |

BUSINESS ASSESSMENT (Option 3)

| | | |
|---|-------------------|----------------------|
| Direct impact on business (Equivalent Annual) £m: | In scope of OITO? | Measure qualifies as |
| Costs: 0 | Yes | Out |
| Benefits: 0.43 | | |
| Net: 0.43 | | |

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

Alcohol licensing

1. The Licensing Act 2003 (“the 2003 Act”) regulates the sale of alcohol. Licensing authorities (LAs) – i.e. district and borough councils or unitary councils – administer the system of licensing under the 2003 Act. LAs must carry out their functions with a view to what is appropriate to promote the statutory licensing objectives (the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm).

The standard review process

2. The procedures set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with licensed premises occur after the grant or variation of a premises licence or club premises certificate. At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the LA to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives. When a LA receives an application for a review from a responsible authority or any other person (for example, a local resident, residents’ association, local business or trade association) which is relevant and not frivolous, vexatious or repetitious, or has received a notice about a closure order in accordance with section 167 of the 2003 Act, it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in the Hearings Regulations¹ which ensure that there is time for all responsible authorities and any other persons to consider making representations. It also ensures that the premises licence holder is made fully aware of any representations made in respect of the premises and of any evidence supporting the representations in order to allow the holder or their legal representative to prepare a response.

Summary reviews

3. Powers set out under sections 53A to 53C of the 2003 Act allow the police to trigger a fast track process to review a premises licence where they consider that the premises is associated with serious crime or serious disorder (or both). In addition to triggering a fast track review process, the powers allow the LA to take “interim steps” quickly, where it considers this is necessary, pending the full review. The powers apply only where a premises licence authorises the sale of alcohol. They do not apply in respect of other premises licences, or to premises operating under a club premises certificate.
4. The tests to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) (a) and (b) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:
 - a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or
 - b) Involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
5. There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under section 12 of the Public Order Act 1986 in which it is also used.

¹ The Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) set out the usual processes governing the conduct of licensing authority hearings.

The summary review process

6. The full summary review process is set out in the flow chart at Annex A and also described below.

Before the review hearing

7. In summary, the process is:
 - the chief officer of police for the area in which the premises are situated may apply to the LA for an expedited review of a premises licence where a senior police officer (of the rank of superintendent or above) has issued a certificate stating that in his/her opinion the premises are associated with serious crime or serious disorder (or both);
 - on receipt of the application and the certificate, the LA must within 48 hours of the time of its receipt consider whether it is necessary to take interim steps pending determination of the review of the premises licence. When calculating the 48 hour period any non-working day can be disregarded². The authority must then undertake a review within 28 days after the day of receipt of the application.
8. The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring. The interim steps the relevant LA must consider taking are (one or more of):-
 - modification of the conditions of the premises licence;
 - the exclusion of the sale of alcohol by retail from the scope of the licence;
 - removal of the designated premises supervisor from the licence; and
 - suspension of the licence.
9. The LA may want to consult the police about the steps that it thinks are appropriate, pending the determination of the review. The LA may consider the interim steps without the holder of the premises licence having been given an opportunity to make representations. If the LA decides to take interim steps, the decision can take effect immediately. The LA must give immediate notice of its decision and its reasons for doing so to the holder of the premises licence and the chief officer of police who made the application.
10. The LA should consider the practical implications of compliance in relation to the interim steps imposed on a premises and give careful consideration to any interim steps which would result in significant costs or permanent or semi-permanent adjustments which would be difficult to remove if the outcome of the subsequent full review was to withdraw or modify those steps. In some circumstances, it might be better to seek suspension of the licence pending the full review, rather than imposing a range of costly conditions or permanent adjustments.
11. The premises licence holder may make representations against the interim steps taken by the LA. There is no time limit for the premises licence holder to make representations on the interim steps before the review hearing takes place (within 28 days of the initial application being received by the LA). On receipt of such representations, the LA must hold a hearing within 48 working hours. The LA must give advance notice of the interim steps hearing to the premises licence holder and the chief officer of police. Given that these measures are designed to deal with serious crime and serious disorder on an interim basis only, the process is designed to avoid delay. As such, the process set out in the Hearings Regulations is streamlined. At this hearing the LA must consider whether the interim steps are appropriate for the promotion of the licensing objectives; and determine whether to withdraw or modify the steps taken. There is no right of appeal to a magistrates' court at this stage (i.e. prior to the full review hearing).

At the review hearing

² This means that, for example, if the application was received at 3pm on a Friday, the 48 hour period would cover the remaining 9 hours on that Friday and the remaining 39 hours starting on the Monday morning (provided it was not a bank holiday). In this case the LA would have to decide on interim steps by 3pm on the Tuesday.

12. At the full review hearing, the LA must consider what actions are appropriate for the promotion of the licensing objectives, when making its final determination. The actions the LA can take in its final determination are:

- the modification of the conditions of the premises licence;
- the exclusion of a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months; and
- the revocation of the licence.

13. The LA must take into account any relevant representations made. Relevant representations are those that:

- relate to one or more of the licensing objectives;
- have not been withdrawn; and
- are made by the premises licence holder, a responsible authority or any other person (who is not also a responsible authority).

Right of Appeal

14. Decisions at the full review hearing ordinarily take effect 21 days from the time the licence holder is notified of the LA's determination. During this time an appeal may be made to a magistrates' court. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations. When an appeal is lodged, the LA's determination will not have effect until the disposal of the appeal.

Problem under consideration

15. There is ambiguity in the 2003 Act about whether the interim steps remain in place or lapse automatically after the review hearing and before the determination comes into effect (after 21 days) or, where an appeal is lodged, before the appeal is disposed of. There is also ambiguity about whether LAs have the power to withdraw or amend the interim steps at the review hearing. Practitioners consider that the legislation is ambiguous, and there is disagreement about what the 2003 Act intends, as well as what the law *should be*.

16. As a result of this ambiguity, a number of judges have made conflicting decisions in interpreting the law. In one case³ a decision was taken to suspend the licence as an interim step, followed by a decision at the full review hearing to suspend for a further three months. The licence holder appealed against the three month suspension and continued to operate pending the appeal. The police issued a closure notice on the basis that the premises was being used for the unauthorised sale of alcohol. The District Judge refused to make the closure order and the premises was allowed to remain open as she ruled that the interim steps are one-sided and should only be in place for a limited time. In a later case⁴, where drug dealing was a concern, the LA decided to suspend the licence as an interim step with a decision taken at the full hearing to revoke the licence and for the interim steps to remain in place until the disposal of any appeal. The premises operators appealed and instigated judicial review proceedings on the basis that the LA had no power to impose interim steps beyond the date of the full summary review hearing, but permission for judicial review was refused. In a third case⁵ where a decision was taken to suspend the licence as an interim step and to revoke the licence at the full hearing, the previous two cases were cited as part of the opposing arguments presented by each side, with an independent judgement ultimately being made that the interim steps should remain in place. In another case⁶ the LA decided at the full review hearing to revoke a licence and continue to suspend the licence as an interim step. The licensee lodged a judicial review claim alleging, among other things, that the interim steps could not extend beyond the summary review decision. An application was made by the licence holder to allow them to continue trading pending the outcome of the judicial review, which was granted. However, this decision,

³ Chief Constable of Cheshire v Oates (December 2011)

⁴ 93 Feet East Ltd v London Borough of Tower Hamlets [2013] EWHC 2716

⁵ The Commissioner of the Metropolitan Police v Mayfair Realty Limited [July 2014, unreported]

⁶ Sarai v London Borough of Hillingdon [August 2014]

along with the permission for judicial review, was then overturned by the High Court. In doing so, it is felt by some lawyers that the High Court missed an opportunity to achieve a definitive judgement.

A.2 Groups Affected

17. **Members of the public**, including residents living in the vicinity of licensed premises or customers of premises are directly affected by premises associated with serious crime or serious disorder, or both, remaining in operation. The public may be put in danger, for example by being exposed to the threat or carrying out of serious violence. This could potentially include knife and gun crime or other types of serious violent assault.
18. **Licensed premises** that are, in the opinion of the police, engaged in serious crime or serious disorder can be subject to the summary review process as set out above. The wider licensed trade in the vicinity of premises associated with serious crime or disorder can be affected negatively, as their customers may be put off from visiting them through a fear or dislike of being near such activity. Premises being used as a front for organised crime may have a detrimental impact on the nearby licensed trade as they might be engaged in the sale of illicit, cheap alcohol and criminal activities which may undercut local competitors and lower the general appeal of the area.
19. **LAs** who receive applications for summary reviews are required to consider within 48 hours whether interim steps are necessary and notify all parties of their decision. Where representations are made against the imposition of interim steps the LA must hold a hearing to consider the representations within 48 hours. They must hold a full summary review hearing then, within 28 days of receiving the application, to consider their final determination.
20. **The police** play a key role as the body with responsibility for making applications for summary reviews. In particular senior officers of the rank of superintendent or above have the responsibility of approving and signing off any application. The LA may also want to consult the police about the interim steps that it thinks are appropriate to impose to address the immediate problems with the premises and the police also attend the full hearing and any subsequent appeal hearings.
21. **Magistrates' courts** are affected by the summary review process where one of the parties (usually licence holder) appeal a decision made at the full review hearing. Evidence from LAs suggests that in most cases no appeal is lodged. In some cases appeals are withdrawn. Where an appeal is heard the court may decide to make a decision on the case or remit the case back to the LA with instructions.

A.3 Consultation

Public Consultation

22. Consultation has been undertaken with key partners via two workshops in summer 2015. One included public sector representatives from the Local Government Association (LGA), the National Association of Licensing and Enforcement Officers (NALEO), the offices of the National Policing Lead and Police and Crime Commissioner lead on alcohol and licensing officers from seven LAs. The other included industry partners representing the British Beer and Pub Association (BBPA), Association of Convenience Stores (ACS), Association of Licensed Multiple Retailers (ALMR) and the Wine and Spirits Trade Association (WSTA). Attendees were asked what should happen to interim steps after the full review hearing before the full determination comes into effect (after 21 days) or, where an appeal is lodged, what happens before the appeal is disposed of.
23. There was a general consensus at the public sector workshop that the committee should have discretion to modify interim steps as it sees fit at the review hearing. However, they felt that a separate hearing for altering interim steps would be too bureaucratic and should be avoided. Feedback suggested that, where the final decision is to revoke a licence, some LAs make a decision about whether the interim steps should continue. One area said they take a pragmatic

approach where each case is assessed on an individual basis, for example if interim steps involve a temporary closure of the premises unless certain other conditions are complied with and the licensee has taken measures to address the conditions by the time of the full hearing, then they are sometimes allowed to reopen. The group raised concerns about legal cases against the licensing committee for lost business if premises have to remain closed for unnecessarily long periods.

24. At the industry partners workshop there was agreement that more clarity in the system would be beneficial for all sides and that businesses would not be opposed to any proposal which brings such clarity. As most businesses are not generally associated with serious crime or serious disorder, they saw this as more of an issue for the LAs, licensing lawyers and the courts.
25. We sent a questionnaire to several LAs to gather information on their approach to summary reviews and interim steps over the last two years and about their general experience of the process including whether they had faced any particular problems with the system. Feedback showed that in the vast majority of summary review cases (45 out of 47), interim steps were imposed and in 29 out of 45 cases (64%) this involved suspension of the licence. In a third of cases (15 out of 45) other conditions were added or modified, in a fifth of cases (nine out of 45) operating hours were modified and in six out of 45 cases a licensable activity was partially restricted or the designated premises supervisor was removed. Interim steps remained in place after the review hearing in 31 out of 45 cases, and ceased to have effect in 11 cases, nine of which were from one LA who took a conscious decision to remove them, but did not feel compelled by the system to do so. The steps were modified in just three cases. Out of the 47 cases only nine appeals were lodged against the review determination, all by the licensee. Three of these appeals were later withdrawn (two of which related to the same premises). In all nine cases where an appeal was lodged, the interim steps remained in place. In most cases it appears that an appeal was lodged when the LA had decided to revoke the licence. Typically the types of premises involved in summary reviews were nightclubs, pubs (most independently run) and bars (which together made up 27 of the 33 returns where data was provided). The majority (18 out of 30 where data was provided) were premises in fee band B⁷.
26. The feedback showed that LAs have a number of complaints with the system that they would like to see addressed. Some said the system is unfair on businesses which have to remain closed or have their operating schedules⁸ significantly restricted due to interim steps, sometimes for months where an appeal is lodged, only for the final determination to be less onerous conditions. It was also seen as being unfair where no appeal is lodged by a licensee against the review decision, which might be just to impose conditions, but the premises has to remain closed due to the interim steps, until the decision takes effect after 21 days.
27. LAs complained about the burden caused by having to set up hearings on the interim steps within 48 hours and the fact that repeated representations can be made following the imposition of interim steps, which require a hearing or at least a committee meeting with the relevant parties each time. LAs said that clarity on the scope of the interim steps hearing process would be helpful, as it often acts as a pre-run of the full hearing which potentially is giving businesses multiple attempts at having their case heard (albeit at significant cost to them if they instruct a lawyer each time).
28. One LA said that they had sought legal advice which said that while the language of the legislation was unclear the only 'logical construction of the statutory provisions' was that the interim steps remain in place pending any appeal. Another said their legal advice was that the

⁷ Fee bands are set out in Schedule 1 to The Licensing Act 2003 (Fees) Regulations 2005. The fee bands are based on the "rateable value" of premises which is defined in the 2005 Regulations as *the value for the time being in force for the premises entered in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 1988*. The bands range from A to E, with A being the lowest and E the highest. According to the Alcohol and late night refreshment licensing England and Wales statistics for 2013/14 54% of premises licences (where fee band known) were band B as at 31 March 2014. Bands A and B tend to be smaller or medium-sized pubs and bars. Higher bands include larger, town centre nightclubs.

⁸ Operating schedules include details of all activities that a premises will undertake as part of its regular operations, including the times of events, types of licensable activities involved and opening times. They also include the steps that the licence holder will take to promote the licensing objectives (which may include details of conditions on the licence). All applications for a premises licence need to include an operating schedule.

sub-committee has an implied power to vary the interim steps when it has made its decision at the full review stage, for example a suspension no longer having effect and being replaced with conditions agreed at the full review hearing. Others complained generally about the lack of clarity of the legislation, saying it was simply not clear what should happen and that the process around interim steps needs to be better defined.

29. No formal public consultation on this amendment is being carried out in view of the consultation workshops with key stakeholders and the industry, the questionnaire to LAs and because this change is about clarifying the law, rather than developing a new policy proposal or change.

B. Rationale

30. In the absence of any definitive High Court judgement, there have been a number of calls from practitioners and leading QCs for the Government to clarify sections 53A-53C of the 2003 Act.
31. Clarifying the law on this matter is in the interests of LAs, the police, the licensed trade and the public. It will help ensure the public is protected from premises associated with serious crime and serious disorder and reduce demand on the police from needing to deal with such premises through separate or alternative emergency processes.
32. Clarity will also ensure that businesses subject to summary reviews are treated fairly. The human rights of licence holders and the profit losses for businesses from being closed for a disproportionate length of time and/or from lost customers following a period of closure are key factors in these proposals. Both businesses and LAs can also potentially face costs due to changes in behaviours when faced with the possibility of a summary review, specifically by strongly incentivising operators to comply with police requests, even if a review is felt likely to fail. This change in behaviour may be warranted in many cases, but because of the ambiguity in the legislation, this can be a major cause of operator resentment of the current law. It also disproportionately affects Small and Micro Enterprises who lack the resources and often the confidence to challenge the police in a hearing or in court.

C. Objectives

33. The policy intention is to help ensure the public are protected from premises associated with serious crime and serious disorder in the uncertain period between the review hearing and the determination coming into effect, in particular where an appeal is lodged by the licensee, which can delay implementation of the final outcome by several months. We would also like to clarify the law to ensure that businesses subject to summary reviews are treated fairly and that any interim steps remaining in place after the review hearing are proportionate, including when they remain in place for extended periods when an appeal is lodged by either side. Our aim is therefore to implement a policy solution which provides appropriate protection for the public whilst being compatible with the ECHR rights of operators to run their businesses. Providing clarity in the law may also save LAs, businesses, the police and the courts time and money by resolving conflicts more effectively at an earlier stage, thus avoiding the need for late stage appeals and reconsiderations.

D. Options

34. Option 1: make no changes (do nothing). Feedback indicates that LAs often put in place local policies based on their individual interpretation of the legislation or legal advice and that they often use workarounds to bring cases to their natural conclusion. Evidence from LAs suggests that they usually decide to leave interim steps in place until the final outcome of a case is determined (i.e. the review decision takes effect after 21 days or an appeal is finally disposed of). Where an appeal is lodged, delays in the court system can leave interim steps in place for lengthy periods, with examples of this extending to eight or nine months. See annex A.
35. Option 2: Change the legislation so that the interim steps lapse automatically after the review hearing. The default position would be that the determination would only take effect after the period of 21 days for lodging an appeal expires or when any appeal is finally disposed of (as is

currently the case). However, a new power would be given to the LA to decide at the hearing that the determination should have immediate effect. If so, all parties would have a right to an expedited appeal to a magistrates' court, which would probably need to take place within 28 days to be effective. See annex B.

36. **Option 3** (preferred): Require the LA to review the interim steps at the main review hearing and decide what steps, if any, should remain or be put in place pending any appeal or the expiry of the 21 day period for lodging an appeal. After the hearing, both the licence holder and the police would have a right to an expedited appeal against the interim steps, to the magistrates' court (to be heard within 28 days). See annex B.

E. Appraisal (Costs and Benefits)

GENERAL ASSUMPTIONS & DATA

DATA

37. The analysis for this IA has been carried out using two principal data sources:

- **Licensing authority questionnaires:** Questionnaires were sent to several licensing authorities to gather information on their use of an approach to summary reviews and interim steps. The data returns have been used to provide an estimated percentage breakdown of the fee bands which premises with interim steps fall into.

| Fee Band | Breakdown | % of reviews |
|----------|-----------|--------------|
| A | 3 | 10% |
| B | 18 | 62% |
| C | 2 | 7% |
| D | 1 | 3% |
| E | 5 | 17% |

- **Alcohol and late night refreshment licensing Statistics 2014⁹:** The 2014 publication provides statistics on a variety of licensing authority powers under the Licensing Act 2003. The supplementary data tables break down all interim steps in that year into six categories – it is assumed this breakdown is reflective of the steps taken by licensing authorities in a typical year.

| Type of interim steps taken | No. of instances | Percentage |
|---|------------------|------------|
| Operating hours modified | 17 | 16% |
| Licensable activity partially restricted | 6 | 6% |
| Licensable activity completely excluded | 5 | 5% |
| Other conditions added or modified | 30 | 28% |
| Designated Premises Supervisor removed | 15 | 14% |
| Licence suspended | 69 | 65% |
| Total no. of cases where interim steps were taken¹⁰ | 106 | |

38. Other information regarding inputs and assumptions for the analysis has been provided through correspondence with the Association of Licensed Multiple Retailers (ALMR). Weekly profits have been calculated on the basis of the weekly turnover figures and a typical 5% profit margin as estimated by the ALMR.

⁹ <https://www.gov.uk/government/statistics/alcohol-and-late-night-refreshment-licensing-england-and-wales-31-march-2014-data-tables>

¹⁰ As more than one type of interim step can be taken in a case, the sum of the instances of the different types of interim steps is greater than the total number of cases involving interim steps.

| Fee Band | Weekly turnover | Estimated Weekly profit |
|----------|-----------------|-------------------------|
| A | £8,000 | £400 |
| B | £12,000 | £600 |
| C | £15,000 | £750 |
| D | £25,000 | £1,250 |
| E | £200,000 | £10,000 |

ASSUMPTIONS

39. For the purposes of the analysis, it has been necessary to make some simplifying assumptions in order to monetise the costs to business under the three different options. Given the legal ambiguity around interim steps, there is room for reviews to proceed differently according to the specifics of the case at hand as well as which licensing authority it falls to. Some form of simplification is therefore necessary to be able to monetise the impacts presented in this appraisal.

PRIMARY COSTS

40. A central simplifying assumption is that each type of interim step leads to a certain percentage loss in profit when it is taken against the premises. For example, *licence suspended* would result in temporary closure and therefore 100% loss, whereas *licensable activity partially restricted* would still leave room for profit. The estimated percentages associated with each category of interim steps were provided by the ALMR.

41. It is possible for a licensing authority to apply more than one type of interim step in a given case. As we only have information on the final tally of the instances of each type of interim step and not how they were combined, we cannot know how they would interact. It is theoretically possible that if multiple interim steps were applied in a case, the percentages below would add up to greater than 100%. However this is highly unlikely in practice - if the very impactful steps such as *licensable activity completely excluded* or *licence suspended* were taken, any further steps would probably be unnecessary.

| Type of interim steps taken | % profit lost |
|--|---------------|
| Operating hours modified | 50% |
| Licensable activity partially restricted | 25% |
| Licensable activity completely excluded | 75% |
| Other conditions added or modified | 25% |
| Designated Premises Supervisor removed | 20% |
| Licence suspended | 100% |

42. The cost of the summary review process has been broken down into several stages, with option-specific assumptions applied at each stage (these are set out in detail in the costs under each option):

1) **Impact up to review hearing:**

Once a summary review application has been submitted, the licensing authority must decide whether to take interim steps pending determination of the review of the premises licence. This review hearing must take place within 28 days of the receipt of the application. Businesses on interim steps are therefore assumed to face **28 days'** worth (4 weeks) of profit losses.

2) **Impact between review hearing and determination:**

The decision of the licensing authority, following the review hearing, will not take effect until

the end of the 21-day period allowed for appeal. Businesses on interim steps are therefore assumed to face a further **21 days**' worth (3 weeks) of profit losses before the determination comes into effect.

3) **Impact until appeal is heard:**

If the premises appeals the decision, the determination will not come into effect until the appeal has been disposed of. Appeals often take a very long time to be heard – based on anecdotal evidence from licensing lawyers and comments in the licensing authority questionnaire results, this is assumed to be 24 weeks. The estimated 15% of businesses which appeal therefore face a further **24 weeks** of interim steps and associated profit losses.

43. At each stage, the overall impact on profits from interim steps is applied directly to the length of time for which the interim steps remain in place. The overall impact is calculated by taking the fee band percentage breakdown and associated weekly profits and assuming that this fee band distribution applies to each of the types of interim steps taken.

SECONDARY COSTS

44. As described above, there are costs to business arising *immediately* from the implementation of interim steps. However, having interim steps in place can also lead to *secondary* effects for a business. While the above associates each type of interim step with an immediate percentage loss in profit, there is also an impact on the 'remaining' revenue from potential lost custom over time. Based on anecdotal evidence from licensing lawyers and comments in the licensing authority questionnaire results, a further assumption is made that the longer premises remain on interim steps, the greater the impact on its profits. Therefore the costs for the stages above also include parameters (set out in the table at paragraph 45 below) which account for the increasing cost to business as they progress through the stages. This ultimately leads to a final stage of costs:

4) **Revenue lost before full recovery from appeal:**

Anecdotal evidence from licensing lawyers and comments in the licensing authority questionnaire results suggests the prolonged length of time for which premises remains on interim steps while waiting for their appeal to be heard can be detrimental to business. The analysis therefore assumes a recovery period of **4 weeks**, during which a percentage of the impact on profits from the interim steps continue to be felt.

45. The parameters are applied as follows:

| Length of time on interim steps so far | Additional Lost Profits Parameter | How it is applied |
|--|-----------------------------------|--|
| Until review hearing (28 days) | 5% | It is assumed that, having been on interim steps for 28 days already, the impact would become greater for the next 21 days of the process. 5% of the remaining profit (i.e. after the impact of interim steps has been deducted) is counted as an additional cost (i.e. lost profits) between the review hearing and the determination (i.e. for 21 days). |
| Until determination comes into effect (28 + 21 days) | 10% | For the 15% of premises which will go on to appeal, it is assumed that, having been on interim steps for 21 + 28 days already, the impact would become greater for the time until the appeal is disposed of (which is assumed to be 24 weeks) 10% of the remaining profit (i.e. after the impact of interim steps has been deducted) of these premises is counted as an additional cost between the determination and the appeal (i.e. for 24 weeks). |

| | | |
|--|-----|---|
| Until appeal is disposed of (28 + 21 days + 24 weeks) | 15% | As explained above, there is a final recovery from appeal stage. 15% of <i>total</i> profits for the premises which go to appeal are counted as the cost for this period (which is assumed to be 4 weeks) |
|--|-----|---|

COSTS AND BENEFITS

46. In this section we firstly monetise the main costs of the current Summary Reviews process. This enables us to establish the baseline status quo scenario, which we can use to assess the incremental impact of the policy proposals. Further detail on how the figures were reached is available in **Annex C**.

OPTION 1 – Do nothing

COSTS

47. Feedback on the summary review process indicates that LAs often have local policies in place based on their individual interpretation of the legislation and that they often use workarounds to bring cases to their natural conclusion. Evidence from LAs suggests that they usually decide to leave interim steps in place until the final outcome of a case is determined (i.e. the review decision takes effect or an appeal is finally disposed of). This often leaves very little scope for discretion on the part of the LA and modification of the interim steps are rare. This can result in disproportionate interim steps remaining in place for lengthy periods, particularly if the decision at the summary review hearing is appealed. Having interim steps such as suspension or heavy restrictions on operating hours remaining in place for months, pending the appeal, can cause serious profit losses and can even put the premises out of business.
48. The requirement on LAs to hold a hearing to consider interim steps where representations are made against such steps can cause pressure on resources, particularly where multiple representations are made. Many LAs use the review hearing to further consider the interim steps but, as mentioned, many automatically leave them in place until the period for lodging an appeal is over or an appeal is finally disposed of. Appeals and potential judicial reviews against decisions to leave interim steps in place after the review hearing carry legal costs for the LA and administrative demands on the police.
49. Evidence from LAs suggests that in most cases no appeal is lodged against the decision at the review hearing. In a sample of 47 cases nine appeals were lodged, including three which were subsequently withdrawn (of which two were in relation to connected reviews of the same premises). Where an appeal is heard the court may decide to make a decision on the case or remit it back to the LA with instructions. Magistrates' courts would be affected by any change to the process which affected the number of appeals being lodged. Feedback from LAs and industry representatives suggests that the low appeal rate in the current system may be due in part to the risk of delay, which can result in interim steps remaining in place for extended periods. We are also informed that small and medium enterprises often lack the resources and confidence to take cases to court.
50. As set out above, a number of licensing lawyers and judges in key cases have concluded that allowing interim steps to remain in place after the review hearing, without affording LAs any discretion to modify or review such steps and without the premises operators having recourse to appeal against the imposition of such steps, is disproportionate and incompatible with ECHR law. Depending on the judge's standpoint on this matter, any judicial review application against interim steps continuing after a review hearing could potentially result in unsuitable premises associated with serious crime and/or disorder remaining open for months without restriction, pending the disposal of the final appeal. This could put the public at risk and adversely affect nearby businesses.

51. While option 1 is the baseline option and, as such, the other options will be assessed relative to it, the analysis points to an estimated cost to business of £2.3 million per year from the summary review process as it currently stands. This is based on the assumption, as evidenced above, that LAs leave interim steps in place for the entire duration of the process. The full impact of interim steps is therefore felt for the entire duration of each stage, with a recovery period at the end for cases which go to appeal.

OPTION 2 – Interim steps lapse automatically after the review hearing with LA discretion to decide that the final determination should have immediate effect.

52. This option was considered as a potential viable solution but it has been decided not to take it forward as it does not fully meet the policy objectives. If interim steps lapse, there is a risk to public and neighbourhood safety, while if the final determination is brought in immediately, businesses would have little or no time to adjust to any decision put in place. The costs and benefits have therefore not been monetised.

COSTS

53. The main disadvantage of this option is that it provides little flexibility for LAs. There is no option for the LA to exercise its discretion beyond a choice of either bringing the final determination into effect immediately or allowing the usual 21 day period for appealing. Given the fact that the vast majority of LAs currently leave interim steps in place after the review hearing, it can be assumed that under this option most LAs would default to bringing the decision at the review hearing into effect immediately to avoid having a period where no protective measures are in place. While this means a fully considered decision would be put in place which is likely to be appropriate for dealing with the crime and disorder associated with premises in the long term, LAs would lose the flexibility that an interim solution might provide.

54. This would mean that businesses are likely to have little or no time to adjust to any decision put in place. For example they may struggle to adjust to costly, permanent or semi-permanent structural changes like having to install CCTV systems. In cases where the decision is revocation of the licence and businesses wish to appeal, they would have little time to prepare for meeting the court costs under the expedited appeal process. This would in particular apply to small and micro businesses which would not be able to afford to appeal against the review decision. For others, with the financial resources to appeal, this option may increase the appeal rate as they would have little to lose from appealing under the expedited process. Overall this option is likely to increase pressures and costs on courts.

55. If LAs chose not to use their power to bring the review decision into immediate effect, it would result in a gap of at least 21 days (or longer where an appeal is lodged), where no measures are in place to protect the public and neighbouring premises. This is considered to be unlikely as we know from existing practices that LAs are more likely to take a cautious approach to ensure the promotion of the licensing objectives. However, we also know that LAs can feel pressure to avoid legal challenges from larger businesses and so might be dissuaded from bringing in certain decisions with immediate effect, for potentially the wrong reasons.

56. Businesses that can afford to do so might have an incentive to appeal against delayed decisions as it would mean they would be able to operate unchallenged for potentially several months, during which time they would be able to build up finances to fund their appeal and legal services. They may also seek to moderate their operating practices to give them more chance of success, which may be a positive outcome in cases where the business genuinely intends to improve, but could also lead to unscrupulous businesses seeking to exploit this loophole. In certain cases this could lead to costs being passed onto the police and health services as a result of increased crime and violence.

BENEFITS

57. This option is based on provisions in section 208(1) and (2) of the Gambling Act 2005 which provide that a determination will not take effect while an appeal could be brought or has been brought and has not yet been disposed of. However, a LA making a determination or taking

other action may direct that this does not apply (i.e. the decision could take immediate effect), in which case a magistrates' court determining an appeal may make any order that it thinks appropriate. By being based on existing principles, the option would bring legal certainty and clarity for businesses and licensing authorities.

58. This option would address the ambiguity around the current summary review process. It would also be compatible with ECHR law by offering an expedited appeal right to both parties where decisions are brought into effect immediately. It would also provide protection to the public and neighbouring premises where the LA implements its final review decision immediately. However the difficulty, as mentioned in the costs, is that premises may not actually be able to adjust to this final decision immediately. This option, as with option 3 below, would also add a provision to prevent premises from making repeated representations against the interim steps prior to the review hearing which would result in cost savings and reductions in burdens on LAs.

SUMMARY

59. While this option could potentially be the most generous overall towards licence holders with the lowest cost to business, it carries a level of risk (for the reasons set out above) which is considered to be unacceptable and would provide limited discretion for LAs. It may also disproportionately benefit larger businesses as set out above.

OPTION 3 – Require LAs to review interim steps at review hearing and decide what steps, if any, should remain or be put in place until appeal period expires/ final appeal disposed of.

COSTS

60. Under this option, after the review hearing both the licence holder and the police would have the right to an expedited appeal to a magistrates' court against the interim steps (to be heard within 28 days). If many premises were to take this route, there is the potential for additional costs to all relevant parties. However, given that this option requires the LA to review the interim steps at the hearing, it is likely that any disproportionate interim steps will have already been modified. An appeal at a magistrates' court will come at a cost for licence holders and if the interim steps have already been recently reviewed, it seems unlikely that many appeals would be successful. It is therefore assumed that few licence holders would take up the expedited appeal as there should be fewer complaints regarding the interim steps following the review. Under the current system, LAs are faced with the burden of licence holders making repeated representations against the interim steps. This option should help to prevent such situations and therefore any uptake of expedited appeals is not expected to represent a cost over the baseline option.

BENEFITS

61. This option provides LAs with the flexibility to exercise their discretion when deciding what interim steps are necessary after the hearing. It is also a proportionate and robust solution for all parties as it provides them with the opportunity to have their arguments fully discussed and scrutinised at the review hearing. As a result it is likely that fewer appeals would be lodged later down the line, whilst the additional right of appeal to a magistrates' court in relation to the interim steps makes this option fully compatible with ECHR law.
62. This option also ensures that the public and neighbouring premises remain protected as any premises which the LA considers to pose a threat can continue to have restrictions placed on them, including suspension of the licence pending the review decision taking effect or the disposal of any appeal against the review decision.
63. As with option 2, there are costs to business under this option, but since it represents a saving on option 1, it is presented as a benefit. The analysis suggests the cost to business of the summary review process under option 3 would be approximately £1.9 million, representing a saving on option 1 of around £400,000 per year. The saving is based on the assumption that,

by providing LAs the opportunity to review the interim steps, more proportionate steps will be put in place after the review hearing, thus lessening the impact on business in the later stages. It is assumed that requiring the LA to review the interim steps at the review hearing will bring the interim steps more in line with the review decision, given that the facts would have been established. Several licensing authorities who had completed the summary reviews questionnaire were asked to provide information on the final decisions taken at the review hearing in their cases. This breakdown was compared to the interim steps in these cases to assess how the impact on the business changed, using the same percentages provided by ALMR on the impact on profits from each type of interim step. On average, the impact of the final decisions were 30% less than that of the interim steps. Therefore, it is assumed that, under this option, the cost to business in the last three stages is reduced by 30% when compared to option 1.

64. As with option 2, this option would also add a provision to limit the number of times a premises is able to make representations against the interim steps prior to the review hearing to one occasion. This would be the case unless the circumstances had changed materially or genuinely new evidence came to light. This would result in cost savings and reductions in burdens on LAs and, to a lesser degree, the police. While LAs have described multiple representations as being an issue, we do not have information on the total number of these in a year, how exactly this number would be affected and what the costs associated with it are. Therefore it is not possible to monetise this saving. However, given this limit on representations and the fact that LAs will be required to review interim steps at the review hearing, it is likely that some savings will be made.

F. Risks

OPTION 2 – Interim steps lapse automatically after the review hearing with LA discretion to decide that the final determination should have immediate effect.

65. Option 2 leaves no room for flexibility and therefore risks that LAs will default to bringing the review decision in to effect immediately to ensure some protections are in place. Magistrates' courts are likely to face increasing costs and be placed under increased pressure as the rate of appeals increases. In particular, the requirement for an expedited appeal on the main review decision to be held within 28 days would put the courts under strain.
66. Alternatively, where LAs do not exercise their discretion to bring the review decision into effect immediately (either by choice or as a result of pressure from legal challenge), there would be period of 21 days before the review decision takes effect, where no measures are in place to promote the licensing objectives and potentially a much longer period where an appeal is lodged. During this period there would be a risk of increased crime and disorder, including the risk of violent crime, as premises associated with serious crime and disorder would be able to operate freely during these periods.

OPTION 3 – Require LAs to review interim steps at review hearing and decide what steps, if any, should remain or be put in place until appeal period expires/ final appeal disposed of.

67. The risks associated with options 1 and 2 are minimised with option 3. Clear parameters on what the LA can do are provided by this option. The flexibility for LAs to leave the most appropriate interim steps in place given any set of circumstances before the committee mean that there are no gaps where no protective measures are in place. It also means that any steps that remain in place after the review hearing will have been fully considered in front of all parties, with each having an opportunity to make representations in respect of both the interim steps and the final decision.
68. Following the review hearing, the additional right of appeal against the interim steps (in addition to the full hearing) makes certain that the ECHR rights of the business involved are fully protected.
69. The risk of increased appeals and associated rises in costs and burdens on the courts and LAs as a result of the additional expedited appeal right against the interim steps is considered to be

minimal. This is because it is unlikely that many businesses will take up this option as it would involve a cost and would be unlikely to be fruitful, given that they would have had the opportunity to put forward their case against any interim steps less than a month prior to lodging the appeal against the steps. The fact that businesses will have had an opportunity to have their case against any interim steps heard at the hearing should mitigate against the need for a subsequent appeal against any continuing interim steps.

G. Small and Micro Business Assessment

70. The summary review process ensures that premises identified by the police as being associated with serious crime or serious disorder have appropriate steps taken against them to protect public safety and to promote the alcohol licensing objectives. Given the important objective behind summary reviews, it would not be reasonable to exempt small and micro businesses from the process if there is indeed a genuine police concern regarding the business.
71. However the rationale behind this impact assessment is to ensure that businesses subject to summary reviews are treated fairly. As presented in the benefits of option 3, there is a saving to business generally from implementing the proposal, and small and micro businesses in particular would benefit from the prevention of disproportionate interim steps. Furthermore, as mentioned, feedback from LAs and industry representatives suggests that small and micro enterprises often lack the resources and confidence to be able to take cases to court as a prolonged period on interim steps is disproportionately detrimental for smaller businesses. Requiring the licensing committee to review any interim steps in place at the main review hearing offers smaller businesses an opportunity to put forward their case without feeling that having to go to court is their only option.
72. Where businesses do decide to take up the option of appealing against the renewed interim steps, they would be offered an expedited appeal which would avoid a prolonged period where they are subject to interim steps. Reducing the impact of interim steps pending the appeal would provide such businesses with greater flexibility to respond to the decision made at the summary review hearing, including securing finance to fund any appeal they wished to lodge against the final decision. Therefore, while the suggested reforms would benefit all business, they are likely to benefit small and micro businesses to an even greater extent.
73. Option 2 would likely result in most decisions at the full review hearing coming into effect immediately. This would give very little, if any time for small businesses to adjust to any changes imposed. Decisions such as revocation, suspension or heavy restrictions on their operating schedules would either lead to these premises going out of business or to significant profit loss. In such cases smaller businesses may feel compelled to shut down and start again as they would be unlikely to have the confidence or financial ability to appeal against the decision at such short notice.

H. Family Impact Test

74. There may be general benefits of this policy change for families by ensuring that problems of crime and disorder associated with local premises are tackled effectively. However, it is considered that the impact of this policy at the family level is small and indirect and temporary in nature. In accordance with Department for Work and Pensions Guidance it is therefore considered that it would not be sensible or proportionate to apply the family test.

I. Enforcement

75. The above information clearly demonstrates how the preferred option 3 will ensure that enforcement activities to prevent serious crime and serious disorder will be conducted in a fair, open and proportionate manner. The rights of all parties have been considered without risking any undermining of the licensing objectives.

J. Summary and Recommendations

76. The table below outlines the costs and benefits of the proposed changes.

| Table H.1 Costs and Benefits | | |
|-------------------------------------|--|--|
| Option | Costs | Benefits |
| 2 | N/Q | N/Q |
| | <ul style="list-style-type: none"> • Little flexibility for LAs • Risk to public safety and neighbourhood premises from letting IS lapse and not having protective measures in place against premises • Bringing in final decision leaves premises with little time to adjust to the decision and to prepare for appeal – this would disproportionately affect small and micro businesses | <ul style="list-style-type: none"> • Based on provision in Gambling Act 2005 so will provide legal clarity for businesses and LAs • Compatible with ECHR law by offering an expedited appeal right to both parties where decisions are brought into effect immediately • Limits the number of representations premises can make against the interim steps, which would likely lead to savings for LAs as there is currently no limit. |
| 3 | N/Q | <ul style="list-style-type: none"> • £3.8m net benefit to business from allowing LAs to use their discretion to implement more proportionate interim steps. Interim steps will be more in line with final decisions and therefore more lenient on business, resulting in a saving. |
| | <ul style="list-style-type: none"> • Potential for costs from uptake of expedited appeals, but this is unlikely as IS will have already been recently reviewed | <ul style="list-style-type: none"> • Limits the number of representations premises can make against the interim steps, which would likely lead to savings for LAs as there is currently no limit. |
| Source: | | |

77. The recommendation is that Option 3 is pursued on the basis that it addresses the current ambiguity in the law on summary reviews and interim steps, whilst protecting the ECHR rights of businesses concerned. It does so by offering a flexible, fair and proportionate solution for all parties concerned, without creating any new loopholes (unlike option 2).

K. Implementation

78. The Government plans to include these proposed changes in the Policing and Crime Bill. Subject to parliamentary approval, the Bill is expected to gain Royal Assent by the end of 2016 and so the earliest that these proposals are likely to come into effect would be the common commencement date in April 2017.

79. Guidance will be provided to LAs and the police when the changes come into effect. Guidance on the existing process is available on Gov.uk¹¹.

L. Monitoring and Evaluation

80. The effectiveness of the new regime would be monitored by studying the latest licensing statistics on gov.uk¹² to monitor any change in the rate of appeals in respect of reviews. This could potentially include additional future collections to seek specific information on appeals in relation to summary reviews and on the types of second stage interim steps imposed, but only after considering whether this is an acceptable burden on LAs.

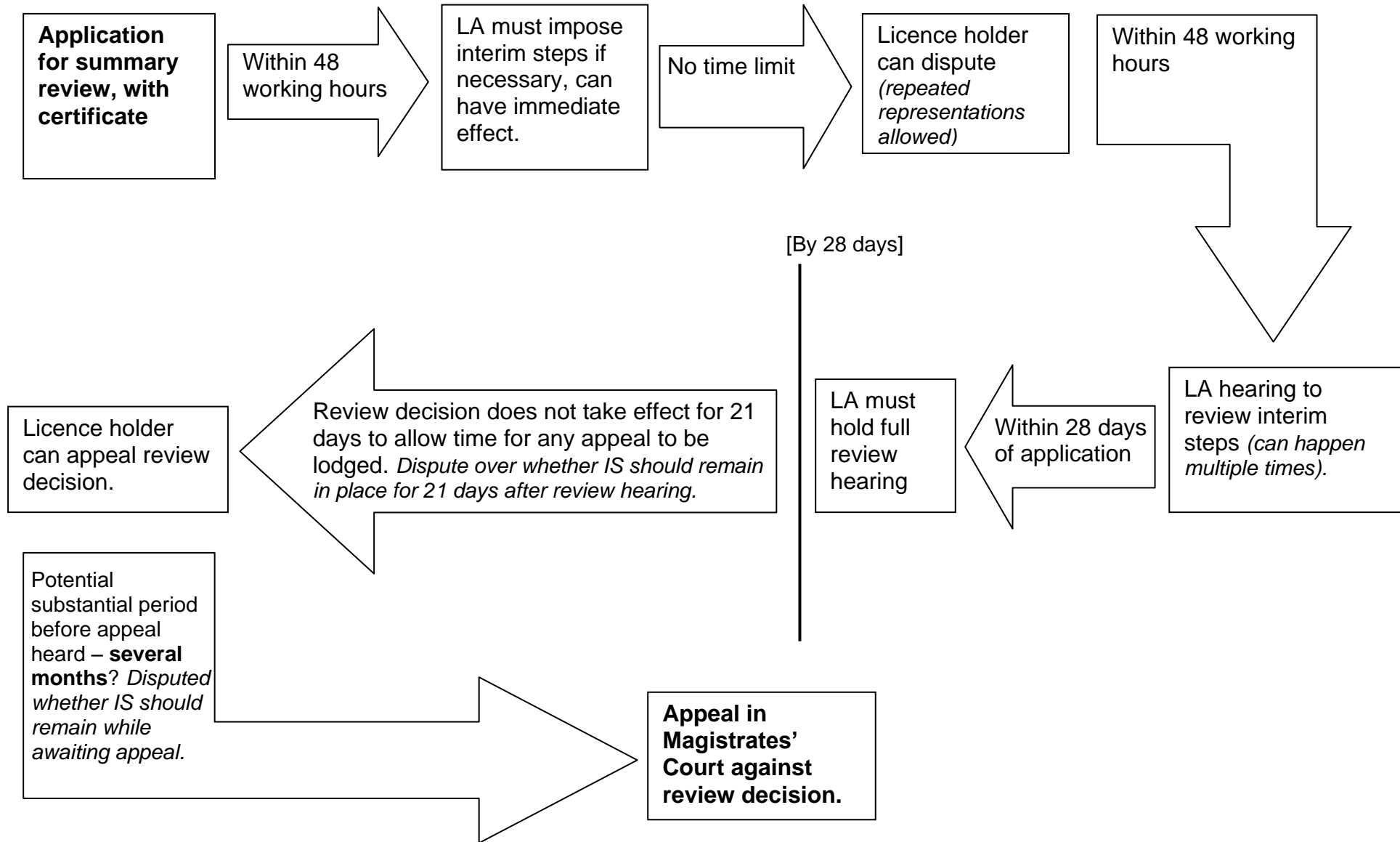
¹¹ <https://www.gov.uk/government/publications/section-53a-licensing-act-2003-summary-review-guidance>

¹² <https://www.gov.uk/government/collections/alcohol-and-late-night-refreshment-licensing-england-and-wales-statistics>

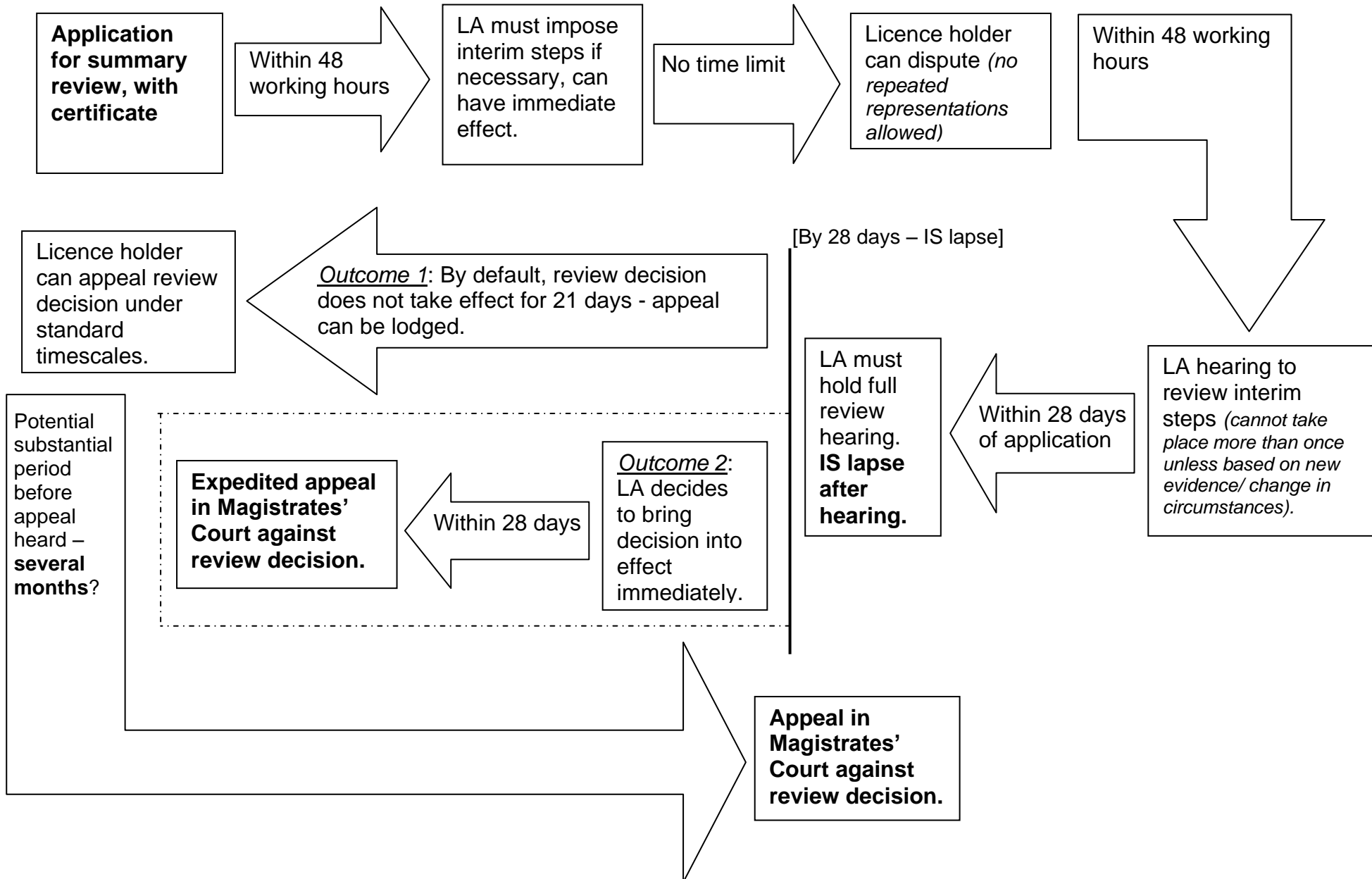
M. Feedback

81. The Home Office will seek feedback from LAs, police, licensing lawyers and trade representatives on how the new process is working from their perspective. In addition the Home Office will seek feedback on the Guidance, including if it needs amending once those affected by the process have started to apply the changes.

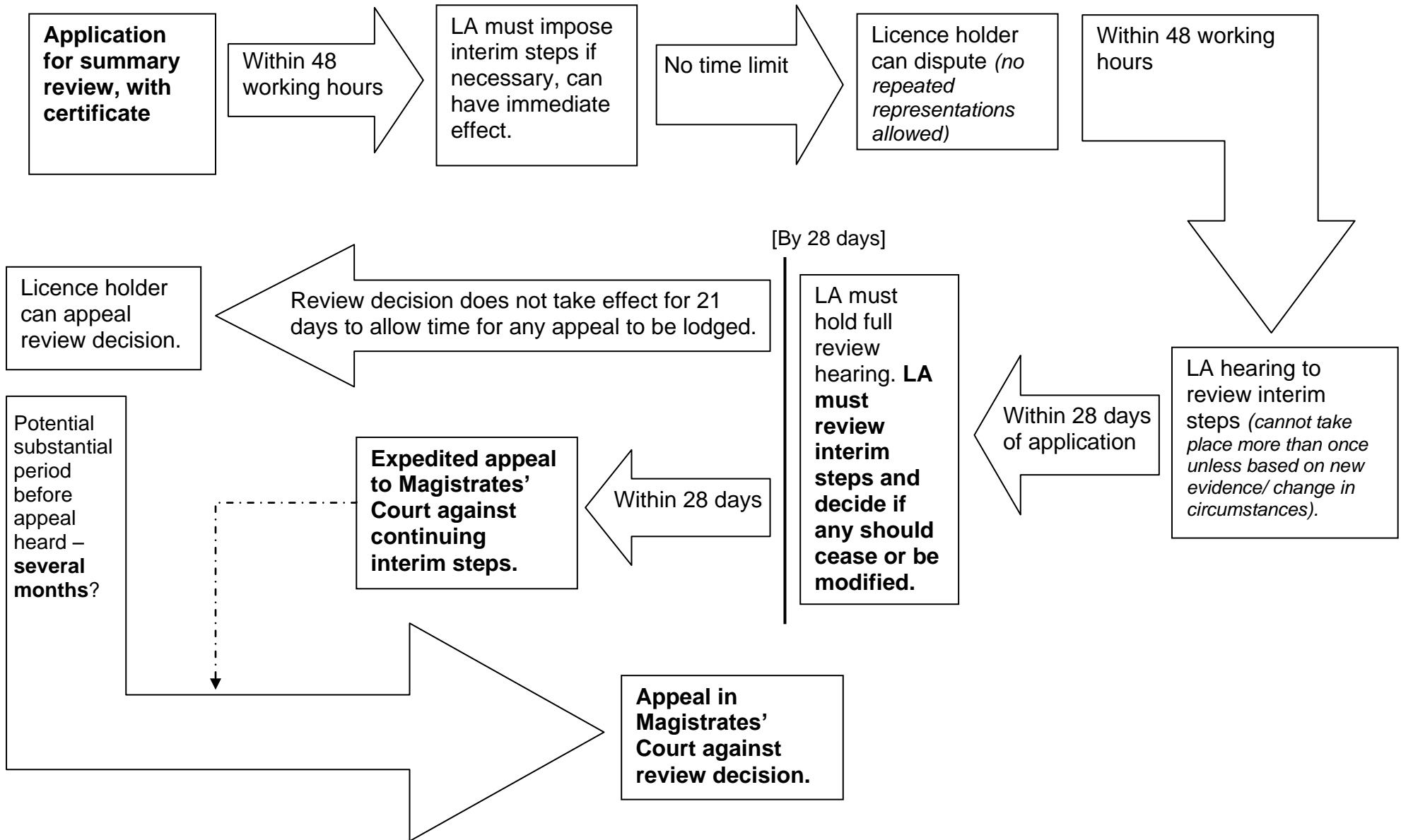
Summary review flowchart – do nothing option



Summary review flowchart – option 2



Summary review flowchart – option 3



Analysis: Calculation of Costs

Calculating total weekly profit

The percentage breakdown of premises with interim steps by fee band is multiplied by the estimated weekly profit for each fee band and then summed to give the weighted average weekly profit of a premises. This gives a weighted average of £2,233 profit per premises per week.

| Fee Band | % of reviews | Estimated Weekly profit | |
|----------|--------------|-------------------------|-------------------------|
| A | 10% | £400 | |
| B | 62% | £600 | |
| C | 7% | £750 | |
| D | 3% | £1,250 | Weighted average |
| E | 17% | £10,000 | £2,233 |

Total weekly profit of premises affected by each type of interim step is then calculated by multiplying the average calculated above by the number of instances¹ of that type of interim step.

| Type of interim steps taken | No. of instances | Total weekly profit |
|--|------------------|---------------------|
| Operating hours modified | 17 | £37,957 |
| Licensable activity partially restricted | 6 | £13,397 |
| Licensable activity completely excluded | 5 | £11,164 |
| Other conditions added or modified | 30 | £66,983 |
| Designated Premises Supervisor removed | 15 | £33,491 |
| Licence suspended | 69 | £154,060 |
| | Total | £317,052 |

PRIMARY COSTS

Calculating total weekly impact

Total weekly impact from the interim steps is then calculated multiplying the total weekly profit of premises under each interim step by the percentage profit loss associated with that interim step.

| Type of interim steps taken | % profit lost | Total weekly impact |
|--|---------------|---------------------|
| Operating hours modified | 50% | £18,978 |
| Licensable activity partially restricted | 25% | £3,349 |
| Licensable activity completely excluded | 75% | £8,373 |
| Other conditions added or modified | 25% | £16,746 |
| Designated Premises Supervisor removed | 20% | £6,698 |
| Licence suspended | 100% | £154,060 |
| | Total | £208,205 |

The sum of the total weekly impacts is therefore the total cost to all premises from interim steps each week. This total is therefore multiplied by the number of weeks for which each of the four stages of costs

¹ This breakdown is of all interim steps imposed in 2013/14 (described in the General Assumptions & Data section) and is taken to reflect a typical year.

last. For stages which only apply to premises who have gone on to appeal (i.e. stages 3 and 4), the costs are multiplied by the appeal rate of 15%.

SECONDARY COSTS

As explained in the main text, there are secondary costs associated with potential lost custom from having remained on interim steps for a prolonged period of time.

| Length of time on interim steps so far | Additional Lost Profits Parameter | Stage applied |
|--|-----------------------------------|---------------|
| Until review hearing (28 days) | 5% | 2 |
| Until determination comes into effect (28 + 21 days) | 10% | 3 |
| Until appeal is disposed of (28 + 21 days + 24 weeks) | 15% | 4 |

The first two parameters are applied to the 'remaining profit' i.e. after the impact of interim steps has been deducted. The total remaining weekly profit is calculated by taking the total weekly profit above (£317,052) and subtracting the total weekly impact (£208,205) – giving £108,847. In the second stage of costs, 5% of the remaining profit is counted as an additional cost (i.e. lost profits) and in the third stage, 10% of the remaining profit is counted.

As the fourth stage is after the summary review process has been completed, there are no longer interim steps in place. Therefore the parameter of 15% is applied to total weekly profits given there is no impact from interim steps by this point.

OPTION COSTS

Having come to the totals in the table below, the primary and secondary costs of each option can be calculated. As described, the **primary** cost takes the total weekly impact and multiplies it by the number of weeks for which the stage lasts. The **secondary** cost uses the additional lost profits parameters above to account for the impact of remaining on interim steps for a prolonged period of time. The first two parameters are applied to total weekly *remaining* profit whereas the last parameter is applied to total weekly profit as there are no interim steps in place in stage 4. Stages 3 and 4 only apply to premises which go on to appeal, therefore all primary and secondary costs are multiplied by the appeal rate of 15%.

| | |
|-------------------------------|----------|
| Total weekly profit | £317,052 |
| Total weekly impact | £208,205 |
| Total weekly remaining profit | £108,847 |

OPTION 1

| Stage | Length of time (weeks) | Primary cost | Secondary cost | Total cost |
|--------------|------------------------|--------------|----------------|-------------------|
| 1 | 4 | £830,000 | £0 | £830,000 |
| 2 | 3 | £620,000 | £20,000 | £640,000 |
| 3 | 24 | £750,000 | £40,000 | £790,000 |
| 4 | 4 | £0 | £30,000 | £30,000 |
| TOTAL | | | | £2,300,000 |

As explained in the main appraisal, interim steps are anticipated to be 30% more lenient once they have been reviewed at the review hearing. Therefore, while stage 1 is the same for both options 1 and 3, the costs associated with the stages after the review hearing are 30% less for option 3 than for option 1.

OPTION 3

| Stage | Length of time (weeks) | Primary cost | Secondary cost | Total cost |
|--------------|-------------------------------|---------------------|-----------------------|-------------------|
| 1 | 4 | £830,000 | £0 | £830,000 |
| 2 | 3 | £440,000 | £10,000 | £450,000 |
| 3 | 24 | £520,000 | £30,000 | £550,000 |
| 4 | 4 | £0 | £20,000 | £20,000 |
| TOTAL | | | | £1,900,000 |