



Department for
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Liquor Licensing – The Way Forward

Government Proposals to Reform Liquor Licensing Law in Northern Ireland

Consultation Document
October 2005



INVESTOR IN PEOPLE

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Foreword

It has rightly been said, many times – alcohol is no ordinary commodity. It is a powerful double-edged sword which our society must handle with care. It is a source of pleasure to many and anathema to some. It can brighten our leisure, bolster our tourist trade and generate profit, revenue and employment. It can also wreck lives and families, destroy health and well-being and place burdens on our police and other public services. It has been a focus for criminal activity, helping prolong conflict in our community and undermining economic stability. As a responsible society we have a duty to manage both the elements.

In the ten years since the last review of the laws governing Northern Ireland's liquor licensing and registered clubs we have seen very welcome changes in the social and economic situation locally. It has been a time of continuing growth and challenge for the community, the economy and the Government.

People's disposable income has increased; the retail, tourism and leisure industries have expanded to meet growing demand and our town and city centres have changed for the good beyond recognition. We expect those trends to continue as we see the positive results of our work in urban regeneration and community development.

The changing market and social environments have helped bring about new patterns of drinking. More people, particularly in middle and older age

ranges, are drinking at home. Generally those who go out to drink wait until later in the evening to go on the town. More young people are drinking and drinking at an earlier age. Some are drinking more, and some are drinking more irresponsibly. The new patterns of consumption have been reflected in a decline in the number of pubs and a growth in off-licences and restaurants. All these changes place new demands and responsibilities on Government, on the licensed and registered club trade and on our communities and public services.

The licensed sector has played a big part in the rebirth of local confidence, by investing in new services and premises to keep pace with the changing, more sophisticated market. They have done so against the backdrop of an increasingly competitive trading situation, created in part by the movement into Northern Ireland of several large multiples in pursuit of new opportunities. The licensed trade has argued to Government over a number of years that modernising licensing laws, and in particular liberalising opening hours, is essential to enable them to continue to compete effectively in the market place and to contribute to the economic growth of the region.

The registered clubs, for their part, point to their positive role in maintaining and strengthening communities, by providing a focal point for development of initiatives at local level and through their support over many years for sport, leisure and charitable causes. They argue that they too

need to see liberalising changes if they are to retain their ability to act as strong community players in the face of the more diverse range of commercial attractions now on offer.

Tourism interests have made the point that Northern Ireland is growing as a tourist destination and needs flexibility in its licensing laws if it is to move with the changing times. The Police Service of Northern Ireland has indicated that it would welcome moves to simplify and modernise the licensing laws, coupled with a greater sharing of responsibility, a more holistic and integrated approach and improved partnership working among all the key stakeholders.

For all these reasons, my predecessor, John Spellar MP, in March 2004 announced a review to consider key elements of Northern Ireland's liquor licensing law and practice and to develop proposals aimed at striking a balance between facilitating the supply of alcohol and public safety and the public interest. Work to date on the review has involved extensive research and discussion with key stakeholders in the public and private sectors and has demonstrated that licensing legislation is a complex area – where there are competing agendas, where opinions can be poles apart and where there are no easy answers.

In considering the way forward I have been keenly aware of the need to weigh up, as objectively as possible, the rights, needs and demands of the various interests concerned and to strike an

equitable balance between the sale and supply of alcohol and the public good. I have also been very conscious that many issues to do with alcohol – when, where and how it is supplied and consumed, in what context and quantities and to what personal and public effect – extend well beyond the parameters of licensing legislation, into areas which are the responsibility of Ministerial colleagues in Northern Ireland and Whitehall.

My colleagues and I agree that an interdepartmental and multi-agency approach to dealing with issues around alcohol is required and that progress will best be achieved where there is a shared understanding of the issues involved, and acknowledgement of joint responsibility.

My proposals in this consultation paper are designed to be implemented in two stages. The first, transitional phase will involve a balanced package of changes which will address identified problem areas in current legislation and remove unnecessary burdens on the licensed trade and registered clubs – while introducing more safeguards for the community, based on additional powers and stronger enforcement of the licensing laws. The changes will include the abolition of general and additional permitted opening hours for licensed premises and registered clubs. Instead, where certain conditions are met, premises will be able to open up to 2.00am.

An area in which the public, police and licensed trade are in agreement is the

need for effective enforcement powers to regulate the liquor licensing system. I intend, therefore, to introduce a range of new enforcement provisions which will include measures to allow opening hours to be curtailed, premises to be shut down immediately for a short, defined period and penalty points to be levied on offending premises.

More fundamental changes will take place once the current review of public administration is completed and a new system of local government is in place. This is unlikely to occur before 2009. My intention at that stage is to simplify and harmonise functions associated with the control and supply of alcohol, by transferring the administration of the liquor licensing and clubs registration systems from the courts to the newly-formed district councils, mirroring a model which will shortly come into operation in England and Wales and which has been in place in Scotland for many years. District councils will have a wide range of regulatory and enforcement powers which will include the introduction of liquor licensing officers.

Children's certificates were introduced in 1996 to protect children and young people from alcohol-related harm by setting out the circumstances in which they could be present in premises serving alcohol. Experience has shown that they have not worked effectively. I therefore intend to replace them with a system which will provide more flexibility and clearer guidance for people under 18 and adults

who wish to enjoy a family function in premises such as pubs, clubs, hotels and restaurants.

These longer term changes represent a sensible development of the law and will produce a more evidently democratic, responsive and accountable licensing system. I am determined that the new system will be as free as possible from bureaucracy, particularly during the initial transfer of responsibility to district councils. Before granting or varying the terms of licences, councils will be compelled to have regard to the views of local residents, police and other responsible authorities and will be at liberty to impose conditions on individual premises. They will be supported by central guidance aimed at providing clarity, consistency and equity for all stakeholders. The new council-based regime will be based on clear objectives designed to encourage a better understanding of Government's vision of the place of alcohol in our future society and a more responsible approach by licence holders to the sale or supply of liquor. The changes will therefore deliver benefits to both the community and the licensed economy.

The need – or not – for further licensed premises, particularly pubs and off-licences, in a particular vicinity will be a key consideration for district councils. As a result, the current requirement for certain pubs and off-licences to surrender a licence to a court as part of the application process will no longer be necessary.

I will monitor the impact of the changes I propose to make, along with developments across the UK and other jurisdictions, to ensure that new licensing and registration systems in Northern Ireland remain effective and responsive to local needs.

I would like to thank all those who have contributed to the work of the review so far. I look forward to receiving your responses to these proposals and will take careful note of your views in developing new licensing legislation for Northern Ireland.

A handwritten signature in blue ink that reads "David Hanson". The signature is written in a cursive style with a large initial 'D'.

David Hanson MP

Minister of State for Northern Ireland

October 2005

Introduction and Background

Aims and Objectives

This consultation paper seeks comments on possible changes to the Licensing (Northern Ireland) Order 1996 and the Registration of Clubs (Northern Ireland) Order 1996 aimed at striking a balance between facilitating the sale or supply of alcohol, public safety and the public interest.

Responses

Comments on any aspect of the legislative changes discussed in this paper are welcome. They should reach the Department by **31 January 2006**. You may provide comments by letter, email, phone or fax, or via the comments facility at "Consultations" on the Department's website. Details are:

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Freedom of Information Act 2000 – Confidentiality of Consultations

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity, should be made public or be treated as confidential. If you do not wish information about your

identity to be made public please include an explanation in your response.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- The Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- The Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature;
- Acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk/>). For further information about this particular consultation please contact the Liquor Review Team at the address on the previous page.

Overview

The last major review of the law on licensed premises and registered clubs in Northern Ireland resulted in the Licensing (Northern Ireland) Order 1996 and the Registration of Clubs (Northern Ireland) Order 1996 which introduced a more modern, liberal, less regulated regime. Significant changes included making licences/certificates valid for up to 5 years instead of the previous 1 year; the abolition of compulsory closing on Sunday afternoons; the introduction of Children's Certificates to allow accompanied children and young people in certain premises, and some relaxations on later opening. In the case of registered clubs accounting procedures were strengthened and a system of penalty points introduced for certain financial offences.

Current Review

In March 2004, the then Minister with responsibility for social development, John Spellar MP, announced a review of NI liquor licensing legislation. The main drivers were:

- Government's call to develop the night time economy as an incentive to regeneration, investment and tourism;
- The commitment by the Department for Social Development under the DHSS&PS Drugs and Alcohol Regional Action Plan 2002, to examine licensing with reference to social, environmental and wider public health issues;
- Trade and media pressure for more flexible opening hours to reflect the new circumstances brought about by the peace process.

Terms of Reference

To consider the key elements of Northern Ireland's liquor licensing law and practice, with particular reference to the implications for health and public order; and bring forward proposals aimed at striking a balance between facilitating the sale of alcohol, public safety and the public interest.

To refer in particular to the Licensing (Northern Ireland) Order 1996 and the Registration of Clubs (Northern Ireland) Order 1996 and have regard to the following issues:

- Opening hours;
- Enforcement;
- Surrender of a subsisting licence;
- Categories of licences;
- Wider public health issues;
- Licensing laws regarding children;
- Social and environmental issues; and
- Equality and equity issues.

Methodology

Since May 2004 a Liquor Review Team based in DSD has been taking forward the review with an Inter-Departmental Steering Group of DSD, DHSS&PS, Northern Ireland Court Service, Northern Ireland Office and the Police Service of Northern Ireland. The Review Team has adopted a holistic approach, considering issues beyond the current licensing legislation framework to ensure that the review is comprehensive and that outcomes are balanced, effective and enforceable.

Work to Date

The first stage of the review involved pre-consultation and research and culminated in a report to Ministers in June 2005. As part of its work the Review Team met and/or received written submissions from key stakeholders, including representatives of the licensed trade, registered clubs, the tourism industry and church interests. District Councils were alerted to the review and discussions held with government officials on related topics such as town and city centre regeneration, taxis and buses, night-time economy and entertainments' licences. The Review Team attended relevant conferences and developed contacts with officials in England & Wales, Scotland and Republic of Ireland who had experience in reviewing and developing liquor licensing legislation.

In terms of research, a literature review and analysis¹ was carried out to identify the current position, policy and practice in the UK, Republic of Ireland and further afield. Statistical data was collected on such topics as opening hours, enforcement, licensing laws regarding children and young people, and social and environmental issues. An audit of publicly funded initiatives designed to tackle alcohol-related issues was carried out to help identify best practice locally. An Omnibus Survey² was conducted to take views from a controlled sample of the public on access to alcohol, drinking patterns and the effects of drinking. The Police Service of Northern Ireland (PSNI)

surveyed District Commanders across Northern Ireland on their experiences, concerns and priorities on the ground and provided a report³ for the Steering Group.

Key Issues

The work to date has confirmed that liquor licensing legislation in Northern Ireland is a complex area involving difficult issues and choices, competing agendas and no simple solutions to the problems posed.

The issues arising frequently impact across a wide cross-section of public life and are the responsibility of a range of NI and Whitehall Departments. Action in one area can have significant implications elsewhere and a co-ordinated approach across Government and other agencies will be particularly important. Particular linkages are discussed in relevant sections of the paper.

The Minister for Social Development, David Hanson MP, has agreed with Ministerial colleagues the need for a shared understanding of the implications of the proposals for Northern Ireland and Whitehall departments and agreement on the way forward.

Timeframe

The Government is committed to ensuring that, before any changes are made, the issues receive careful consideration in consultation with key stakeholders, and the public. For this reason the original 26 month timescale for the review was

¹ *Review of the literature on the impact of licensing and other controls on the consumption of alcohol* - NISRA: December 2004

² *Northern Ireland Omnibus Survey* - NISRA: October 2004

³ *Report for the Northern Ireland Licensing Review Team: Summary of Results of the Survey of District Commanders, Regional Headquarters and Criminal Justice Department's Community Safety Branch* - PSNI Operational Support Department: October 2004

reviewed and extended. Some of the proposals in this paper are relatively straightforward insofar as they involve an amendment to the existing law. Others, such as the transfer of responsibilities to district councils, are more innovative and will require more time to bring into operation. For this reason, Government will introduce new primary legislation in two stages.

Legislation in the first stage is expected to be made in mid-2007 and will include proposals relating to opening hours, enforcement, children and registered clubs' accounts. The timing of second stage legislation will depend to an extent on the current Review of Public Administration which will radically change the form and responsibilities of district councils in Northern Ireland. The Review of Public Administration is due for completion by 2009 and this will be the provisional target date for making legislation involving transfer of responsibility for licensing from courts to district councils, doing away with Children's Certificates and the existing categories of licence and abolition of the surrender requirement.

Licensing Objectives

Background

Alcohol is a special commodity and requires special controls. To the majority of the population it is a source of pleasure and a significant aspect of their leisure time. However, consumed irresponsibly, it can lead to crime, social problems, anti-social behaviour and poor health. Due both to the short-term effects it can have on individual behaviour and the long-term effect on health and social welfare, Government believes the level and pattern of consumption should not be determined by market forces alone.

Current legislation in Northern Ireland is largely based on the Report of the Inter-Departmental Review Body on Intoxicating Liquor in Northern Ireland (“the Blackburn report”)⁴, published in 1979. Following a comprehensive review of the law on liquor licensing and registered clubs, the report proposed the following four objectives as a basis for future legislation:

- To control the level and pattern of alcohol consumption so as to protect social welfare and the health of the community;
- To protect social amenity and the physical environment;
- To encourage a higher standard of licensed facilities; and
- To be fair to all sections of the community and the licensed trade.

The licensing objectives set out in the Blackburn report provided an excellent basis for the creation of the current legislation. However, their influence on the ongoing development and operation of liquor licensing law was weakened by the fact that they were merely recommendations and were not enshrined in legislation.

England and Wales introduced four licensing objectives as part of the Licensing Act 2003:

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

Scotland is introducing the same objectives with the significant addition of:

- The promotion of public health.

Republic of Ireland alcohol policy is based on a public health imperative but recognises various other objectives.

Key Issues

Some see licensing laws as a method of regulating the overall consumption of alcohol and influencing the way in which people view it; others regard them as existing simply to shape the context in which drinking takes place.

⁴ Report of the Inter-Departmental Review Body on Intoxicating Liquor Licensing in Northern Ireland – 1979

There is a clear link between alcohol and problems relating to crime, public nuisance, health and children and young people. Licensing legislation can contribute to solving or aggravating those problems.

In the UK the lack of clear understanding about the objectives and implications of licensing provisions has resulted in the past in uncertainty in developing and implementing policy and in interpreting the relevant laws. This has led to expensive court cases to determine what is or is not legal.

Options

Do nothing. This would perpetuate a lack of clarity around why Government regulates the sale or supply of alcohol and would do little to promote a joined-up approach to alcohol-related issues.

Introduce appropriate licensing objectives to underpin revised licensing legislation. This would contribute to a range of Northern Ireland departmental policies and reflect the efforts being made by departments, including NIO, DHSS&PS and DSD, to target anti-social behaviour, promote public health and safety, protect children, produce an environment for social drinking which is safe and welcoming for all and encourage growth in the economy.

Proposal

The Government proposes to legislate to establish the following objectives as the basis for policy, legislation and regulatory procedures in respect of liquor licensing and related issues:

- Promotion of public health;
- Promotion of public safety;
- Prevention of crime and disorder;
- Prevention of public nuisance;
- Protection of children from harm;
- Fair treatment of all stakeholders.

The six objectives will have practical applications under the new legislation. For example, district councils will be required to demonstrate in full how they intend to meet the objectives in fulfilling their functions. Members of the licensed trade and registered clubs who wish to vary their licences or certificates will also be required to state how they intend to meet the objectives in carrying out their business.

Timing

By 2009, in line with implementation of the Review of Public Administration.

Your views

- Are there any other objectives you feel should underpin Northern Ireland's liquor licensing legislation?

Licensing System

Background

The licensing system in Northern Ireland differs from that soon to be operational in England and Wales and proposed for Scotland because it is administered by the courts, relies on the expertise of judges and magistrates with advice from the police and other specified parties and does not provide statutory central guidance to help explain or interpret the law.

As the system currently operates, first time applications for a licence to sell alcohol, applications for consent to alterations to a licensed area or applications for a certificate of registration (for registered clubs) to supply alcohol must be made to a county court. Applications for renewal of a licence/certificate must be made to a magistrates' court, normally at the end of a licensing/registration period that can last for up to 5 years.

The police, the district council or anyone who owns or conducts a business or lives in the vicinity of the relevant premises may object to the granting, renewal or other types of application in respect of a licence/certificate, and the court will consider this when dealing with the application. A court may refuse to renew a licence/certificate for a number of reasons; for example, if it feels the premises are unsuitable or that the business has not been conducted in a peaceable and orderly manner. It can also suspend licences or cancel certificates of registration on conviction of the holder for certain offences. In the case of pubs and off-licences, applications can also be refused on the basis of either the "need" or the

"surrender" principle. The "need" principle has to do with demonstrating the need for a licensed premises in a certain vicinity. The "surrender" principle has to do with the present requirement to hand an existing licence into court when applying for a new licence. These principles are discussed in detail in Chapter 9 – Surrender.

In England and Wales the Licensing Act 2003 transferred responsibility for the administration of liquor licensing from the courts to local authorities. The aim was to improve the efficiency, effectiveness and responsiveness of the licensing system by making it more accountable, more accessible and better equipped to assess applications for licences and certificates and to tackle alcohol-related crime and disorder in a particular area. With advice and information from statutorily defined "Responsible Authorities" which will include the police, the fire authorities, health and safety and environmental health authorities and "Interested Parties" such as businesses and residents in the vicinity, the new licensing decision-makers should have a wider knowledge on which to base judgements about how applications coming before them will contribute to meeting the licensing objectives.

Key Issues

The Review Team examined county court records for Belfast which showed that of 36 applications (for grant of a licence or consent to alter the licensed area within premises) over the last two years, none had been refused, although several were withdrawn. Information from 69 cases examined in the Belfast county and

magistrates' court indicated that once a licence is in place, 90% of applications relating to it seem to succeed, even if there is an objection. It is, however, important to note that the majority (80%) of applications met with no objections.

There is no common view as to where power to grant and renew licences should lie. The licensed trade is divided and the PSNI believe that there is a strong argument in favour of moving to a more representative system.

Ministers believe that issues to do with licensed premises and registered clubs are predominantly local issues and that a licensing authority should be clearly accountable and accessible to local residents whose lives may be fundamentally affected by the decisions it takes. Ministers appreciate that the courts have much expertise in liquor licensing but feel that many residents may be inhibited from making their views known by the complexity and cost of court processes and would be more willing to seek to influence decisions if those lay in the hands of local councillors.

The Government also believes that a licensing authority should have available to it information, advice and support based on local experience and expertise. District councils already have responsibility for, or are involved with, a range of alcohol-related issues – entertainment licences, local planning, health and safety issues, noise pollution, town centre management, and community safety partnerships. Following

the Review of Public Administration, they will have more responsibility for town and city centre issues. It would be consistent with the objectives of that Review and with the identified need for a coordinated approach to dealing with alcohol-related issues, to streamline and simplify the licensing process by moving responsibility for licences and registered clubs to the new councils.

Options

The options considered were:

- Do nothing and continue with the present court-based system;
- Introduce a new form of local licensing authority involving a wider spread of local expertise and greater local accountability;
- Introduce an amalgamated system providing for appeal from a new district council-based licensing authority to the court.

The Government's preferred option is for a district-council based system with rights of appeal to a county court in the first instance.

Proposals

The Government proposes to relieve the courts of purely licensing responsibilities. It intends that they will retain responsibility for dealing with people charged with offences under the new law, with appeals against decisions of a district council and with requests for judicial review of district council licensing activities.

The Government proposes that district councils will fulfil their licensing functions in the context of a robust operating framework with the following features:

Statement of Licensing Policy

As a cornerstone of the new system each district council will draw up and publish a Statement of Licensing Policy explaining how it will promote the licensing objectives when considering and making licensing decisions. The Statement will not override or duplicate any rights or obligations established by other legislation e.g. on crime prevention, health & safety, equality.

Local Licensing Forum

The district council will draw up its Licensing Statement, and review it every three years, in consultation with all local parties in the licensing process, including police, residents, fire authority, current licensees, other businesses and others with an impact e.g. cultural, transport and tourism interests.

Operating Plan

Under the new district council regime applicants for a new licence/certificate or for variation of an existing licence/certificate – for example, to extend their opening hours – would need to supply the council with an

Operating Plan setting out the type of business they want to carry on, the nature of the location, hours of business proposed etc. and the steps they will take to meet the licensing objectives.

Conditions

The district council may grant a licence/certificate with conditions attached. If the conditions attached require the implementation of certain steps, the conditions will be enforceable in law. The Government will consider which conditions would be appropriate to attach to all licences/certificates as standard.

Guidance

The Government will provide guidance to district councils and police as necessary to ensure that work goes forward in a procedurally open, fair and consistent way, and that the factors to which councils must have regard in taking decisions are well defined.

Timing

The proposed district council based structure will not come into force until after the Review of Public Administration has been completed and a new system of local government is in place, possibly by 2009.

Your views

- Do you agree that a new, district council administered liquor licensing system would be more effective, accessible and accountable?
- Which parties should be involved in the composition of a local licensing forum?
- For what period do you feel Licensing Statements should remain current?
- We would welcome your views on the conditions that could be imposed on an Operating Plan.
- Other than the police and district councils, who should be entitled to receive written notice of an application for a liquor licence?

Opening Hours

Background

Opening hours for licensed premises and registered clubs were last amended by the Licensing (Northern Ireland) Order 1996 and the Registration of Clubs (Northern Ireland) Order 1996. The traditional Sunday afternoon break between 2.30pm and 7.00pm was replaced by all day opening,

off-licences were permitted to open on Sundays and their week-day opening hours were extended.

General permitted opening hours for licensed premises and registered clubs are as follows:

Type of premises	Mon – Sat	Sunday	Easter Sunday & Christmas Day	Good Friday
On-licences & Registered Clubs	11.30 – 23.00	12.30 – 22.00	12.30 – 22.00	17.00 – 23.00
Places of Public Entertainment (theatres, ballrooms, race tracks)	11.30 – 23.00 Within these hours alcohol may only be sold during 30 minutes before the entertainment begins until 30 minutes after it ends.	12.30 – 22.00 Theatres only – Within these hours alcohol may only be sold during 30 minutes before the entertainment begins until 30 minutes after it ends.	12.30 – 22.00 Theatres only – Within these hours alcohol may only be sold during 30 minutes before the entertainment begins until 30 minutes after it ends.	17.00 – 23.00 Within these hours alcohol may only be sold during 30 minutes before the entertainment begins until 30 minutes after it ends.
Off-licences	8:00 – 23:00	10:00 – 22:00	Closed	8:00 – 23:00

Licence holders for eligible licensed premises i.e. pubs, hotels, restaurants, conference centres, higher education institutions and indoor arenas may apply to the courts for additional permitted hours to extend their opening hours to 1.00am on weekdays and to midnight on Sundays, on condition they are providing

“musical or other entertainment” or “substantial refreshment”. Premises not entitled to apply are off-licences, guesthouses, places of public entertainment (theatres, ballrooms, race tracks), refreshment rooms in public transport premises, seamen’s canteens, and non-seagoing vessels.

Registered clubs may apply to the police for authorisation for special occasions to 1.00am on up to 52 occasions each year but do not have to provide food or entertainment.

Since the introduction of scope for more flexible opening in England and Wales, and the unveiling of plans for similar reforms in Scotland, the debate in Northern Ireland has centred mainly on the rigidity of opening hours for licensed premises such as pubs, hotels and restaurants.

Key Issues

Opinions are sharply divided on the subject of opening hours for licensed premises. The Review Team found little consensus on the need for any changes to opening hours. Some of the licensed trade, the public and religious bodies oppose liberalisation while others in the trade, along with tourism and urban regeneration interests, are calling for more flexibility.

PSNI believe that extension of licensing hours must be balanced by the introduction of new, broad-based compensating regulatory structures and stronger powers to enforce the law.

One of the few areas of agreement is that future legislation and practice should respond to Northern Ireland's culture and needs, which are seen as different from those in Great Britain.

Options

Government recognises that the high number of people in Northern Ireland who abstain totally from alcohol makes the region unique in the U.K. and much of Western Europe. It is also conscious that a level of normality and stability has returned to Northern Ireland since the start of the peace process and that a thriving night-time economy has grown up in this period.

The four options Government has considered are:

Do nothing – This option would ignore the changing demands in our society, would run counter to Government's tourism and urban regeneration objectives for Northern Ireland and would be out of step with changes being introduced in the rest of the UK.

Scope for flexible opening up to 24 hours – The English/Welsh model removes the concept of standard permitted hours. Instead, eligible licensed premises and registered clubs will set out the hours they intend to open, up to 24 hours, in their Operating Plan which will be open to challenge by responsible authorities e.g. police and interested parties such as local residents, businesses etc. Where there is no challenge, or the challenge fails, the premises will be allowed to open for the hours it has selected. Where a licensing authority upholds a challenge it may attach conditions to the premises licence or certificate of registration specifying shorter hours than originally proposed in the plan.

One of the expected benefits of this system is that it will spread the period over which drinkers leave, eliminating the congregations of drunken people that are disgorged onto the streets at the current closing times, and reducing the burden on transport and refreshment outlets.

Opening hours decided by local licensing authority – The Scottish Executive proposes to abolish national standard permitted hours. Instead, the Scottish Local Licensing Boards will determine opening hours to suit local circumstances. The Boards will be required to discuss their policy on opening hours with a local licensing forum which will include police, trade and community interests, and to set out in their licensing policy statement the maximum number of hours to be permitted in their area. The Boards will consider each application on its own merits. The Boards may decide to let particular premises open for longer than the local permitted hours but they would be expected to offer justification for their decision. The Executive has decided that there will be an automatic presumption against any premises being granted 24 hour opening.

A modest extension of current opening hours – The granting of applications for additional permitted hours has become so routine that opening hours have, in practice, become 11:30am to 1:00am for many premises. The provision of food or entertainment is such an integral feature of modern-day licensed premises that this form of control over who may open later no longer seems relevant. The business needs

of licensed premises, the expectations of customers and the concerns of authorities and residents might be better met by allowing premises to opt for a preferred closing time up to 2.00am subject to the approval of the courts (district councils in due course) who would take account of local considerations, including any objections to later opening. Registered clubs are private members' clubs open to members and guests only and similar considerations would apply to them.

The Government's preferred option is a modest increase in the hours available. This would provide a measured response to requests from tourism, trade and regeneration interests for a more flexible liquor licensing system while protecting the rights of people living close to licensed premises.

Proposals

The Government proposes to abolish the concept of general and additional permitted hours. Instead it will allow:

- Licensed premises and registered clubs to apply to the courts (and to district councils in due course) to open up to 2.00am on weekdays, and midnight on Sundays;
- Licensed premises and registered clubs to apply to the courts/ district councils to open beyond 2.00am/midnight for special occasions, such as major sporting or other events attracting significant national or international interest;

- Licensed premises to apply to the courts/district councils for extension licences permitting them to open up to 2.00am for specified functions of a charitable, benevolent or sporting etc nature;
- Licence holders to apply to the courts/district councils for occasional licences permitting them to sell alcohol up to 2.00am in other, non-licensed premises.
- Once a court or district council approves later opening, there will be no need to reapply periodically. This will reduce the existing administrative burden on premises.
- Police and courts will be given additional powers to address concerns about a possible increase in nuisance and inconvenience in the vicinity of premises. These powers will include the immediate temporary closure of offending premises and the curtailment of opening hours. These are discussed in more detail in Chapter 7 – Enforcement.

The Government also proposes that, under the new opening arrangements:

- Applicants for later opening will be required to advertise their intentions in local newspapers.
- There will be no change to the requirement that licensed restaurants may only sell alcohol as ancillary to a main table meal.

Timing

The proposals will come into operation as part of the first stage of legislative amendments planned for mid-2007.

Your views

- What hours do you feel licensed premises should be entitled to remain open for the sale of alcohol?
- What premises should be eligible to apply for opening up to 2.00am? Should this be restricted to pubs, hotels, restaurants, conference centres, higher education institutions and indoor arenas?
- Should the restriction on bar opening in places of public entertainment (30 minutes either side of the entertainment) be eased?
- Are you satisfied with the proposals for rights of objection to later opening by people in the vicinity of the premises?

Children and Young People

Background

The Licensing (Northern Ireland) Order 1996 and the Registration of Clubs (Northern Ireland) Order 1996 contain provisions and sanctions designed to protect children and young people under the age of 18 from the potential dangers of alcohol. With some exceptions, the provisions place restrictions on the presence of under-18s in licensed premises and registered clubs and prohibit the sale to, or purchase and consumption of alcohol by them. Most restrictions apply equally to licensed premises and registered clubs.

Sale, Supply and Consumption – Offences

It is an offence:

- for an under-18 to buy alcohol or to consume it anywhere other than in a private residence;
- to send an under-18 to obtain alcohol from licensed premises for consumption off those premises;
- for a licensee or his servant or agent to;
 - sell alcohol to an under-18 for consumption on or off the premises;
 - sell alcohol to anyone for consumption by an under-18 on or off premises;
 - allow an under-18 to consume alcohol in licensed premises;
- for a person to buy alcohol for delivery to, or consumption by, an under-18 in any place other than a private residence.

Children's Certificates

With some exceptions, such as the child of a licence holder and trainee staff, under-18s are not allowed in an **off-licence** unless accompanied by an adult. They are not allowed in any part of an **on-licensed premises** or **registered club** (except a sporting club) containing a bar, or in any part which is used primarily for the sale and consumption of alcohol, unless that part has a children's certificate and the young person is accompanied by an adult.

Children's certificates were introduced in Northern Ireland in 1997 following their introduction in England and Wales. Their purpose was to enable children to become familiar with sensible drinking habits in a family environment. The certificate allows a young person, accompanied by an adult, to be in the relevant part of the premises up to 9.00pm but not at the bar counter. A court will grant a children's certificate if it is satisfied that the part of the premises for which it is sought is a suitable environment for an under-18. To be considered suitable, the relevant part of the premises must have meals and beverages other than alcohol available, and be equipped with an adequate number of tables and chairs.

Great Britain & Republic of Ireland

England & Wales no longer impose an outright ban on children in licensed premises or registered clubs. Children's certificates have been abolished. Children's

right of entry will remain at the discretion of the licensee or committee. Scotland is set to follow suit but will, additionally, require premises to state in their Operating Plan if they intend to allow children on the premises.

In the Republic of Ireland under-18s may be allowed in a bar at the discretion of the licensee between 10.30am – 9.00pm provided they are accompanied by a parent/guardian. The introduction of the general 9.00pm curfew provoked considerable opposition from publicans, the tourist trade, and some tourists and general public and it was subsequently relaxed to 10.00pm for the summer months.

Key Issues

Some in the licensed trade are concerned that the restriction on children in licensed or club premises after 9.00pm makes it difficult for them to stay within the law if they are hosting family functions such as weddings. They would like to see the licensee given discretion to allow under-18s to be on the premises beyond that time, provided they are accompanied by a responsible adult.

Registered clubs would back a move for greater flexibility since they see themselves as a community base and, in some cases, a place where young people take part in leisure or sporting activities, which may involve different generations of one family.

The tourist industry would be in favour of allowing accompanied under-18s to remain in licensed premises or registered clubs for an extra hour i.e. up to 10.00 pm. with the permission of the licensee or club committee.

Though it is an offence in Northern Ireland to sell alcohol to a person under 18, or for anyone to misrepresent themselves as 18 years or over, the law does not specify how a person's age should be determined. This can cause uncertainty for licensees, young people and PSNI.

Options

Under-18s in licensed premises/ registered clubs

Do nothing – The existing law is clear as regards the conditions under which young people are permitted in licensed premises and registered clubs. However, relatively few Children's Certificates have been applied for locally. To do nothing would ignore the fact that the law is routinely ignored.

Encourage better uptake of Children's Certificates – This might be done by offering additional flexibility to those in possession of a children's certificate, and enforcing the current law more strictly.

Replace the existing rules with more effective arrangements to protect children from harm – This could provide licensees and responsible adults with the flexibility to use discretion within certain parameters to

permit accompanied under-18s in eligible licensed premises. Under the new licensing regime district councils and licensed premises could be required to clarify in their Policy Statement or Operating Plan respectively how they intend to meet their obligation to promote the licensing objective of protecting children from harm. Failure to comply with an Operating Plan could lead to conditions being imposed on a licence and attract sanctions.

Underage drinking

Do nothing – This would ignore statistical evidence showing the significant numbers of children and young people who have had an alcoholic drink, the number who drink regularly and the number who have been drunk more than once.

Make it easier to enforce the current law – This could be done by promoting a voluntary proof of age initiative to help police, licensees and, in later years, district council licensing officers to identify young offenders. The Joint Industry Sales & Marketing Code advises licensees “*When in any doubt, licensees should ask to see proof of age, for example, passport, driving licence or electoral identity card.*” Not everyone wants to carry these important documents on a night out so there is also room for a voluntary photographic proof-of-age card. Such schemes (Portman Group, Validate UK, Citizen Card) operate across the UK. The major schemes are validated by PASS, the Proof of Age Standards Scheme, and carry the PASS hologram logo which makes

them more difficult to forge or tamper with, more easily recognisable by licensees and more easily distinguishable from forgeries. PASS is endorsed by the Home Office, Institute of Trading Standards and the Department for Education & Skills.

Provide extra power for police to help them identify and tackle irresponsible suppliers of alcohol – The PSNI regards underage drinking as a key enforcement issue and has requested powers to help them gather evidence of illegal sales to under-18s.

Proposals

Under-18s, unless accompanied by an adult, will continue to be prohibited from any part of a licensed premises or registered club which contains a bar, or is used exclusively or mainly for the sale and consumption of alcohol.

The offences connected to the purchase and consumption etc of alcohol by under-18s will remain a key feature of the law.

Children’s certificates will remain in operation until such time as a licence holder or registered club applies to a district council for variation of the terms of their licence or certificate. Until then a licensed premises or registered club holding a children’s certificate or applying for one, may request authorisation from the court to allow under-18s in the relevant part of the premises until 10.00pm as part of a family function.

The licensed trade will be encouraged to take a “no-proof, no-sale” approach to suspected underage customers and to adopt a single, voluntary proof of age card until liquor licensing administration transfers to district councils. If no national identity scheme is in place at that point district councils will be required to retain the existing voluntary proof of age card or adopt a new one.

Following the transfer of licensing responsibility from courts to district councils,

each district council will be required to issue a licensing policy statement which will address the protection of children. Licensed premises and registered clubs will be required to set out in their Operating Plans their proposals in respect of children.

Timing

The above proposals will come into operation as part of the first stage of amendments planned for mid-2007.

Your views

- Do you agree that the existing restriction of 9.00pm on children in licensed premises and registered clubs should be relaxed for family events?

Enforcement

Background

The results of the Omnibus survey revealed widespread concern about the problems caused in urban and rural areas by those who have been drinking. According to the survey, the main concerns about public drunkenness and drunken behaviour were violence and disorderly behaviour. 63% of those surveyed believed that the majority of disturbance, crime and disorder in Northern Ireland was directly linked to alcohol consumption.

There are 47 offences in the Licensing (Northern Ireland) Order 1996 and 25 in the Registration of Clubs (Northern Ireland) Order 1996 covering topics such as opening hours, conduct of premises and the illegal sale of alcohol, particularly to young people. These laws do not deal directly with health matters such as binge drinking or with policing of public order offences occurring in or around licensed premises or arising as a direct result of intoxication.

This paper deals with those aspects of enforcement that relate directly to liquor licensing legislation, but also identifies a number of new initiatives and proposals being considered by Government departments in Northern Ireland to tackle public order issues.

In England and Wales the Licensing Act 2003 gives police and new local authority enforcement officers tough new powers to quickly tackle breaches of the law. These include the power to immediately close licensed premises temporarily where

customers are causing public disorder or nuisance in an area, automatic loss of a licence for three offences over a specified period and the creation of Alcohol Disorder Zones where licensed premises may have to contribute to policing costs.

The Licensing (Scotland) Bill is broadly similar to the new law in England and Wales. Additionally, it provides for new local authority liquor licensing standards officers who will have statutory powers of entry into all licensed premises at all times. They will also be entitled to take necessary steps to ensure a licensee is complying with the terms and conditions of the licence.

In the Republic of Ireland, the Intoxicating Liquor Act 2003 introduced reforms to improve compliance with, and enforcement of, the law. These include powers of immediate closure and stronger powers to deal with repeat offences, including a penalty points system and increasingly severe punishments. The Act also targets behaviours which can lead to disorderly drunken conduct and underage drinking. This involves banning entertainment during drinking-up time, strengthening the rules on conduct in licensed premises and requiring 18-20 year olds on the premises to carry a specified proof-of-age document.

Key Issues

In a report produced for the benefit of the liquor licensing review, the PSNI set out several areas where enforcement could be

improved. They felt that there were difficulties in prosecuting licensees for breaches of the legislation due to:

- A plethora of licensing offences carrying varying degrees of penalty;
- Protracted court cases;
- Suspension of a licence being considered as a punishment of last resort, deployed after a licensee had appeared frequently before the courts; and
- Sanctions that fail to act as an effective deterrent.

The licensed trade believe that enforcement could be more effective. They believe that those who routinely flout the law are not being effectively punished e.g. a fine for selling after hours is not a deterrent if the guilty party can make more than that amount in the time they illegally stay open.

Magistrates currently have to choose between the two extremes of issuing fines, that are seen by some as ineffectual and lenient, and suspending or revoking licences, a major punishment that could deprive an individual of their income or business, and which could seem disproportionate for many offences. Issues around police resources and priorities have also been raised.

Options

Do nothing. This would be to ignore the concerns expressed by the public, the police and the licensed trade on the need for better enforcement to tackle the damage being caused by the illegal sale of alcohol.

Introduce stronger enforcement powers and penalties. Providing additional powers for the police and making tougher penalties available to the courts would act as a more effective deterrent to breaches of the law by individuals, licensed premises and registered clubs. This should be welcomed by all the community and provide economic, social and environmental benefits for all.

Proposals

The Minister proposes to introduce the following measures:

Immediate temporary closure orders
 – The police will be given the power to immediately close down individual licensed premises or registered clubs that are disorderly, likely to become disorderly or are causing nuisance as a result of noise emanating from the premises. The orders are intended to protect the public and will only be made where they are necessary in the interests of public safety or to prevent noise nuisance. A licensee or manager of the premises will not automatically be held responsible for the disorder.

Penalty points – These have proved useful in combating driving offences. A similar system for liquor licensing will offer judges a sliding scale of sanctions with which to punish repeat offenders. Offences will lead to endorsement of a liquor licence. A certain number of endorsements in a specified period will trigger a sanction such as a reduction in trading hours, temporary closure, suspension of licence or, ultimately, revocation of licence.

Civilian inspectors – District councils will be given the power to employ liquor licensing officers to supervise, monitor and report to the council on the operation of the new licensing system and to advise and co-operate with licensees and communities. The officers will be given statutory powers of entry to all licensed premises and will have three main roles:

- *Guidance* – To act as a source of advice and guidance for licensees, registered clubs and the community.
- *Mediation* – To mediate between communities and the trade or between any two parties to resolve local problems.
- *Complaints* – To report to the council where repeated, serious breaches of a licence or Operating Plan have taken place or where mediation and guidance have failed to resolve complaints.

The Minister also proposes to consider the following alcohol-related enforcement measures which would fall within the ambit of criminal justice legislation rather than the scope of the present review:

Alcohol disorder zones – These will soon be introduced in England & Wales. Where the police and licensing authorities there believe alcohol fuelled disorder has reached unacceptable levels in an area, the area may be designated an alcohol disorder zone (ADZ). Before an area is designated, the premises which are contributing to the disorder within it would be given the opportunity to take certain actions to reduce the alcohol disorder. Should those actions fail the premises will be required to help pay policing and other local costs of dealing with the disorder.

Powers to seize alcohol – Drinking in public bye-laws are currently under review and are expected to be replaced with new primary legislation which will provide police and district councils with stronger and more effective powers to control the anti-social and nuisance behaviour associated with drinking in public places. The new laws are likely to be introduced in criminal justice legislation.

Fixed penalty fines – Set fines of £80 for drunk and disorderly behaviour. Consideration is also being given to extending fixed penalty fines to include antisocial behaviour by 10 to 15 year olds.

Power to address underage drinking

– New enforcement measures to target illegal alcohol sales to minors may include new test purchasing powers for the police.

Timing

We would envisage some of these new powers being brought in as soon as

possible, while others are longer term proposals. Immediate temporary closure and penalty points would be included in the first legislative amendments planned for mid-2007, while civilian inspectors could not be created until after the proposed transfer of the licensing system from courts to district councils.

Your views

- How do you think a tiered system of penalty points should work and what should the range of sanctions be?
- Can you suggest other enforcement powers to act as an effective deterrent for future breaches of licensing legislation?

Categories of Licence

Background

The range of categories of outlets permitted to sell alcohol has developed over many years. The Blackburn Report led to horse and greyhound racing tracks, ballrooms and the international lounge of what is now Belfast International Airport being added to the traditional categories of licensed premises such as pubs, restaurants and hotels. In 1997 guesthouses, conference

centres and higher education centres were added to the list and January 2005 saw the inclusion of indoor arenas.

Twelve categories of premises may now be licensed to sell alcohol. Those in Group A below have the sale of alcohol as their primary function. For those in Group B selling or supplying alcohol is ancillary to their main business.

Group A	<ul style="list-style-type: none"> • pubs; • off-licences;
Group B	<ul style="list-style-type: none"> • hotels; • guesthouses; • restaurants; • conference centres; • higher education institutions; • places of public entertainment (theatres, ballrooms, race tracks); • refreshment rooms in public transport premises; • seamen's canteens; • non-seagoing vessels; • indoor arenas.

The various categories have core features in common e.g. that the licence holder should be a "fit" person. There are also distinguishing characteristics concerning who may be served, where and when in each type of outlet. In the case of pubs and off-licences, the conditions attaching to this type of outlet in which alcohol may be sold can restrict number of premises overall in Northern Ireland. This is because these categories are regulated by the "surrender" requirement, which requires an existing licence for either type of premises to be surrendered before a new

one may be granted by a court, and the "need" principle which stipulates that a new licence may only be granted if the court is satisfied that the number of such premises in the vicinity is not already adequate. Further information on the Minister's proposals in respect of the surrender principle is in Chapter 9 – Surrender.

In England and Wales from November 2005 there will be only two types of licence – a premises licence with conditions attached and a personal licence

confirming the suitability of the holder. Scotland currently has seven types of licence but the new Licensing Bill there will abolish these and introduce a system similar to that in England and Wales.

Key Issues

The Government believes that regulation of the types of premises licensed to sell alcohol and those entitled to hold such licences should remain a key feature of the law.

The existing system of regulation is regarded by many as unfair, particularly as it relates to the financial impact of the surrender requirement on those seeking a licence for a pub or off-licence, as opposed to any of the other categories of licence.

The law cannot react swiftly to the emergence of new, modern types of premises who may wish to sell alcohol. Adding a new category to the existing list involves amending primary legislation, which can be a long and expensive process.

There is a blurring in practice of distinctions between some categories, which sees e.g. some restaurants acting as pubs, some registered clubs competing with pubs. There have been complaints from some in the trade that these distinctions are not being adequately enforced.

Some sections of the licensed trade have argued for the creation of a new "nightclub" licence to allow for much later

opening than at present, typically to 5.00am or 6.00am, in recognition of competition for the tourist trade from other European cities and in response to changing lifestyles at home.

District councils may grant licences authorising the provision of entertainment beyond the latest bar closing time of 1.00am. This can lead to pressure on licensees to keep the bar open beyond 1.00am in breach of licensing legislation and lead to alcohol-related disturbance persisting for longer. The Government intends, in due course, to review the system of entertainments licensing in conjunction with district councils.

Current law requires a court to satisfy itself that an applicant for a licence is a "fit person" and gives guidance on the issues to which the court must have regard in reaching a conclusion. A court must also have regard to the "qualifications and experience" of the applicant and any person managing the premises on behalf of the applicant, but the law does not specify minimum criteria for the qualifications and experience necessary to carry out that role.

Options

Do nothing – This would constitute a failure to react to the changing needs of the licensed trade and the expectations of customers and would perpetuate the current level of bureaucracy and expense involved in adding to the categories as necessary.

Abolish the twelve categories of licences and introduce a dual system of personal and premises licences to be administered by district councils – District councils in Northern Ireland will in due course become responsible for determining licensing policy in their local areas, in a process involving licensing policy statements, individual premises' Operating Plans and greater local accountability. In that context the need to specify in primary legislation the categories which may sell alcohol, and to use category-specific criteria to restrict the overall number of certain types of outlets, disappears. Furthermore, the argument for retaining categories to restrict numbers would be overturned in any case by the Minister's proposal to abolish the "surrender" principle. Similarly, the proposal to extend, harmonise and introduce flexibility into opening hours renders the case for a separate "nightclub" licence less compelling.

Proposals

The Minister proposes to abolish the current categories of licences in favour of a dual system of personal and premises licences when responsibility for liquor licensing transfers from the courts to district councils. Government believes that reducing the number of categories of liquor licence will make for less bureaucracy for the licensed trade, courts and PSNI and in due course, district councils. It will also reflect the trend towards more flexibility. This will simplify processes and, by requiring personal licence holders to have accredited qualifications, should improve operating standards.

Timing

We envisage that the above proposal will not come into force until after the Review of Public Administration is completed and a new system of local government is in place, possibly by 2009.

Your views

- Do you agree that the current 12 categories of premises eligible for a liquor licence are overly prescriptive and restrictive?
- In your opinion, would the introduction of personal and premises licences for managers and owners improve operating standards?

Surrender

Background

Under current liquor licensing law, the grant of a new public house or off-sales liquor licence is conditional on the surrender to the court of an existing licence. The requirement does not apply if the prospective licence holder intends to continue the same business on the same premises but does apply where the new licence is required for a pub or off-licence elsewhere in Northern Ireland. This has generated a lucrative trade in licences in the private sector. The surrender provision exists nowhere else in the UK. It is unique to the island of Ireland and to the licensed trade.

Prior to 1902 there were few restrictions on the sale of alcohol in Ireland, North or South, and it was supplied predominantly by publicans and spirit grocers i.e. grocers' shops where alcohol could be bought and consumed on the premises. The proliferation of liquor outlets was thought to be the major cause of the extremely high levels of alcohol consumption and the alcohol-related problems prevalent at that time.

The first licensing law passed by a Northern Ireland Parliament (the Intoxicating Liquor (Northern Ireland) Act 1923) placed a virtual ban on "mixed trading" and began reducing the number of outlets by requiring the surrender of 2 licences for each new one. Spirit grocers were given the option of selling groceries or alcohol but not both. Those who left the licensed trade were compensated from a

fund financed by pub owners. The measures had the desired effect. Prior to the 1923 Act there were almost 3,000 pubs in what is now Northern Ireland; by 1966 the figure had fallen to 2,196. The "surrender" provision remained unchanged until the Licensing (Northern Ireland) Act 1971 reduced the requirement for new licences from 2 existing licences to one. There are currently 1526 pubs and 412 off-licences in Northern Ireland.

Key Issues

Among interested parties, opinion is divided on the subject of surrender. To many, its continued existence constitutes a barrier to entry into the market and stands as an anti-competitive mechanism amidst an ever-increasing tide of market liberalisation measures occurring at local, national and international levels. The Omnibus Survey indicated that the majority of the public do not feel Northern Ireland is overprovided with pubs and off-licences. Sections of the licensed trade believe surrender protects Northern Ireland from the overprovision they feel exists in Great Britain but, in contrast, other sections of the trade feel that surrender is anti-competitive and should be abandoned.

Since a new pub or off-licence does not have to be in the same area as the premises from which the surrendered licence was acquired, a pub closing in rural Fermanagh could lead to one opening in Belfast city centre. Surrender could, therefore, lead to some rural areas being left without a pub.

Options

Do nothing – The surrender provision has been effective in its aim of restricting the overall number of pubs and off-licences in Northern Ireland. However, it is not clear that it has limited the number of outlets in specific areas or the problems associated with high concentrations of licensed premises. Having spent large quantities of money to acquire a liquor licence for the purposes of surrender, existing licence holders have a vested interest in retaining the provision. It is important to recognise, however, that the commercial value of liquor licences is notional and not a matter for legislation.

Abolish the surrender provision – Following the proposed transfer of the licensing system from the courts, district councils could decide on applications for new licences and have regard to any local

objections. They could apply the “need” principle to these applications, which currently provides that a court shall not grant a licence for a pub or off-licence if it considers there is already an adequate number of similar outlets in the vicinity of the proposed new premises. In order to minimise the impact on existing licence holders for pubs and off-licences, a period of time would have to be allowed in which to write off the notional value of the licence.

Proposals

It is proposed to abolish the surrender requirement in favour of district councils deciding whether to grant a licence for further pubs or off-licences in the area.

Timing

This is a long-term proposal that would be unlikely to come into effect before 2009.

Your views

- Do you agree that the surrender provision is anti-competitive and should be abolished?

Registered Clubs' Accounts

Background

The Registration of Clubs (NI) Order 1996 was the result of a wide-ranging review which introduced relaxations in the law including more late night opening authorisations and longer Sunday hours. It also tightened the control environment under which registered clubs operate by setting minimum criteria and standards. These applied to management of clubs with particular emphasis on financial controls and accounts. This development was requested by the police to help tackle financial mismanagement in clubs. The detailed requirements were contained in the Registration of Clubs (Accounts) Regulations (NI) 1997 ("the Regulations"). The Northern Ireland Federation of Clubs has, since their introduction, opposed what they regard as the onerous provisions of the Regulations.

In 2004 the PSNI, acknowledging the efforts of registered clubs to improve their accounting procedures, proposed that the Regulations should be reconsidered with a view to relaxing them. The police felt there was scope to simplify the auditing requirements and replace many of the other mandatory requirements of the Regulations with a system of guidance and best practice. The former Minister with responsibility for Social Development, John Spellar MP, agreed to review the Regulations in the context of the current liquor licensing review.

Key issues

The Northern Ireland Federation of Clubs believes the situation which prevailed when the Regulations were introduced has altered substantially for the better. They feel the Regulations are over-prescriptive in the current climate and that they place an undue burden on club officers, particularly in smaller organisations. They believe that the degree of administration required by the Regulations can discourage club members, who might otherwise play a bigger role in running their club, from accepting office.

This can compound the problems facing clubs, especially in disadvantaged areas, who are coming under pressure as the development of licensed premises in town and city centres attracts more young people and drinking patterns change.

The Government believes that registered clubs can act as a centre for the community in many areas and provide a resource which is useful in terms of taking forward neighbourhood renewal.

The PSNI have advised that the climate in which the Regulations were introduced has changed for the better and that such an intense level of scrutiny is no longer necessary.

Options

Retain the Accounts Regulations in their current form – The Regulations have been effective in dealing with possible financial mismanagement and have successfully tightened the control environment under which registered clubs operate, by setting minimum criteria and standards.

Amend the Regulations and replace the financial controls with guidance – The Regulations could be amended and the financial controls replaced with a monitoring scheme for the clubs' accounts

which would be less prescriptive, place less of a burden on club officers and distinguish between large and small clubs.

Proposals

The Minister proposes, in recognition of the clubs' efforts to improve their accounting practices, to revoke the financial controls and accounts formats prescribed in the Registration of Clubs (Accounts) Regulations (NI) 1997 and to make provision for best practice guidance in their place.

Your views

- Do you feel the current regulatory system for registered clubs should be relaxed as proposed?

Equality, Human Rights, Rural and Financial Impact

Equality

Under section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity between:

- Persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- Men and women generally;
- Persons with a disability and persons without; and
- Persons with dependants and persons without.

In addition to this obligation, the Department in carrying out its functions shall have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

The Department for Social Development is fully committed to complying with this statutory obligation and has set out in its Equality Scheme how it will fulfil this when reviewing and developing policy.

These obligations are designed to ensure that equality and good relations considerations are made central to policy development and have the potential to make a real difference to the lives of the people most likely to be affected, by consulting with and taking into account, how policy development may impact on them.

The Department has undertaken an initial screening exercise of this policy in line with the Equality Commission's guide to the Statutory Duties and no significant or adverse impacts have been identified.

It has already been identified in this paper that young men in particular are more likely to take advantage of any extension of opening hours. It has also been identified that faith based communities including the churches may have objections to any extension of opening hours. There are also potential positive impacts on young people as the amendment of the Children's Certificate and Proof of Age Scheme will promote more responsible drinking and seek to further prevent under age drinking.

These are issues that will perhaps be developed further during this consultation exercise, others may emerge, and we will of course reconsider our findings and finalise our screening document at the end of this process when all responses have been considered.

We would now welcome your comments on the equality implications of this policy, particularly with regard to the following criteria that our screening has taken account of:

- On which equality categories do you predict the policy will have an impact?
- Is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories?

- Is there evidence that different groups have different needs, experiences, issues and priorities in relation to the main policy areas?
- Is there an opportunity to better promote equality of opportunity or good relations by altering policy, or by working with others, in Government or the community at large?

Human Rights

An exercise has been carried out to determine whether the proposals are compatible with the European Convention on Human Rights. The findings are contained in **Annex A**.

Rural Impact

Similarly, a rural impact assessment has been carried out to determine whether the proposals will have any differential effect on rural, as opposed to urban, communities. The results of the assessment are at **Annex B**.

Financial

A draft Regulatory Impact Assessment on the proposals is included at **Annex C**. Comments would be welcome on any financial implications with, if possible, estimates of costs, savings, additional costs or additional revenue where appropriate.

Summary

This document sets out Government's proposals for modernisation and reform of the current system of liquor licensing in Northern Ireland. The aim is to offer a degree of liberalisation and deregulation which will afford consumers greater choice and meet the needs of Northern Ireland's increasingly vibrant night-time economy. These relaxations of the law will, however, be matched and balanced by tougher powers for the police, the courts and local licensing authorities to prevent anyone taking advantage of these freedoms in a way that impacts negatively on the public interest.

A summary of the key proposals included in this paper is below:

- The introduction of six licensing objectives to form the basis for policy, legislation and regulation in respect of liquor licensing. These are:
 - Promotion of public health;
 - Promotion of public safety;
 - Prevention of crime and disorder;
 - Prevention of public nuisance;
 - Protection of children from harm;
 - Fair treatment of all stakeholders.
- To move from a court-based system to a licensing authority under the aegis of the district councils.
- To provide a modest extension of current opening hours, creating scope for

opening to 02.00am Monday to Saturday and midnight on Sunday, with some extra flexibility for special, major events.

- To introduce, or support the introduction of, a range of measures for the protection of children – including new test purchasing powers and a voluntary proof of age scheme. It is also proposed to offer additional flexibility around allowing children on licensed premises when accompanied by responsible adults.
- To introduce new and more effective measures to enforce licensing laws – such as immediate temporary closure powers for the police, a penalty points system for breaches of the legislation and the creation of new liquor licensing officers.
- To abolish the current categories of licences in favour of a dual system of personal and premises licences
- To abolish the surrender principle following the proposed transfer of the licensing system to district councils.
- To revoke the financial controls and accounts formats prescribed in the Registration of Clubs (Accounts) Regulations (NI) 1997 and to make provision for best practice guidance in their place.

The proposals constitute a balanced package of reform providing additional flexibility, greater accountability and transparency, more effective enforcement and increased understanding of the overall objectives of Northern Ireland liquor licensing legislation.

Annex A: Human Rights Screening

Introduction

It is a requirement of the Human Rights Act 1998 that any proposed legislation is compatible with the European Convention on Human Rights (the Convention). The proposals for new legislation are set out in chapters 3 to 10 of this paper.

Screening Exercise

A screening exercise was carried out in order to assess the compatibility of the proposals with the Convention. Certain areas of the Convention are considered to be particularly relevant and these are as follows:

- The proposals comply with Article 5 of the Convention as the new powers for the police, courts and district councils will increase public safety and security by ensuring that non-compliance with licensing legislation is effectively punished;
 - The proposals also conform to Article 6 of the Convention in that any person applying for a liquor licence or dealing with the licensing authority will receive a fair hearing from an independent body, with right of appeal to the courts;
 - They also comply with Article 14 of the Convention in that all stakeholders will be treated equitably.
- Affect a person's right to life (Article 2);
 - Affect the prohibition of torture (Article 3);
 - Affect the prohibition of slavery and forced labour (Article 4);
 - Affect a person's private or family life (Article 8);
 - Affect the right of a religious organisation to freedom of thought, conscience or religion (Article 9);
 - Affect the right of a person to freedom of expression (Article 10);
 - Affect the right of a person to freedom of assembly and association (Article 11);
 - Affect the right of a person to marry and to found a family (Article 12);
 - Affect the right of a person whose rights and freedoms have been violated to an effective remedy (Article 13);
 - Discriminate against people in an area involving other Convention rights (Article 14).

Conclusion

The screening exercise did not identify any human rights implications.

There will be no impact on the Convention in a number of areas. The proposals do not:

Annex B: Rural Proofing

Rural proofing is a process through which Government policies are examined objectively to ensure that they treat rural dwellers fairly, affording them the same quality of access to goods and services as those who live in other areas.

The ethos of rural proofing is to ensure that the needs and special considerations of rural communities are considered routinely as part of the policy development process. The process of rural proofing should apply to all significant new policies.

It is considered that only two of the policy proposals contained in this document may affect rural communities differently to urban areas:

- Currently, the “surrender” provision controls the number of liquor licences for pubs and off-licences that can be issued in Northern Ireland by requiring an existing licence of either type to be surrendered before a new one can be issued. There is no restriction on the location of the surrendered licence, which could lead to a village pub selling its licence to enable a new bar to open in an urban area. This could leave the rural community bereft of a pub or off-licence but the proposed abolition of “surrender” may make this scenario less likely.

- The transfer to a district council based licensing system which will have regard to a range of local resident and agencies will create a licensing authority with greater local knowledge which will be able to take account of the needs and expectations of rural communities.

As both of these policies will have positive impacts on rural communities, and no negative impacts have been identified, it is considered that the policy proposals will serve rural communities as fairly as urban communities.

Annex C: Initial Regulatory Impact Assessment

Introduction

A Regulatory Impact Assessment (RIA) is a tool that informs policy decisions. It provides a basis for identifying potential impacts and highlights the costs, benefits and risks of a set of proposals.

It is Government policy that all Departments and Agencies, where they exercise statutory powers and make rules that will have a general effect on others, should produce RIAs.

A full RIA will be published following the completion of the public consultation process, when all responses and opinions have been taken into account and the final policies agreed.

This initial partial RIA will inform the public consultation process by highlighting likely impacts and their effects.

Purpose and intended effect

The proposals in this public consultation document are designed to deregulate liquor licensing law by liberalising aspects of the system and removing unnecessary burdens. This will be balanced by introducing new, stronger enforcement measures for the police and the courts in the shorter term and, in the longer term, by the proposed new district council-based licensing authorities armed with a wide range of powers.

The key proposals are:

- The introduction of six licensing objectives to form the basis for policy, legislation and regulation in relation to liquor licensing;
- To move from a court-based licensing system to a licensing authority under the aegis of the district councils;
- To offer a modest extension of the current opening hours by one hour making 11:30am to 02:00am (12:30pm to midnight on Sunday) the maximum period a pub or registered club can generally open; there will be some extra flexibility for special, major events;
- To introduce, or support the introduction of, a range of measures for the protection of children – including a voluntary proof of age scheme and additional flexibility for licensed premises with respect to the presence of children;
- To introduce more effective measures to enforce licensing laws – such as immediate temporary closure powers for the police, a penalty points system for breaches of the legislation and the creation of new liquor licensing officers;
- To abolish the current 12 categories of licences in favour of a dual system of personal and premises licence;

- To abolish the “surrender” principle provision which, in many instances, requires applicants for a licence for a pub or off-licence to acquire an existing licence for surrender to a court before a new licence can be granted;
- To revoke the financial controls and accounts formats prescribed in the Registration of Clubs (Accounts) Regulations (NI) 1997 and to make provision for best practice guidance in their place.
- The current “surrender” principle is regarded by many as anti-competitive and unfair to anyone trying to break in to the licensed trade.
- In terms of health and social development, failure to implement the enforcement proposals will affect the proposed new powers for the police and the licensing authority to target binge drinking and underage drinking.
- Without the introduction of licensing objectives, there is no clear guiding philosophy underpinning liquor licensing decisions.
- Failure to introduce a more representative licensing system would inhibit the development of a coordinated approach, by a range of departments and agencies, to dealing with alcohol related issues.

Risk Assessment

Failure to implement the proposals would have negative consequences for a range of key stakeholders.

- The current system is failing to tackle widespread illegal activity surrounding liquor licensing – including alcohol-related disorder and breaches of liquor licensing legislation. This can also lead to a general diminution of standards and be a disincentive to well run premises.
- Not to implement the proposals would ignore the economic and social changes that have taken place in Northern Ireland in the past twenty years.
- The development of the hospitality, late night refreshment and leisure industries could be hindered, inhibiting their ability to appeal to families, tourists and children;

Options

Option 1

Leave things unchanged – Government believes that to do nothing would be irresponsible and would fail to meet the demands of the thriving night-time economy. It could have an impact on public safety and health through failing to effectively enforce licensing law.

Option 2

Full and immediate implementation of the proposals contained in the public consultation paper and, in particular, the

transfer of responsibility for liquor licensing to district councils. This would be unrealistic in advance of the outcome of the Review of Public Administration which will have a significant impact on our existing district councils.

Option 3

A twin-track process of implementation with certain proposals to be implemented in mid-2007 and others to be introduced following the successful completion of the Review of Public Administration, likely to be 2009.

The Government favours the third option. This will allow some significant changes to be made in the short term but will also give the licensed trade, police and district councils advance notice of the more radical changes proposed in the consultation paper.

The proposals expected to be implemented in 2007 are:

- Opening hours extended to 02:00am;
- Amendment to the conditions of Children's Certificates to create increased flexibility around the presence of children on licensed premises;
- Support for a voluntary proof of age scheme;
- Immediate temporary closure powers for police;

- A penalty points system for breaches of licensing legislation; and
- Revocation of the financial controls and accounts formats prescribed in the Registered Clubs' (Accounts) Regulations (NI) 1997.

The proposals expected to come into operation after 2009 are:

- Introduction of licensing objectives;
- Transfer of the licensing system from the courts to district councils;
- Abolition of Children's Certificates;
- Abolition of the current categories of licence, and the creation of a dual licensing system of personal and premises licences; and
- Abolition of the "surrender" principle.

Benefits

The proposals contained in the consultation paper will have the following benefits:

- New powers for the police and the licensing authority will make enforcement of the law more effective by providing them with greater leverage to bring offending premises into line through a sliding scale of sanctions;
- Transferring the licensing system from the courts to the district councils

- will allow for better control by the introduction of Policy Statements by councils and Operating Plans by licensed premises;
- District councils will be better placed to meet the concerns of local communities;
- There will be greater diversity and choice for consumers, with the late night economy providing wider attractions for a broader age group;
- Improved enforcement and standards will improve public safety;
- There will be greater transparency and accountability as regards the operating conditions of premises, and in terms of premises being more involved in licensing decisions by councils;
- There will be more targeted protection for the young and vulnerable, which could lead to a decrease in levels of underage drinking;
- Increased competition in the late night economy;
- More power for a wider range of people to make views known on new applications and where problems arise on existing licences;
- A reduction in long-term legal costs incurred by individual businesses for applications for licence renewals and extensions;

- There will be less prescriptive regulation of accounts for registered clubs, which will place less of a burden on club officers and distinguish between large and small clubs.

Costs

Compliance Costs

Many of the proposals contained in the consultation paper will not come into effect until 2009 and, at this early stage in the process, it is not possible to subject them to a detailed costing exercise. The purpose of this initial, partial regulatory impact assessment will be to identify where these costs are most likely to arise.

Costs for licensed premises and registered clubs

The transfer from the current licensing system, administered by the courts, to one presided over by district councils is likely to increase compliance costs for registered clubs and licensed premises initially, requiring them to meet new demands (such as the production of an Operating Plan). However, costs will fall in the long term as it will no longer be necessary to apply for renewal of a licence every five years. There may also be increased charges levied by district councils for grant of licences to allow the new system to be self-financing.

As the new system should make it easier for members of the public and other relevant authorities to object to the granting of licences or the conduct of the premises at any time during the lifetime

of the licence, there may also be additional legal costs in terms of defending against these challenges.

Proposals for more effective and appropriate enforcement powers will have no costs for licensed premises and registered clubs that remain within the law.

Costs for district councils

More will be known on the potential costs for district councils when the Review of Public Administration makes its recommendations for the future. However, it is inevitable that responsibility for administering the licensing system such as the creation of local licensing committees and licensing officers will have a cost impact for district councils. In the first instance, there may be legal costs to councils in defending against challenges to their licensing decisions.

Other Costs

The abolition of the surrender provision will have an impact on pubs and off-licences who hold licences which could be worth up to £120k, should the licence holder wish to sell.

Costs for a Typical Business

It is not possible to estimate costs at this early stage in the process. It is likely that many of the costs will be one-off charges associated with responsibility for the system transferring to district councils and will ultimately lead to savings. However, the proposed flexibility in opening hours

also has the potential for pubs and registered clubs to increase their profits by remaining open for a longer period.

Small Business Impact Test

Officials of the Department have met with a number of key stakeholders throughout the licensed trade and corresponded with others. Their views have been taken into account in the formulation of the policy proposals. Feedback on this consultation phase will also be reflected in the final RIA.

Enforcement and Sanctions

Compliance with liquor licensing law is vital as breaches can be detrimental to public health and safety and are often directly linked to increased crime and disorder. The new enforcement proposals will give the police, courts and district councils new, enhanced and practical powers to deal with offenders and ensure compliance. Those involved in running licensed premises and registered clubs will be made aware of any changes to the system to allow them sufficient time in which to ensure compliance.

The Review's proposals will impact on several other Government Departments and Agencies. These include the Police Service of Northern Ireland, the Northern Ireland Courts Service, the Department of the Environment and the district councils. Officials from these organisations have been consulted and will be included in the consultation process.

Monitoring and Review

The impact of implementing the proposals will be assessed through monitoring the numbers who apply for extended opening hours, for licences, the number of licences that are granted and by assessing the impact of the policy proposals on the users and operators most involved in the process.

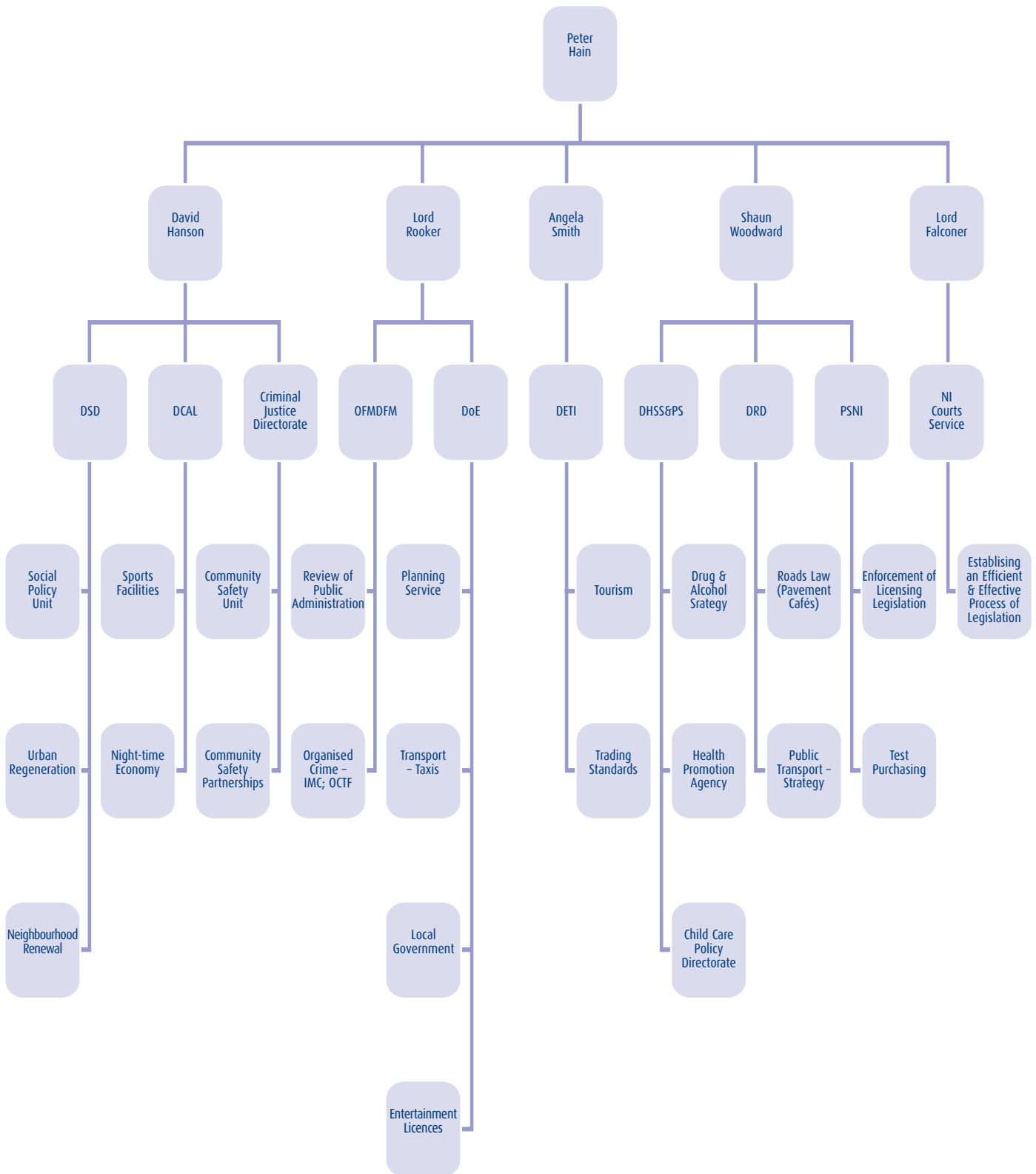
The qualitative and quantitative research that has been carried out as part of the review, involving the public, the police and a range of other key stakeholders, will be repeated periodically. This will highlight any benefits or weakness in the new proposals.

One of the post-2009 proposals is for the creation of licensing forums consisting of representatives of the police, district councils, fire authorities, the licensed trade, registered clubs, residents groups etc. The forums will support district council licensing committees and regular meetings will provide a continuous stream of feedback on the success or failure of the proposals.

Consultation

As already mentioned, the proposals will impact on a number of Government Departments and Agencies. The diagram overleaf provides an illustration of the extent of the proposals' influence and of the bodies with which the Review Team has carried out internal consultation.

The first stage of the review involved pre-consultation and research and culminated in a report to Ministers in June 2005. As part of its work the Review Team met and/or received written submissions from key stakeholders, including representatives of the licensed trade, registered clubs, the tourism industry and church interests.



Public Consultation

The submissions received in response to the consultation paper, which this initial Regulatory Impact Assessment accompanies, will be used to inform the draft legislation to be put forward at the next stage.

The full consultation document will be made available to public representatives, the key stakeholder groups, those listed on the Department's statutory consultees list, representatives of the Section 75 groups and anyone expressing or perceived to have an interest in Northern Ireland liquor licensing.

Summary and Recommendation

In March 2004 John Spellar MP, then Minister with responsibility for social development, announced a review of Northern Ireland's liquor licensing legislation. The main drivers for the review were:

- Government's call to develop the night time economy as an incentive to regeneration, investment and tourism; and
- the commitment by the Department for Social Development, under the DHSS&PS Drugs & Alcohol Regional Action Plan 2002, to examine licensing with reference to social, environmental and wider public health issues;

- trade and media pressure for more flexible opening hours to reflect the new circumstances brought about by the peace process.

Terms of Reference approved for the review were:

To consider the key elements of Northern Ireland's liquor licensing law and practice, with particular reference to the implications for health and public order; and bring forward proposals aimed at striking a balance between facilitating the sale of alcohol, public safety and the public interest.

To refer in particular to the Licensing (Northern Ireland) Order 1996 and the Registration of Clubs (Northern Ireland) Order 1996 and have regard to the following issues:

- opening hours;
- enforcement;
- surrender of a subsisting licence;
- categories of licences;
- wider public health issues;
- licensing laws regarding children;
- social and environmental issues; and
- equality and equity issues.

Changes to policy are necessary and, as with any policy reforms, these will impact on users and operators.

This initial RIA has identified the most obvious impacts of the proposed changes. Given that the benefits of the proposals outweigh the risks, the recommendation at this consultation phase is that all the proposed policies be adopted.

Following the completion of the public consultation process, taking into account the responses received and the opinions given, full RIA's will be completed on each of the proposals.

Your views

- Do you agree with the points that have been made in this RIA?
- Are there any other potential impacts that have not been stated but which you feel merit inclusion?
- If there are any such potential impacts, can you explain them and provide evidence to support your view?

