



House of Commons  
Regulatory Reform Committee

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**Draft Legislative  
Reform (Supervision of  
Alcohol Sales in Church  
and Village Halls &c.)  
Order 2009**

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**Third Report of Session 2008–09**

*Report, together with formal minutes and  
written evidence*

*Ordered by the House of Commons  
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## The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which were approved on 4 July 2007.

### Current membership

Andrew Miller (*Labour, Ellesmere Port & Neston*) (Chairman)  
Gordon Banks (*Labour, Ochil and South Perthshire*)  
Lorely Burt (*Liberal Democrat, Solihull*)  
Mr Quentin Davies (*Labour, Grantham and Stamford*)  
Mr James Gray (*Conservative, North Wiltshire*)  
John Hemming (*Liberal Democrat, Birmingham, Yardley*)  
Mrs Sharon Hodgson (*Labour, Gateshead East & Washington West*)  
Mr Stewart Jackson (*Conservative, Peterborough*)  
Judy Mallaber (*Labour, Amber Valley*)  
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Mr Mark Prisk (*Conservative, Hertford and Stortford*)  
Mr Jamie Reed (*Labour, Copeland*)  
Mr Anthony Steen (*Conservative, Totnes*)  
Phil Wilson (*Labour, Sedgefield*)

### Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union.

## **Publications**

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/regrefcom](http://www.parliament.uk/regrefcom). A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

## **Committee staff**

The current staff of the Committee are John Whatley (Clerk), Neil Caulfield (Inquiry Manager) and Liz Booth (Committee Assistant).

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Delegated Legislation Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is [regrefcom@parliament.uk](mailto:regrefcom@parliament.uk).



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## Summary

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The draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009<sup>1</sup> was laid before Parliament on 8 December 2008. It would allow administrators of community premises with a properly constituted management committee to apply for exemption from the requirements under which designated premises supervisors and personal licence holders must authorise alcohol sales. Instead, the management committee would be responsible for authorising sales of alcohol. Applications for exemption would be assessed on a case-by-case basis.

The terms of the draft Order are intended to benefit those community premises that successfully obtain exemption by eliminating the need to find designated premises supervisors—who are often volunteers—and by eliminating the costs ancillary to the requirement for a supervisor. The effect would be to assist community premises to remain financially healthy and thereby support their local communities.

Provided that applications are properly considered on an individual basis, and given that licences are always subject to application for review (including by the police) in instances of mismanagement, **we believe that the proposal in the draft Order would benefit local communities while preserving adequate safeguards against abuse.**

**The Government has proposed that the Order be dealt with under the negative resolution procedure. Given that the Order concerns arrangements for supervising alcohol sales and given also the general sensitivity surrounding licensing issues, we consider that the House should have the opportunity expressly to approve it. Consequently, whilst we recommend that the Order itself should proceed, the procedure should be upgraded to the affirmative resolution procedure.**

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<sup>1</sup> The Order was laid with a date of 2008 but if approved would be made in 2009



# 1 Introduction

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1. The draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009<sup>2</sup> and Explanatory Document (ED) were laid before Parliament on 8 December 2008 by the Department for Culture, Media and Sport (DCMS) under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA). A number of written questions about the draft Order were put by us to the DCMS, the responses to which are annexed to this Report.

## 2 Background

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### Supervision of premises under the Licensing Act 2003

2. The Licensing Act 2003 (the 2003 Act) established a dual regime for the licensing of premises and of those who supervise activities within them. Temporary events have their own set of provisions.<sup>3</sup> Permanent premises licences and club premises certificates are applied for under the provisions in Part 3 or Part 4 of the 2003 Act respectively. Importantly, a premises licence does not have to be renewed, although changes to the premises must be approved by the licensing authority, and the premises licence must at all times stand in the name of an individual or corporate body.<sup>4</sup> There are analogous although somewhat different provisions for clubs.<sup>5</sup>

3. However, under section 19 of the 2003 Act, it is a condition of all premises licences which permit the supply of alcohol that there be a designated premises supervisor (DSP) for those premises at any time when alcohol is supplied, and furthermore that the DSP must hold a valid personal licence. There is a second condition, which is that every supply of alcohol at the premises must be made or authorised by the holder of a personal licence. Together, these two conditions are known as the “mandatory conditions”. They are intended to ensure that there is a trained and approved individual who can be held to account for the proper supervision of alcohol sales. However, neither the DSP nor the personal licence holder is required to be present on the premises at all times.

4. Personal licences are subject to criminal records checks and require a training course to be undertaken which gives instruction on matters such as the law in relation to underage drinking and police powers to enter premises. It is an offence for a personal licence holder not to declare relevant convictions (for example, for drug-related or licensing offences or violent crime). There are procedures under the act for revoking personal licences upon conviction for such offences.<sup>6</sup> Otherwise, a personal licence is valid for ten years.

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2 See footnote 1

3 See Part 5 of the 2003 Act

4 See 2003 Act, section 27 – a premises licence will lapse if the individual who holds it dies or if the company who holds it becomes insolvent.

5 “Clubs” in this context means members’ clubs such as working men’s clubs, rather than nightclubs to which the public are admitted

6 See 2003 Act, Part 6

5. For commercially run premises such as pubs, the mandatory conditions do not generally present a problem, because the cost of recruiting and training DSPs and personal licence holders can be supported from the profits of the business. However, for charitable institutions and small venues such as local theatres or church halls, the cost of having a DSP and personal licence holder is burdensome, and there can be difficulty in finding people to fulfil the required roles. Typically, it costs of the order of £275 for a volunteer to gain a personal licence.<sup>7</sup> There is a further cost in reapplying to the local authority when the DSP changes, as might be the case when an incumbent leaves the area. Gap periods in which there is no DPS mean that premises might have to forgo substantial opportunities for revenue or even cancel an event or series of events.<sup>8</sup>

### 3 What the draft Order proposes

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6. The draft Order would allow the properly constituted management committees of community premises to apply to replace the mandatory conditions with a simpler and cheaper requirement, whereby the responsibility for alcohol sales would lie with the management committee as premises licences holder. In considering the application, the licensing authority would be required to take into account any representations from the police, and the mandatory conditions could always be re-imposed following any review of a premises licence in accordance with section 51 of the 2003 Act. Importantly, the disapplication of the mandatory conditions could be made conditional on management committee members attending training if it was believed that standards in supervision of alcohol sales at a particular set of premises were unsatisfactory. There would be a fee of £23 for considering applications.

### 4 Preconditions and tests for LROs

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7. The LRRA sets out tests for a legislative reform order (LRO) made pursuant to section 1 of the LRRA. In addition, our standing orders require us to consider whether LROs give rise to issues under the criteria for consideration of statutory instruments in Standing Order No. 151 (such as whether the draft Order appears to have retrospective effect) and whether the draft Order purports to make an inappropriate use of delegated legislation.

**8. In the present case, we do not consider that any issues arise under Standing Order No. 151, nor that there are any issues of constitutional significance arise. This report therefore addresses only the other relevant criteria: whether a burden exists, whether the proposal is proportionate and strikes a fair balance between the public interest and any adversely affected parties, whether there is removal of necessary protection, whether the continued exercise of reasonable rights and freedoms is prevented, and whether the Order is appropriate for delegated legislation.**

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7 See ED page 5 paragraph 22

8 This was pointed out by several consultation respondents

## 5 Consultation

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### Options presented on consultation

9. A first-stage consultation on the proposals took place between 8 August 2007 and 31 October 2007, with a short second-stage consultation on the draft Order, guidance, proposed fee and application form during August 2008. Four options were presented in the first consultation. The first proposed blanket removal of the mandatory conditions in relation to community premises, with no opportunity for re-imposition of the conditions. The second likewise proposed blanket removal, but with the opportunity for conditions to be re-imposed on a case-by-case basis. The third, described above and now contained in slightly modified form in the proposal before the Committee, was the Government's preferred option. The fourth was to leave the position as it is.

### Consideration of the proposals in the draft Order including points made in consultation

#### *First-Stage Consultation*

10. There were 116 responses to the first consultation. The majority of respondents who expressed a preference indicated a preference for the Government's proposed option, but a significant minority (34%) favoured either Option 2 (blanket removal of conditions with the opportunity for re-imposition) (which received 20% support) or Option 4 (do nothing) (which received 14% support). Although there was therefore broad support for a relaxation in the law, concerns were raised about the lack of trained supervision of premises. However, even under the current regime, DSPs and personal licence holders are not required to be present at all times, but merely to be responsible in overall terms for approving sales.

11. It seems to us that the key issue here is to maintain responsible membership on management committees. We asked about that point and we note that the matter of how to deal with changes in the management committee is still being reviewed.<sup>9</sup> The members of the management committee responsible for approving alcohol sales should be individuals who are capable of understanding the risks involved particularly in third-party (i.e. outside visitor and hire) events such as 18th and 21st birthday parties. **We therefore encourage the Department to require that membership of and changes to the management committee be notified to the licensing authority by simple communication copied to the police, so that a review under section 51 can be promptly initiated if the composition of the management committee is no longer believed to be satisfactory.**

12. Following the consultation, it was decided to include a requirement for an appropriate management committee structure in the draft Order itself, rather than in the guidance. It was further decided that the guidance would include advice on how to assess whether premises met the requisite definition of community premises. **We consider that, taken with proper application of the safeguards contained in the originally proposed measure**

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9 See Annex 1, question 3

(and taken with the availability of section 51 review and also section 53A expedited reviews),<sup>10</sup> and subject to the recommendation in paragraph 11, those modifications to the original proposals meet the concerns expressed in consultation.

13. The savings that it is estimated will be recouped as a result of implementing the Government's proposal are set out in paragraphs 22 and 23 of the ED. While they are far from huge, they are clearly sufficient to make a difference to the financial health of small organisations. The proposal received a wide base of support from such organisations and from that point of view is to be welcomed.

14. A substantial number of respondents to the first consultation suggested expanding the scope of the temporary event notices (TENs) regime, which allows sale of alcohol on a one-off basis subject to a cap of 12 such events per year. The Government has responded that the TENs regime is already "light touch" (in the sense that it is a system of simple notification rather than consideration and approval) and that it does not wish to expand the regime for the time being. In any event, we are not sure that suggestions such as for an increase in the cap from 12 events per year to 15 events per year would adequately solve the problems that are sought to be addressed by the draft Order. As a solution to the present problem, such an increase would run the risk of merely displacing the level at which frustration with bureaucracy manifests itself.

### **Second-Stage Consultation**

15. There were 67 responses to the second-stage consultation. Consultees suggested that the application form give more guidance on how applicants should describe their management committee structure, and there were some concerns about the proposed fee of £23 being too low. Wandsworth Council, which had not made a submission in the first consultation, was concerned about the risks of crime and disorder arising from unanticipated paying parties at community venues.

16. We agree that there is scope for confusion among applicants about the degree of detail that they should submit in describing their management committee structure. It is important that this be clear and we urge the DMCS to take steps to get this aspect of the application form right. Notwithstanding what is said in paragraph 47 of the ED about the nature of premises being "self-evident" and about appropriate management structures mostly being already in place, such that consideration of applications should be straightforward, we can also see some merit in the view that the proposed fee of £23 will not allow sufficient time for a proper consideration of whether there is an appropriate management structure and of whether the premises that are the subject of the application genuinely fall within the definition of community premises. Proper consideration will be important in ensuring that the proposal does not create the sort of circumstances that worried Wandsworth Council. **We therefore recommend that the fee level be kept under review. We note that applications will be considered particularly carefully where it**

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<sup>10</sup> Expedited reviews were introduced by the Violent Crime Reduction Act and can result in immediate closure of premises

appears that there might be an intention to run premises on a quasi-commercial basis.<sup>11</sup> We welcome the fact that that is the view being taken by the DCMS.

17. Subject to the above recommendations, we believe that the proposals have been the subject of adequate consultation and have taken proper account of that consultation. We also believe that the draft Order meets the tests imposed by the Act as referred to in paragraph 8.

## 6 Conclusions

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18. The Government has recommended that the draft Order be proceeded with under the negative resolution procedure. **Given the draft Order's subject matter, we believe that it should be subject to formal approval by the House, rather than non-objection as would occur under the negative resolution procedure, and we therefore propose that the draft Order be dealt with under the affirmative procedure. Nevertheless, we recommend that the draft Order be approved and proceeded with in accordance with section 17(2) of the Legislative and Regulatory Reform Act 2006.**

19. Article 4 of the draft Order inserts a new section 41D into the Licensing Act 2003 after section 41C. Sections 41A to 41C would be inserted by the Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009. We have recommended that the draft of that Order should be subject to the super-affirmative resolution procedure. If the Government goes ahead with the Order considered here before the one dealing with minor variations, it will be necessary to make a minor change to the draft to reflect the absence of sections 41A to 41C.

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<sup>11</sup> See ED paragraph 31

## **Annex: Responses from DCMS to Inquiry Manager of the Committee requesting information**

### **1. Currently, qualified designated premises supervisors have to undergo training, but the LRO would mean that premises could sell alcohol without any trained individual being present to supervise. Why was the presence of a trained individual at certain events - especially those involving large numbers of people - not deemed necessary?**

At the outset, we think it is important to note that there is no existing mandatory requirement for a designated premises supervisor (DPS) or personal licence holder to supervise every alcohol sale, or for such a person to be present on every occasion when alcohol is being sold. An alcohol sale must, at a minimum, be authorised by a personal licence holder (who may or may not be the DPS). But authorisation is a sufficiently flexible concept to allow for, e.g. a personal licence holder to give permission in general for alcohol sales by certain persons even when the personal licence holder cannot always be present at the premises. It would be possible for licence conditions to be imposed requiring a personal licence holder to be present at all or at certain times when alcohol is being sold if this was needed to promote the licensing objectives. But such conditions are not currently mandatory.

In answer to the Committee's question, the Department considers that the process for applying the alternative mandatory conditions in the draft LRO, and the conditions themselves, provide adequate safeguards for the supervision of alcohol sales for the types of premises which may apply for them.

Under the draft LRO, on an initial application for a premises licence or an application to vary an existing licence to include the alternative licence condition, the licensing authority (LA) must be satisfied that (a) management arrangements for the premises are sufficient to ensure adequate supervision of the supply of alcohol, and (b) the inclusion of the usual mandatory conditions is not necessary for the promotion of the crime prevention objective. If the LA is not so satisfied, the conditions requiring a DPS (who is a personal licence holder) in respect of the premises and the authorisation of alcohol sales by a personal licence holder will continue to apply. Where the LA is so satisfied, the alternative licence condition will apply.

The police may object to the inclusion of the alternative condition on the grounds of crime prevention. This includes the prevention of criminal offences related to the sale of alcohol, such as the sale to underage persons, to persons who are drunk, etc. Both the police and the LA therefore have substantial scope for assessing the adequacy of the arrangements proposed for the supervision and authorisation of alcohol sales in the event that the alternative mandatory conditions were to be applied. The final decision rests with the LA, which in reaching its decision will be bound by its duty in section 4 of the Act to carry out its functions with a view to promoting the licensing objectives (which include the prevention of crime such as unlawful alcohol sales, and the protection of children from harm).

The alternative condition itself provides that every sale of alcohol made pursuant to the licence must be made or authorised by the management committee. A breach of this condition is a very serious criminal offence under s136 of the Act, attracting a maximum penalty of a £20,000 fine, six months' imprisonment, or both.

In cases where the alternative condition has been applied, interested parties or responsible authorities may apply for a review of the licence on grounds related to any of the licensing objectives. Such a review could result in the reinstatement of the usual mandatory conditions, or the inclusion of additional conditions relating to the supervision of alcohol sales.

In devising the current proposal in consultation with stakeholders, the Department has sought to achieve a balance between the need to remove the cost burden of personal licence training from community premises and the need to uphold the licensing objectives by ensuring that alcohol sales are properly supervised. Given the safeguards outlined above, as applied to premises where the nature of the activities generally poses little threat to the objectives, the Department believes it has got the balance right.

### **2. Will police have sight of the individual identities of management committee members and be able to object on the basis of their knowledge of the personal history of an individual?**

The Department considers that this issue (and the issue of changes in the composition of the management committee) would best be dealt with by reference to the prescribed application form and the prescribed form of licence under sections 24 and 54 of the Act. We are currently reviewing the matter in light of responses to the consultation on the draft LRO.

In the Department's view any conclusion on this matter will need to take account of the already existing safeguards in the draft LRO, particularly the role of the LA in scrutinising the adequacy of the proposed supervision arrangements for alcohol sales.

**3. What procedure will apply upon change of circumstances? For instance, if the membership of the management committee changes, will the police have an opportunity to object other than by way of general review?**

See the answer to Question 2 above.

**4. It might be the case that certain premises licensed for alcohol sales could cope with, for example, as many as 100 or 200 attendees without the need for a designated premises supervisor, while other premises might require more careful control and the presence of trained supervision. Would it be possible to make the approval of certain applications conditional e.g. on maximum numbers of attendees?**

It would be possible to attach such conditions in individual cases, provided the usual criteria in the Act (as interpreted taking into account the statutory Guidance) were met. In cases where the only issue before the LA is the inclusion or otherwise of the alternative licence condition (namely, where an existing licence-holder applies to vary the licence so as to include that condition), the scope of the exercise will necessarily be limited by the matters set out in section 41D of the Act. However, in these cases additional conditions could be included through amendment of the application following consultation with the police, who have substantial scope to object to an application if they are not satisfied with the proposed supervision arrangements (see the answer to Question 1 above).

**5. What division of civil and criminal liability will apply for non-observance of premises licence terms in situations where premises are hired out?**

The draft LRO will not affect the availability of criminal sanctions (e.g. for sales to underage persons or persons who are drunk) or civil remedies (e.g. under occupiers' liability or contract) in respect of hired-out premises (or otherwise). The legal criteria will remain the same in each case, with the one exception mentioned in the response to Question 1 above; namely that it will be the alternative licence condition rather than the ordinary conditions in section 19(2) and (3) that will potentially attract the serious penalties in s136 of the Act. In other words, sales of alcohol that are not made or authorised by the management committee will amount to criminal conduct in the same way as sales not made or authorised by a personal licence-holder. This could involve criminal liability on the part of the person making the sale, and also on the part of the members of the committee who are responsible under the licence for authorising sales. (For example, the committee members could be liable for knowingly allowing licensable activities to be carried on otherwise than in accordance with an authorisation (s136(1)(b)), subject to the defence of due diligence provided in s139).

# Formal Minutes

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**Tuesday 20 January 2009**

Members present:

Andrew Miller, in the Chair

Gordon Banks  
Lorely Burt  
John Hemming

Judy Mallaber  
Dr Doug Naysmith

Draft Report (Draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.)), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 19 read and agreed to.

Summary agreed to.

A Paper was appended to the Report as an Annex.

*Resolved*, That the Report be the Third Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

[Adjourned to a date and time to be fixed by the Chairman.]



## List of Reports from the Committee during the current Parliament

### Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
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### Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090