



House of Commons  
Regulatory Reform Committee

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**Draft Legislative  
Reform (Licensing)  
(Interim Authority  
Notices etc) Order 2010**

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**Third Report of Session 2009–10**

*Report, together with formal minutes*

*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 was 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*)  
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)  
John Penrose (*Conservative, Weston-Super-Mare*)  
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 purpose of the draft Order is to extend the timescales prescribed by the Licensing Act 2003 in relation to interim authority notices, reinstatement transfers, and temporary event notices.

Interim Authority Notices (IANs) permit temporary reinstatement of licences in favour of certain categories of people following, for example, the death of the licence holder. Currently, they must be filed within seven days, following which they run for two months. This period enables a suitable permanent licence holder to be found if desired. The proposal would extend the filing time to 28 days and the two-month period to three months. The police would have two working days to object, rather than the current 48 hours which creates problems when, for instance, an IAN is received at the start of a weekend and does not come to the attention of the relevant police officer until the start of the following week.

Reinstatement Transfers (RTs) are used when a suitable person has already been identified as permanent transferee of the licence (essentially, the person who will be legally responsible for running the business). Again, there is currently a seven-day application time limit. The proposal would extend this to 28 days, consistent with the revised 28-day period for IANs. The police would have two working days to object to temporary event notices (TENs) rather than the current 48 hours.

The proposals seem entirely sensible, and therefore, subject to the possible need for further review in one area, we recommend that an Order in the terms of the draft Order be approved. Because the proposals relate to licensing legislation, however, we believe the House should have the opportunity expressly to approve them notwithstanding their straightforward nature and the support that they received in consultation, and we therefore recommend an upgrading of the applicable procedure from negative (as the Department for Culture, Media and Sport recommended) to affirmative.



# 1 What the draft Order proposes

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## Introduction

1. The draft Legislative Reform (Licensing) (Interim Authority Notices etc) Order 2010 and Explanatory Document (ED) were laid before Parliament by the Department for Culture, Media and Sport (DCMS) on 10 March 2010 under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRA). The draft Order relates to activities that generally need a local authority premises licence under the Licensing Act 2003 (the Act). Those activities are summarised in paragraphs 8 to 11 of the ED, and in outline they comprise the business of providing alcohol, entertainment facilities or late-night hot food or drink.

## Proposal to allow more time in relation to interim authority notices and reinstatement transfers

2. Section 27 of the Act provides that premises licences lapse upon the death, mental incapacity, insolvency or dissolution<sup>1</sup> of the licence-holder. To allow time for a new licence holder to be approved, sections 47 to 50 of the Act set out procedures for reinstating licences following lapse. Under sections 47 to 49, persons connected to the former licence holder<sup>2</sup> or who have a statutorily prescribed interest in the premises<sup>3</sup> are able temporarily to reinstate the licence for two months (subject to any police objection on crime prevention grounds) by sending an “interim authority notice” (IAN) to the licensing authority (with a copy to the police) within seven days of the relevant event. This procedure is useful for people who may not themselves qualify as an applicant under section 16 of the Act (for instance, because they are not the person who will carry on the business).<sup>4</sup> It allows time for a substantive application for transfer of the premises licence to someone who does so qualify.

3. Section 50 provides for reinstatement of the licence to someone qualifying under section 16. It is a simpler procedure, but can only be used if a suitable qualifying person has already been identified. This is not always the case, which is why the IAN procedure is necessary as a backup.

4. The current time limits can cause hardship. Spouses of deceased licence holders, for instance, have to organise the submission of the IAN within seven days of the licence holder’s death, failing which they must go through an entire new licence application procedure from scratch. This can take several weeks, and is costly (the fees can be upwards of £385). It can also result in substantial loss of business while the relevant premises are out of action.

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1 The Act permits the holding of licences by companies

2 Typically, the personal representative in the estate of a deceased licence holder, or the insolvency practitioner handling the affairs of an insolvent individual

3 Someone owning a freehold or leasehold interest in the premises

4 Section 16 is the principal provision of the Act stipulating who can apply for a premises licence

5. The draft Order would extend the seven-day periods to 28 days and the two-month period for which IANs run to three months. Three months would allow more time for applicants to arrange their affairs and decide whether to apply for a permanent licence transfer. The seven-day period for lodging an RT application would similarly be extended to 28 days.

6. The draft Order would also amend the period within which the police can object to an IAN from 48 hours to two working days, to avoid problems in dealing with notices that arrive at the end of the working week.<sup>5</sup> The term “working day” is defined in the Act.<sup>6</sup>

### **Proposal to allow more time for objection to temporary event notices**

7. Temporary event notices are a form of temporary licensing authorisation permitted by the Act which include limitations such as stipulations on time and capacity.<sup>7</sup> They cannot be granted for periods longer than 96 hours. The police currently have 48 hours in which to object to a TEN. Article 3 would amend this to two working days, consistent with the change with regard to interim authority notices.

### **Territorial extent**

8. Licensing matters are not yet devolved to Wales and the draft Order would therefore extend to England and Wales.

## **2 Consultation**

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9. Consultation took place from 8 December to 9 February 2010. At consultation stage the proposals were part of a broader package of proposals which in addition to the measures now proposed included a procedure for accepting late TEN applications and for simplifying consultation arrangements for local government licensing arrangements. Opinions on the latter proposals were divided (about a third of respondents apparently supported the principle, but not the details), and they are therefore being reconsidered.

10. A total of 74 respondents provided submissions in response to the consultation. Consultees agreed that the current seven-day deadlines are not practical and should be extended. Several cases of real hardship flowing from the seven-day restriction were cited. Similarly, consultees agreed that three months would provide a more realistic time period for determining who should take over as licence holder.

11. Only two respondents, Medway Council and Birmingham City Council expressed reservations. Medway was concerned that the temporary licence holder might not have adequate awareness of licensing legislation and of what the law requires of a licence holder. In response, DCMS observes that the law already accepts the principle of a period during which a temporary licence holder has been put forward but in which the police have not

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5 Police objection to an RT can be dealt with under other provisions and do not require a special time limit

6 Section 193

7 TENs cannot be granted for periods in excess of 96 hours

yet had the opportunity to object, and that all the conditions of the licence (together with penalties for breach and opportunity for review) would continue to apply. Medway in any event supported the proposals on balance.

12. Birmingham supported the proposals as a whole but had reservations as to the need for a three-month IAN period. In response the Government cited the cases referred to by other respondents in which the current two-month period had proved inadequate.

13. Consultees recognised the problems that arise from the current 48-hour time limit for police objection, and almost unanimously supported a move to two working days. Consultees cited instances in which notices have intentionally been deposited at remote police stations on Friday evenings as a means of seeking to circumvent police objection.

14. As part of the consultation the opportunity was taken to canvass opinion on whether police consideration time for objecting to TENs should be extended to three working days, although this could almost certainly not be brought within the scope of either principle objective of the LRA (reduction of burdens or promotion of regulatory principles). The majority of consultees opposed an increase to three working days because of the effect it would have in reducing the time to arrange hearings to consider police objections, given the ten-day long-stop time limit for licensing authorities to decide whether to object to a TEN. However, it is worth noting that some nine out of approximately 25 local authorities or local authority licensing groups that addressed the point (i.e. a substantial minority) took the view that there was a case for giving the police a longer period to object despite the inconvenience it would cause in terms of reduced time for arranging hearings. All six police forces that addressed the point were in favour of a longer period than two working days. Arguments in favour of a longer period included the increasing number of TENs applications that police forces are being required to handle, the amount of time required to process non-straightforward applications, and the inadequate opportunity afforded under the current system for checking criminal records.

15. Counter-arguments included the point that a longer objection period would increase the period of uncertainty during which events organisers would have no decision on their TEN application, making it more difficult to proceed with arrangements for the event and increasing financial exposure. We note the concerns of bodies representing TENs applicants in that regard, although in many cases it would presumably not be impossible for a TEN applicant simply to build the possibility of an extra day of uncertainty into its initial planning.

16. Given this, but taking into account the strong arguments made by some bodies for allowing the police a short amount of extra time, **we recommend that DCMS keep the matter of the police objection period for TENs under review.**

17. **We conclude that there was an adequate process of consultation and that the proposed measures have wide support. However, we note that the consultation period, which included the Christmas vacation period, ran for only nine weeks rather than the recommended twelve. We note the reasoning given by DCMS: that earlier consultation had taken place, that there was broad consensus in support of the proposals and that**

there was a pressing need to deliver savings.<sup>8</sup> However, notwithstanding Cabinet clearance for an abbreviated ten-week consultation period on this basis (the ultimate nine-week period was, regrettably, the result of a date miscalculation), we regret this departure from good practice, particularly as we have commented previously on the desirability of conforming to guidelines for consultation periods unless there are exceptional reasons justifying departure.<sup>9</sup> However, we commend the thoroughness of the ED in this instance, which was admirably comprehensive in its explanation of the issues and its summary of the views of consultees.

### 3 Preconditions and Tests

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18. The Committee is charged with assessing whether the proposals meet the conditions in the LRRRA and with examining them against various tests (those set out in Standing Order No. 151, appropriateness for delegated legislation, and compatibility with European Union obligations). In the present case it would appear that the tests requiring substantive scrutiny are:

- a) whether burdens are reduced and/or section 2 of the LRRRA is complied with;
- b) proportionality;
- c) whether each provision taken as a whole strikes a fair balance between the public interest and the interest of adversely affected persons;
- d) whether necessary protections are removed; and
- e) whether the provisions prevent any person from continuing to exercise a right that that person might reasonably be expected to continue to exercise.

19. So far as the changed time limits for IANs and RTs are concerned, DCMS estimates that the Article 2 proposals will lead to cost savings of between some £5.5m and £10.5m per year, largely from reduction in lost turnover but also from reduction of the need to apply for new premises licences. Purely administrative savings (i.e. excluding loss of business and taking into account only those savings that would flow from reduction in use of the full licence application procedure) are estimated at between £172,000 and £564,000 per year. **We agree, therefore, that DCMS has demonstrated that the proposals would result in a reduction in burdens.**

20. So far as the revised police objection periods are concerned, DMCS invokes section 2 of the LRRRA, which concerns promotion of, *inter alia*, consistent regulation, arguing that the adjustment of the time period to one that excludes weekends and Bank Holidays will allow for proper scrutiny and therefore greater consistency. **We agree that a time limit of two working days would allow for greater consistency of assessment of TEN applications by the police.**

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8 See Appendix

9 See Tenth Report of 2008-09

21. The extended time limits appear entirely proportionate to the objective of permitting a more equitable and workable system. The only substantive objections so far as the other tests are concerned are those raised by Medway Council, which are addressed above, and the point that changing the police objection period from 48 hours to two working days will reduce the effective window for a hearing in cases where notification happens just before a weekend or Bank Holiday. However, DCMS rightly point out that the choice of when to notify is to a large extent in the hands of the applicant. The advantages of allowing an appropriate time for police consideration of TEN applications would appear to outweigh this inconvenience.

22. **We agree that the proposals meet the required preconditions and tests.**

## 4 Conclusion

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23. **We conclude that a satisfactory case in favour of the proposals has been made out and that the relevant tests are met. However, given that that the proposals relate to licensing, we recommend an upgrade of procedure from negative to affirmative, but subject to that we recommend that an Order in terms of the draft Order be approved and made.**

# Formal Minutes relating to the report

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**Tuesday 23 March 2010**

Members present:

Andrew Miller, in the Chair

Gordon Banks  
John Hemming  
Judy Mallaber

Dr Doug Naysmith  
Phil Wilson

Draft Report (Draft Legislative Reform (Licensing) (Interim Authority Notices etc) Order 2010), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 23 read and agreed to.

Summary agreed to.

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

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

[Adjourned till Tuesday 30 March at 9.30 pm]

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

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

### Session 2009-10

First	Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2010	HC 288
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### Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
Second	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009: Second stage	HC 209
Third	Draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	HC 210
Fourth	Draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009	HC 399
Fifth	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 400
Sixth	Draft Legislative Reform (Limited Partnerships) Order 2009	HC 794
Seventh	Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009	HC 795
Eighth	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 883
Ninth	Themes and Trends in Regulatory Reform	HC 329-I and III (597)
Tenth	Draft Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2009	HC 1108
Eleventh	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 1111

### 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 (1186)
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090