

REGULATORY IMPACT ASSESSMENT

1. Title of the Proposal

VIOLENT CRIME REDUCTION BILL: CLOSURE OF PREMISES FOLLOWING PERSISTENT SALES OF ALCOHOL TO PERSONS UNDER 18 YEARS OLD

2. Purpose and Intended Effect

(i) The objective

2.1 The objectives of the proposal are to:

- protect children from harm, including self-inflicted harm;
- deter and to reduce current levels of unlawful sales of alcohol to people under 18;
- reduce consumption of alcohol by persons under 18; and
- reduce alcohol-related crime and anti-social behaviour, particularly by young people.

(ii) The background

2.2 The age limit of 18 regarding alcohol purchases has been the law in England and Wales since the coming into force of the Intoxicating Liquor (Sale to Persons under Eighteen) Act 1923. Despite the existence over the ensuing years of offences aimed at reducing underage purchase and consumption of alcohol, it remains the case that many children are able to obtain alcohol from some licensed sources now with ease. Since 1988, several attempts have been made to strengthen the offences and to make prosecution and conviction of offenders easier. These efforts have included:

- making sales of alcohol to children an absolute offence (Licensing Act 1988);
- restricting the defence of due diligence (Licensing Act 1988);
- expanding those who are liable to prosecution for the offences (Licensing (Young Persons) Act 2000);
- further restricting the defence of due diligence (Criminal Justice and Police Act 2001);
- placing “test purchasing” of alcohol on a statutory footing (Criminal Justice and Police Act 2001); and
- making the offence of selling alcohol to children subject to fixed penalty notice procedures (November 2004).

2.3 An Alcohol Misuse Enforcement Campaign in the summer of 2004 found that in premises targeted by test purchasing operations almost 50 per cent were committing offences of selling alcohol to children. A similar campaign during the Christmas/New Year period of 2004/2005 found that out of 989 test purchasing operations on targeted establishments, 32 per cent of on licence and 32 per cent

of off licence premises were found to be selling to under-18s.

2.4 Subject to certain exceptions, it is currently an offence under section 169A of the Licensing Act 1964 to sell alcohol to children under 18 in licensed premises; and a similar offence, which will have force in any place, will exist under section 146 of the Licensing Act 2003 when it comes into effect at the end of the Act's transitional period ("the second appointed day"), which is currently expected to be in November 2005.

2.5 Although the Licensing Act 2003 will increase the maximum fines for offences related to sales of alcohol to children from £1,000 to £5,000, the impact of convictions for such offences falls on the individual offender and therefore not necessarily on the business carrying on the licensable activity at the premises. Similarly, conviction may lead to the suspension of a personal licence if one is held by the offender, but not the premises licence which authorises sales of alcohol at the premises concerned. Whether any action is taken in respect of the premises licence will depend on the police or trading standards officers applying to the licensing authority for a review of the premises licence. Whether any action is taken to suspend or revoke the premises licence would then depend on the view taken by the licensing authority following a hearing.

2.6 On 21 January 2005, the Government published a consultation document entitled "Drinking Responsibly". It contained several proposals relating to the need to reduce the unlawful selling of alcohol to minors. It argued that the existing and future offence provisions and the increased penalties associated with the implementation of the Licensing Act 2003 may be insufficient in themselves to curb the current level of unlawful sales. A key proposal was to legislate to create a power for the police and trading standards officers (inspectors of weights and measures) to close premises for a period of up to 48 hours where there was evidence of persistent unlawful selling to children.

2.7 The consultation ended on 28 February 2005.

(iii) Rationale for Government intervention

2.8 None of the remedial measures, described in paragraph 2.2 are considered to have impacted sufficiently on levels of alcohol consumption by under 18s or the extent to which alcohol is sold unlawfully in some licensed premises. Research evidence shows that alcohol is a contributory factor in raising levels of youth crime. Other research evidence has long established that too early an exposure to alcohol impacts adversely upon:

- health;
- educational attainment;
- job prospects;
- misuse of other harmful drugs;
- involvement in unsafe sex; and
- involvement in crime.

2.9 The number of children under 16 that consume alcohol has not changed significantly since 1988: (around a quarter drink alcohol). However, those who do drink are drinking more. Over the last decade, the average number of units of alcohol consumed per week by such children has almost doubled, from 5.3 in 1990 to 9.8 in 2001.

2.10 “Test purchasing” research, conducted in 2000 under the sponsorship of the Alcohol Education Research Council and involving children holding valid “proof of age” cards showing that they were underage, revealed that in over 80 per cent of the tests, the child was still able to complete a successful purchase of alcohol. The Alcohol Misuse Enforcement Campaigns in 2004 also indicated that current offences and associated sentences are an inadequate deterrent to these levels of criminal activity.

2.11 In addition, young drinkers aged between 16 and 24 engage more often than the general population in binge drinking and are more likely to suffer accidents and acute incidents of poisoning.

2.12 In terms of crime, alcohol is most associated with:

- breach of the peace;
- criminal damage; and
- assault (including sexual assault).

2.13 Table 1 below shows the number of individuals proceeded against for selling to underage persons, those found guilty and those given fixed penalty notices between 2000 and 2004.

Table 1

Persons proceeded against				Persons found guilty				Persons given PNDs
2000	2001	2002	2003	2000	2001	2002	2003	2004
130	155	168	604	56	53	105	416	85

2.14 The table clearly shows that changes made by the Government to the defence of due diligence in 2001 and of placing “test purchasing” on statutory footing have resulted in:

- an increase in the number of offenders detected and proceeded against with regard to selling to minors; and
- an increase in the rate at which those who are proceeded against are convicted.

However, approximately 1 million people work in the on- and off-trade selling alcohol, and although the Alcohol Misuse Enforcement Campaigns have shown significant levels of offending, the table also shows the very small number (about 0.06 per cent) proceeded against.

2.15 Failing to address the impact of underage drinking, would be detrimental to the whole population, including:

- children themselves;
- parents;
- victims of crime and anti-social behaviour.

2.16 The risks associated with not acting to deal with the current level of unlawful selling therefore fall into two main areas:

- the impact on children themselves; and
- the impact on levels of crime and anti-social behaviour, associated with youth crime, which itself impacts on the wider community.

3. Options

Option 1 – Do not introduce new offence or a banning notice

3.1 In the context of underage purchase and consumption, the Government does not consider new voluntary arrangements agreed with the industry would be an acceptable option. It is already a criminal offence to sell alcohol to children under 18 in most contexts and has been for 80 years and it is not a matter involving any discretion or choice. The Government would not be prepared to consider decriminalising this behaviour because it firmly believes that it would be harm children. Voluntary arrangements, which support the criminal law can be valuable and already exist. They include, for example, the Portman Group's Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks, various "proof of age" schemes and the "PASS" accreditation scheme for "proof of age" cards, all of which the Government strongly supports.

3.2 Under Option 1, if the existing arrangements are not reinforced by the proposal in Option 2 below, the Licensing Act 2003 (from the end of its transitional period, which is expected in November 2005) would still increase the penalties for selling alcohol to children; expand the places where such offences may be committed; and make the new personal licence vulnerable to suspension or forfeit by the courts on conviction for the first offence and not the second conviction as now. In addition, any premises at which there were persistent sales to children could expect to have their premises licence reviewed, which could lead to the imposition of additional conditions; the removal of the designated premises supervisor; reduced trading hours; suspension of the premises licence for up to three months; or revocation of the licence. The Government also intends that those committing the relevant offences under the provisions of the Licensing Act 2003 from the end of the transitional period

onwards would also be liable to fixed penalty notices.

3.3 This is a valuable package of new measures, which will take a period of time to bed down. Accordingly, under this Option the Government would rely on the enforcement of these new powers by licensing authorities, the police and trading standards officers. However, the evidence of the Alcohol Misuse Enforcement Campaign is that enforcement of the law against individuals (rather than businesses) and the delay while evidence sufficient to justify reviewing the premises licence is accrued suggests that there may be a risk of not achieving the necessary level of deterrence. This could therefore lead to unlawful activity continuing at an unacceptably high level of with the consequences described in paragraphs 2.8 – 2.16 above.

3.4 There would be no new costs to the alcohol retail industry under this option. However, the proportion of the costs to the economy of alcohol harm nationally (estimated by the Prime Minister's Strategy Unit at £20 billion and reported in the Alcohol Harm Reduction Strategy published in March 2004) to which unlawful sales of alcohol contribute would not be reduced.

Option 2 – Introduce new offence and banning notice

3.5 Under Option 2, the voluntary arrangements and new measures under the Licensing Act 2003 as described in Option 1 would still have effect in conjunction with the proposed new provisions of the Violent Crime Bill. This part of the Bill would create:

- a new offence of persistently selling alcohol to under 18s or failing to prevent such sales at the premises in question, with strong deterrent sentences; and
- arrangements for banning sales of alcohol for a temporary period at premises found to have sold alcohol persistently to people under 18 years old.

3.6 If enacted, persistent unlawful sales of alcohol would therefore put not only individuals at risk of punishment but also put in jeopardy the well-being of any business running premises at which such sales took place persistently by temporarily eroding its profits. The proposals would affect England and Wales only.

3.7 Introducing the proposals, in tandem with the existing voluntary arrangements and the other measures to be introduced by the Licensing Act 2003, could be expected to reduce significantly the current levels of illegal sales from licensed outlets. It should also:

- provide improved ease of enforcement of the existing and future offences relating to unlawful sales of alcohol to children;
- reduce alcohol-related offences (such as criminal damage) by minors;
- reduce public drunkenness by minors; and
- support aims on health, education and employment with regard to young people.

3.8 It would be open to the holder of the premises licence either to accept the closure notice and cease sales of alcohol there for the specified period lasting no more than 48 hours or to elect to go to trial for the offence. On conviction for the

new offence, the premises licence holder would be liable to a maximum fine of £10,000 or to have his premises licence suspended for up to three months or to both.

3.9 The new offence would also apply to “premises users” selling alcohol under the authority of a temporary event notice. As such notices permit sales for only up to 4 days on a single occasion, banning the sales in the future would be unlikely to be effective in prevent persistently unlawful laws. “Premises users” would be therefore be liable to prosecution for the new offence but subject only to the maximum fine.

3.10 A banning notice for 48 hours, if accepted by an offender, would create a cost to the alcohol retail industry in that the profit on legitimate sales of alcohol would be lost for a period of up to 48 hours. They may also lose custom and goodwill over a longer period if customers are frustrated by the inability of the particular outlet to supply alcohol, forcing them to look elsewhere. However, the likelihood of incurring such action would be entirely within the control of the businesses carrying on sales at the relevant premises. In cost terms, the deterrence inherent in such new legislation would only impact on unlawful sales of alcohol, which are wholly avoidable by policies relating to scrutiny of “proof of age” cards.

3.11 Overall costs to the alcohol retail industry are estimated to be between £0.5 million and £1.9 million annually. Within this range, the total cost is likely to be about £1 million. In every case, these costs are avoidable by compliance with the law and in any case of doubt about a person’s age, by electing not to complete the sale. No retailer is obliged to make a sale to any person so long as he does not discriminate on an unlawful ground. There would be no loss of revenue (alcohol duty and VAT) to the Exchequer as customers unable to purchase alcohol at the particular premises involved could be expected to shop elsewhere during the period when alcohol could not be sold. There would, however, be a cost to the Exchequer in terms of lost alcohol duty and VAT through the intended reduction in unlawful sales of alcohol. We estimate that this may be as much as £31.3 million annually.

3.12 The costs to non-commercial “premises users” are estimated to be about £30,000 annually. These costs are also avoidable by compliance with existing licensing law.

3.13 As explained in the recommendation below, this is the Government’s preferred option and overall costs to industry are expected to be £1 million over an initial period of 12 months. The costs could be expected to halve in each subsequent year if the policy achieves its expected deterrent impact, but this would need to be carefully monitored.

Option 3 – Introduce the new offence but not the banning notice

3.14 Under Option 3, the voluntary arrangements and new measures under the Licensing Act 2003 (Option 1) would again have effect in conjunction with the new provisions of the Violent Crime Reduction Bill. However, under Option 3, the Government would propose introducing the new offence of failing to prevent the persistent commission of offences of selling alcohol to minors on the relevant

premises, but not to introduce arrangements for serving banning notices on premises licence holders.

3.15 This option has the merit of creating, through the inclusion in the maximum sentence of the potential for the premises licence to be suspended for up to 3 months, a strong new deterrent against unlawful sales. The costs to industry could be expected to be of the order of between £ 0.2 million and £0.6 million; and the costs to non-commercial premises users £30,000. Once again, these costs are avoidable by compliance with the existing law. As with Option 2, costs to the courts would be £30,000.

3.16 However, in the Government's view, the potentially long delay between the detection of the offence and the trial for it would reduce its deterrent value, and the benefits described in paragraph 4.7 above (Option 2) may not be wholly realised.

4. Costs and Benefits

(i) Sectors and Groups Affected

4.1 Those affected by Options 2 and 3 (the proposals to create a new offence and to introduce a power for the police and trading standards officers to serve notices prohibiting the sale of alcohol for 48 hours where evidence of persistent selling to children exists) include:

- about 160,000 licensed businesses in the hospitality and retail industries employing about one million workers, including;
- many charitable, community and voluntary groups who run permanent venues and carry on events involving sales of alcohol;
- clubs, charities, community and voluntary groups who expect to give temporary event notices relating to the supply of alcohol when the Licensing Act 2003 comes fully into force;
- police forces;
- weights and measures authorities; and
- magistrates' courts.

4.2 None of those who carry on the sale or supply of alcohol and who abide by the law would however be affected.

4.3 There is no individual business which can be described as wholly typical of the alcohol retail and hospitality sectors affected because the scale and diversity of business outlets vary considerably.

4.4 In England and Wales, there are currently 113,000 premises licensed for the sale of alcohol for consumption on the premises. These include, for example, public houses, nightclubs, restaurants, hotels, wine-bars and café bars. Some are owned and run by major companies as chains under the day to day control of managers. In other cases, major companies own the premises, but the individual businesses are often directly operated by tenants. About 60,000

public houses form part of the 113,000 on-licensed premises and about half of these are “independents”, comprise single businesses and will be small to medium-size enterprises.

4.5 There are also about 47,000 shops, stores and supermarkets currently licensed to sell alcohol for consumption exclusively off the premises. Once again the businesses range from major chains of supermarkets (about 8,000) to small shops (about 32,700) run individually. Some of the shops form part of medium and large chains, while the majority are individual businesses. In general, garage forecourt convenience stores find it difficult to obtain alcohol licences because of special provisions in the Licensing Act 1964, which are replicated in the 2003 Act. About 1600 garages and petrol stations are also licensed to sell alcohol (forecourt convenience stores).

4.6 Just over 200 theatres are also licensed to sell alcohol, but are unlikely to be the target of police or trading standards action.

4.7 Full details are provided in Table 2 below.

Table 2

Premises licensed for the sale of alcohol	England	Wales	Total
Pubs, nightclubs, bars, wine-bars etc	75,972	5,483	81,455
Restaurants	19,910	1,344	21,254
Residential	3,686	284	3,970
Combined Residential and Restaurant	2,539	401	2,940
Proprietary membership clubs	3,488	263	3,751
Theatres	201	17	218
Supermarkets	10,179	501	10,680
Shops and stores	31,852	2,500	34,352
Garages/petrol stations	1,417	133	1,550
Total	149,244	10,926	160,170

Source: DCMS/ONS Statistical Bulletin: Liquor Licensing 2003-2004

4.8 We would expect the number of premises holding premises licences authorising the sale of alcohol to increase by about 2,000 – 3,000 annually.

4.9 The Alcohol Misuse Enforcement Campaigns involved about 30,000 premises, of which the police and trading standards officers targeted just under 1,000 (or 3.3 per cent) because intelligence indicated that they may be causing problems through selling alcohol to minors. Of these, 32 per cent were found to committing unlawful sales. If these figures are extrapolated, it would suggest that 1,700 of the 160,000 (or just over one per cent of) the premises permanently licensed for the sale of alcohol may be vulnerable to action by the police or trading standards officers for persistently selling alcohol to persons under 18. However, the proposals are expected to generate a significant deterrent effect. Although criminal behaviour is difficult to anticipate, it would be reasonable to speculate that the combined deterrent impact of the measures in Option 1 in tandem with those in Option 2 should reduce this number at least by half. This

would suggest that around 850 premises might be affected when the new provisions were implemented.

4.10 In addition to those holding permanent licences, about 25,000 organisations each year seek "occasional permissions" from magistrates to sell alcohol temporarily at premises which are normally unlicensed. These organisations include, for example, charities, schools and voluntary and community groups. Around 54,000 occasional permissions are granted each year to these organisations. It is not known how many of them may be acting unlawfully in a persistent way by selling to minors. These organisations would not be subject to banning notices under the proposals, but would be liable to prosecution for the new offence and if convicted, a maximum fine of £10,000.

(ii) Benefits

4.11 There are no benefits associated with Option 1 as it involves essentially no change, but the alcohol retail industry would save between £0.2 and £1.25 million when compared with the other Options. The benefits of the Option 2 and 3 are as follows:

Economic

4.12 In the Alcohol Harm Reduction Strategy for England the cost of alcohol harm to the economy of England and Wales was estimated by the Prime Minister's Strategy Unit to be £20 billion annually. Of this total, the direct cost to the public purse is between £6 - £8 billion. However, it is extremely difficult to quantify the proportion of this amount that may be reduced if the proposal is implemented and has its intended effect. The Alcohol Harm Reduction Strategy contains multiple initiatives which would impact collectively on the problems identified, of which underage sales of alcohol are one. Research shows that too early an exposure to alcohol impacts on a child's future educational attainment and job prospects and therefore directly on the wealth of the country. It is also associated with involvement in other substance abuse, which involves costs to health and social services, and in alcohol-related crime, which creates direct costs to the victims of such crime and anti-social behaviour. The victims of criminal damage by teenagers are often other businesses operating near licensed premises and their insurance premiums are higher in areas of higher than average anti-social behaviour and crime. Option 2 can be expected to reduce these costs by more than Option 3.

Environmental

4.13 Options 2 and 3 should not directly impact on the environment, but the Government considers that reducing unlawful sales to minors and consumption of alcohol by them should reduce crime and anti-social behaviour and contribute to the production of safer and more attractive town and city centres.

Social

4.14 Access to alcohol by people under 18 does not wholly arise from commercial outlets, with a good deal provided at home by parents and, for example, at private parties. However, research and the Alcohol Misuse Enforcement Campaigns confirm that commercial outlets remain a significant source of alcohol for under 18s. Alcohol is a contributory factor in a significant amount of youth crime and anti-social behaviour and directly impacts on the

quality of life of the victims of such behaviour. The Government would expect the proposals to reduce alcohol-related crime and anti-social behaviour in the mid- to long-term. Reducing the consumption of alcohol by young people should also impact on their health, educational attainment, job prospects and reduce their involvement in other substance abuse and crime generally. The Prime Minister's Strategy Unit also estimated that of the £20 billion cost of alcohol harm, £4.5 billion could be attributed to emotional harm and a proportion of this would directly relate to drinking by underage people.

(iii) Costs

Option 1

4.15 This Option would involve not creating the new offence of failing to prevent persistent sales of alcohol to under 18s and not introducing banning notices which lead to the closure of premises where such an offence has occurred for up to 48 hours. There would be a zero cost to individual businesses carrying on the retail of alcohol and therefore a zero cost to industry generally. There would be no reduction in the existing cost of alcohol harm to the economy of £20 billion annually (estimated by the Prime Minister's Strategy Unit). There would be no costs to the police, weights and measures authorities or the magistrates' courts. There would be no cost to the Exchequer in terms of any reduction in alcohol duty and VAT.

Option 2

Industry

4.16 This Option would involve creating the new offence and introducing the arrangements for serving banning notices at premises where the offence has been committed. We have estimated above that there are likely to be about 1700 businesses that may be vulnerable to enforcement action of this kind by the police or trading standards officers. It would be reasonable to assume that the introduction of the new offence and arrangements would have a marked deterrent impact. As explained above, it would be reasonable to speculate that the combined deterrent impact of the measures in Option 1 in tandem with those in Option 2 should reduce this number at least by half. We therefore consider that in the first period of 12 months following implementation, around 850 premises (0.5 per cent of the total number of premises retailing alcohol in England and Wales) might be affected when the new provisions were implemented. As the impact of banning notice became visible, we might expect the number of businesses to decline by 50 per cent in each ensuing year. This would of course have to be closely monitored.

4.17 As explained above, research and the Alcohol Misuse Enforcement Campaigns suggest that there is no particular type of business that is more likely than others to sell alcohol to children. The offending businesses range, for example, from supermarkets to corner off-licences, and from small public houses and restaurants to nightclubs with capacities of more than 1,000.

4.18 During any period of 48 hours the profits which might be made by one of these businesses varies considerably according to the turnover of the business involved. There could also be significant seasonal variations: a Saturday shortly before Christmas might generate very large profits for a supermarket or public

house, whereas sales in a twenty-four period during August might be substantially lower. In calculating the costs to industry, we have had regard to the following information:

- In the case of public houses, the average turnover per week is estimated to be between £5,000 and £10,000 per week, which represents turnover of between £700 - £1400 per day. We estimate that the net profit on alcohol sales is likely to be between £100 - £400 per 48 hour period.
- In the case of nightclubs, the average turnover is likely to be between £1,400 - £2,800 per day, generating a net profit of the order of £400 - £800 per 48 hour period.
- In the case of a small off-licence, turnover on sales of alcohol would range between £2,000 - £4,000 per week, which represents turnover of about £300 - £600 per day. We estimate that this would generate net profit of around £100 - £200 per 48 hour period.
- In the case of a supermarket, while the turnover would be significantly higher, the profit margin would be narrower. Turnover of alcohol sales in a large supermarket might be of the order of £25,000 - £50,000 per week, representing daily turnover of £3,500 - £7,000. We estimate that the profit generated would, however, be approximately £700 - £1400 per 48 hour period.
- Some failing businesses would make no profit whatsoever in such a period, and may make a loss.

4.19 We therefore might expect the range to be from a net loss of several hundreds of pounds (in a failing business) to a net profit of £2,000 in any 48 hour period. These would both represent extremes. Given the larger proportion of small businesses, we think it reasonable to estimate that the average loss on sales of alcohol might be of the order of £200 - £600 in any individual case.

4.20 In addition, there is also a potential loss arising from any decline in custom and goodwill when customers – owing to a sense of frustration caused by the inability to purchase alcohol on a particular day – choose to take their custom elsewhere on a longer term basis. This is difficult to quantify or predict but might represent a loss of between £200 and £1000 to each business.

4.21 Finally, a small percentage of the businesses could be expected to go to trial. We estimate that of the 850 businesses in England and Wales that might be vulnerable to prosecution in the first year, no more than 5 per cent (45) would elect to go to trial. The consequences for these businesses, if convicted, could be quite severe and would deter all but those confident that they are not guilty of the new offence. If we assume for the purposes of this assessment that all would be convicted, we could expect all to receive fines of between £1,000 and £10,000, with the average perhaps around £3,000. In addition, we would expect the courts to use their powers to ban temporarily sales of alcohol up to three months in most cases. Such temporary bans might vary between one

week and one month. In these cases, an individual business might incur additional costs of between £750 and £9,000. In addition, the loss of goodwill and custom is potentially greater and we have estimated this to be between £1,000 and £2,000 in these cases.

4.22 The total costs to the industry of Option 2 is represented in Table 3 below:

Table 3

Number of premises	Average cost in lost profit	Average costs of lost goodwill	Average costs fines	Total average cost per individual business	Total cost to industry
805	£200 - £600	£200 - £1000	£0	£400 - £1600	£322,000 - £1.3m
45	£750 - £9,000	£1,000 - £2,000	£3,000	£4,750 - £14,000	£213,750 - £630,000

4.23 We might therefore reasonably conclude that the costs of Option 2 to industry are between £0.5 million (mostly small businesses) and £1.9 million (mostly large businesses) in the first year of operation. Given the higher proportion of small businesses, a reasonable estimate would be about £1 million annually. The costs should halve in each subsequent year. As stated above, all these costs would be readily avoidable by compliance with existing law concerning sales of alcohol to persons under 18.

Charities, Voluntary and Community Groups, Villages Halls etc

4.24 Under the Licensing Act 2003, we estimate that the number of temporary event notices given would be 50,000 annually from the end of transition onwards. Most are likely to be given by non-profit making (i.e., non-commercial) organisations. The number likely to be vulnerable to enforcement action in connection with unlawful sales of alcohol to children by the police and weights and measures authorities is difficult to estimate. However, on the assumption that the percentage of premises users likely to be vulnerable is similar to that for commercial premises (0.5 per cent), we would estimate that action may be taken against 250 annually. Under Option 2 these individuals would be vulnerable to prosecution only and on conviction to a fine not exceeding £10,000. On conviction, it would be reasonable to assume that the courts would tend to take a relatively more lenient view (compared to a similar offence committed at commercial premises) when imposing a fine. We would not expect the average fine to exceed £1,000. We would also expect the new offence to be made subject to fixed penalty notice procedures and that most premises users would elect to pay the penalty rather than go to trial. We therefore consider that the costs to these premises users would be as follows:

Table 4

Number of premises	Average costs fines	Total cost to industry

238	£80	£19,000
12	£1,000	£12,000

4.25 We therefore consider that the costs to non-commercial organisations would be approximately £30,000 in a period of twelve months. We would not however expect to see as effective a deterrent effect in play, and consider that these costs might recur annually.

Police, Weights and Measures Authorities and Magistrates’ Courts

4.26 If the offence and procedures for banning notices were not introduced, the police and trading standards officers would proceed using existing offence provisions against individuals committing the existing offences relating to sales of alcohol to under 18s. This essentially involves service of fixed penalty notices and prosecutions where such notices were not accepted. The costs of the proposals to the police and weights and measures authorities would not be dissimilar from the existing costs of processing the existing offences. Option 2 would therefore create an alternative strategy of similar cost. We therefore consider that the costs of this Option to these bodies would be cost neutral. With regard to the magistrates’ courts, 57 cases brought before the magistrates’ court would cost £18,696 (@ a unit cost of £328) if only businesses were prosecuted because no legal aid costs would arise. However, if individuals were prosecuted there would be an additional cost of £44,232 which arises from legal aid (57 @ £270 for the police station duty solicitor and 57 @ £506 for magistrates’ courts representation). This generates a minimum potential cost of £18,696 and a maximum potential cost £62,928. Given that we expect a significant number of those electing to go to trial to be businesses, we estimate that the cost to the courts’ services of Option 2 would about £30,000 in the first twelve months, reducing by half in each subsequent year.

The Exchequer

4.27 In terms of legitimate purchases of alcohol, there would be no cost to the Exchequer, because consumers would go to an alternative outlet to purchase alcohol when a banning notice was in effect at on- or off-licensed premises. The Exchequer would however lose both alcohol duty and VAT arising from the deterrent impact on unlawful sales of alcohol generally to people under 18. It is difficult to estimate how much alcohol is sold to people under 18 because of its unlawful nature. However, the impact of the proposals would be to reduce significantly the current level of such sales. Alcohol sales in this country amount to approximately £30 billion annually, generating about £12.5 billion in alcohol duty and VAT. If we conservatively estimate that no more than 0.5 per cent of alcohol sales are to persons under 18, this would equal £150 million, generating £62.5 million in alcohol duty and VAT. If such purchases were reduced by 50 per cent by the proposals under Option 2, the cost to the Exchequer would be approximately £31.3 million. The Government considers that this is an acceptable cost in the interests of protecting children from harm.

Option 3
Industry

4.28 This Option would involve creating the new offence but not introducing the procedures for banning notices. The offence would be made subject to fixed penalty notice procedures. The maximum penalty that could be paid would be £80 in the case of a fixed penalty notice and £10,000 if imposed by court following conviction. However, in the case of those who elected to go to trial and were convicted the court would have the discretion to suspend the premises licence.

4.29 We have already indicated that approximately 850 businesses may be vulnerable to enforcement action, of which 45 may elect to go to trial. Where a business elects to go to trial we have indicated that the average fine that is likely to be imposed by a court would be £3,000 and the premises licence may be suspended from between one week and one month. The costs of this Option are therefore those shown in the Table below:

Table 5

Number of premises	Average cost in lost profit	Average costs of lost goodwill	Average costs fines	Total average cost per individual business	Total cost to industry
805	£0	£0	£80	£80	£64,400
45	£750 - £9,000	£1,000 - £2,000	£3,000	£4750 - £14,000	£213,750 - £630,000

4.30 We might therefore reasonably conclude that the costs of Option 3 to industry are between £0.2 million and £0.6 million in the first year of operation. Once again, given the higher proportion of small businesses, it would be reasonable to conclude that the cost annually of this Option would be about £0.3 million. The costs should reduce in each subsequent year, but not as rapidly as under Option 2 (perhaps only by 25 per cent annually). As stated above, all these costs would be readily avoidable by compliance with existing law concerning sales of alcohol to persons under 18.

Charities, Voluntary and Community Groups, Villages Halls etc

4.31 The costs for non-commercial organisations under Option 3 would be identical to those for Option 2, and would amount to £30,000 in any twelve month period.

Police, Weights and Measures Authorities and Magistrates' Courts

4.32 Option 3 would also be cost neutral for the police and weights and measures authorities. With regard to the magistrates' courts, we consider that the costs to the courts' services would be similar to that under Option 2 and can be estimated at £30,000 in the first twelve months.

The Exchequer

4.33 Option 3 should still function as a deterrent to unlawful sales of alcohol to children, though in the Government's view, a less effective one. Accordingly, we consider that the loss to the Exchequer in terms of alcohol duty and VAT would

be lower than under Option 2. It is difficult to quantify precisely how much lower, but we think a reasonable estimate would be 25 per cent. We therefore estimate the loss to be about £16 million.

5. Small Firms Impact Assessment

5.1 The proposals were subject to public consultation (“Drinking Responsibly”), including with small businesses, between 21 January 2005 and 28 February 2005. The vast majority of the businesses affected by the proposals are small businesses. However, only those which are currently and persistently carrying out criminal unlawful sales of alcohol to children need be concerned by the proposals. As explained above, this is likely to be no more than 0.5 per cent of the alcohol retail industry.

5.2 We have estimated above the costs that can be expected to fall on individual businesses if any of the three Options were to be implemented. In the case of public houses run by tenants, the costs could be expected to fall on them rather than on the pub company that is leasing the premises. The large pub company’s income from the leasing contract would be largely unaffected by the 48 hour period during which alcohol could not be sold. However, the tenant’s income would be directly reduced by the fall in profits. The table below shows the earnings by pub companies and tenants. We have withheld the individual companies’ names, but the nine leading companies involved give a very good cross section of the industry.

**Table 6
PubCo and Lessee Earnings**

No. of pubs	Pubco earnings per pub	Average lessee package	Average Lessee earnings per 48 hour period
5,083	£49,300	£37,000	£202
4,086	£53,647	£34,823	£190
4,414	£52,600	£34,038	£186
1,114	£42,998	£29,499	£162
1,115	£40,359	£28,179	£154
3,074	£39,362	£27,681	£150
1,022	£27,886	£21,943	£120
832	£26,803	£21,401	£118
652	£24,387	£20,193	£110

Source: FitchRatings, Company Data, Office of National Statistics, Deutsche Bank.

5.3 This impact can be expected to be similar in the case of smaller off-licence shops. In financial terms, the smaller businesses would experience a proportionately smaller impact than a large business, such as a supermarket,

which would normally achieve significantly higher daily profits.

5.4 It should be noted that businesses other than alcohol retail businesses should benefit from these proposals. Firstly, they form part of a broader strategy aimed at making town and city centres more attractive and safer. This should encourage a more diverse range of customers in to these areas. Many are currently deterred by the anti-social behaviour that takes place there. Secondly, small businesses other than alcohol retail businesses are often the victims of the criminal damage committed by young people drinking unlawfully. Insurance premiums reflect these problems. If the Government's strategies are successful, there should be a reduction in criminal damage directed at these businesses.

5.5 The Small Business Service has commented.....

5.6 The Government is therefore satisfied that the burden on small businesses created by the proposals under Option 2 is proportionate and fair, and will not place any undue burden on those complying with the existing criminal law. The industry itself has repeatedly made clear to the Government that it has no sympathy whatsoever for those who persistently sell alcohol to children and threaten their well-being.

6. Competition Assessment

6.1 Options 1, 2 and 3 treat all sectors of the alcohol retail industry equally, affect only those currently breaching the criminal law and do not directly impact on competition.

7. Enforcement, Sanctions and Monitoring

(i) Enforcement and sanctions

7.1 The enforcement of the criminal law relating to sales of alcohol to persons under 18 falls primarily on the police and weights and measures authorities. These bodies both use "test purchasing" operations as a tool in detecting offences. These existing arrangements will apply equally to the new offence it is proposed to create.

7.2 Where a closure notice is given effect or a court decides to suspend the premises licence for any period up to three months, any business which continued to sell alcohol would be carrying on an unlicensed activity during the period in question. No new offence of breaching a banning notice is therefore needed. An offence would be committed under section 136 of the Licensing Act 2003, the penalty for which is a fine up to £20,000, up to six months imprisonment or both. It is part of the normal enforcement role of the police and the licensing authority to monitor unlicensed activities in their areas.

(ii) Monitoring

7.3 The Department of Health annually collects and publishes statistical material on the percentage of children under 16 who gain access to alcohol, the source of the alcohol and the amount that they consume. The Government would also monitor:

- levels of alcohol-related crime through the British Crime Survey; and
- levels of alcohol-related youth crime

In addition, the Government would ask the police and weights and measures authorities to monitor the number of banning notices issued and the number of prosecutions proceeded with under the new arrangements when implemented.

7.4 In partnership with the industry, the Government would also monitor the deterrent impact of the measures introduced. This should enable it to measure whether the number of premises attracting penalties is reducing at the rates predicted above.

8. Implementation and delivery plan

8.1 Subject to the Violent Crime Bill receiving Royal Assent, the Government would expect to bring the new provisions into effect within four months of Royal Assent in accordance with the following timetable:

- Royal Assent (“RA”)
- Guidance issued to police and weights and measures authorities about the new provisions – RA plus two months;
- Commencement order to be made giving effect to new provisions – RA plus two months (bringing provisions into force two months later)
- Therefore, provisions brought into force – RA plus four months
- Monitoring commences – RA plus four months
- Review begins – RA plus sixteen months
- Review concludes – by end of RA plus 24 months.

9. Post-implementation Review

9.1 In consultation with the Association of Chief Police Officers, Crime and Disorder Reduction Partnerships, the alcohol retail industry and local authorities, the Government (DCMS, Home Office, ODPM and Department of Health) would expect to use the available data to begin a review the effectiveness of the proposals within sixteen months of the Violent Crime Bill receiving Royal Assent. It would expect to complete the review and make formal recommendations for consideration by Ministers within two years of Royal Assent.

10. Consultation

(i) Within Government

10.1 The publication of the consultation document “Drinking Responsibly”, which first announced the proposal in January 2005, was approved by the Cabinet. The following Departments have been consulted in more detail during the development of the policy and preparation of this part of the Violent Crime Bill:

- The Department for Culture, Media and Sport (the lead Department);
- The Home Office;

- The Department of Health;
- The Office of the Deputy Prime Minister;
- The Department for Environment, Food and Rural Affairs;
- The Department of Constitutional Affairs;
- The Cabinet Office (Regulatory Impact Unit); and
- The Treasury

(ii) Public consultation

10.2 About 250 responses were received to the consultation paper “Drinking Responsibly”. These included responses from the leading trade associations representing the alcohol retail and hospitality sectors. With regard to the proposed powers described in this Assessment, the response was mixed. Respondents laid emphasis on the value of the “PASS” accreditation system for “proof of age” cards and the approach taken by some retailers of “No ID No Sale”. Broadly, the alcohol retail industry did not consider the proposed new powers either necessary or proportionate. However, the Portman Group, Alcohol Concern and local authorities strongly supported the proposed measures, with some suggesting that the use of the powers should be linked to a review of licence conditions. The Association of Chief Police Officers (ACPO) supported the proposals, but the Police Federation questioned whether temporary closures of licensed premises would be of any real practical benefit. Some respondents suggested that the ban on sales of alcohol at premises should last longer than 24/48 hours, perhaps until a full review of the premises licence has been completed.

10.3 The Government considered the responses carefully and have been mindful to ensure that the proposals contained in the Violent Crime Bill are proportionate in the way they deal with this area of persistent criminal activity, while conscious of the need to create an effective deterrent which impacts directly on the businesses affected. The Government is minded to accept the position adopted by ACPO as a more strategic assessment of the likely impact of Option 2 and believes that it would be possible to demonstrate real practical benefit from those proposals, contrary to the view expressed by the Police Federation. The Government gives a very high priority to ensuring the well-being of children. It also notes that only businesses engaged in unlawful activity now are affected by the proposals in Options 2 and 3 and therefore considers that the potential measures described in Options 2 and 3 are balanced, proportionate and fair, contrary to the view expressed by the industry.

11. Summary and Recommendation

11.1 The Options are summarised in Table 7 below:

Table 7

Option	Cost	Benefit
1. Do not include provisions in Violent Crime Bill and rely on provisions in	<ul style="list-style-type: none"> • No costs to alcohol retail industry. • No cost to non- 	<ul style="list-style-type: none"> • No new benefits.

<p>Licensing Act 2003 supported by voluntary schemes.</p>	<p>commercial organisations selling alcohol.</p> <ul style="list-style-type: none"> • No reduction in alcohol harm costs to economy of £20 billion. • Continued damage to health, job prospects and educational attainment of young people. • No reduction in alcohol-related offences (such as criminal damage) by minors. • No reduction in public drunkenness by minors and related anti-social behaviour. 	
<p>2. Create new offence, implement arrangements for serving notices banning sales of alcohol for 48 hours, and provide courts with power to suspend premises licences on conviction for new offence.</p>	<ul style="list-style-type: none"> • Estimated “avoidable” costs of £0.5 million to 1.9 million to the alcohol retail industry in first twelve months. Total cost probably of the order of £1 million annually. • Reducing by 50 per cent in each subsequent year. • Estimated “avoidable” costs of £30,000 annually to non-commercial organisations. • Costs of £31.3 million to the Exchequer in lost alcohol duty and VAT. • Cost neutral for police, weights and measures authorities • Estimated cost of £30,000 to the courts’ services. 	<ul style="list-style-type: none"> • Unquantifiable reduction in alcohol harm costs to economy of £20 billion. • Improvement in health, job prospects and educational attainment of young people. • Reduction in alcohol – related crime. • Reduction in unlawful sales of alcohol to children. • Reduction in public drunkenness by minors and related anti-social behaviour.
<p>3. Create new offence and provide courts with power to suspend premises licences on conviction for new offence, but do not</p>	<ul style="list-style-type: none"> • Estimated “avoidable” costs of £0.2 - £0.6 million to the alcohol retail industry in first twelve months. Total 	<ul style="list-style-type: none"> • Unquantifiable reduction in alcohol harm costs to economy of £20 billion but less than Option 2. • Improvement in health,

<p>implement arrangements for serving notices banning sales of alcohol for 48 hours.</p>	<p>cost probably of the order of £0.3 million annually.</p> <ul style="list-style-type: none"> • Reducing by 25 per cent in subsequent years. • Estimated “avoidable” costs of £30,000 annually to non-commercial organisations. • Costs of £16 million to the Exchequer in lost alcohol duty and VAT. • Cost neutral for police, weights and measures authorities • Estimated cost of £30,000 to the courts’ services. 	<p>job prospects and educational attainment of young people, but less than Option 2..</p> <ul style="list-style-type: none"> • Reduction in alcohol – related crime but less than Option 2. • Reduction in unlawful sales of alcohol to children but less than Option 2. • Reduction in public drunkenness by minors and related anti-social behaviour but less than Option 2.
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11.2 Having carefully considered the evidence of the Alcohol Misuse Enforcement Campaigns, research into underage purchase and consumption and the responses to “Drinking Responsibly”, the Government considers that the deterrence inherent in the Licensing Act 2003 could only be significantly enhanced by increasing to direct risk to the profits of the business itself when unlawful sales occur. It also considers that Option 1 alone would not impact sufficiently on businesses where illegal sales are taking place rather than just individuals involved. The Government considers that Option 1 therefore needs to be supported by the proposals in Options 2 or 3.

11.3 Of these two Options, the Government considers that Option 2 represents the maximum benefit to children and to society generally. It considers the measures to be fair and proportionate, given the serious impact of alcohol-related crime and anti-social behaviour. In drawing this conclusion, it has had particular regard to the fact that any costs incurred by industry or non-commercial organisations are entirely avoidable by obedience to the law that has been in existence in one form or another for over 80 years, and by the simple adoption of a policy of refusing sales of alcohol where there is the slightest doubt that the purchaser is legally of an age to make it.

12. Declaration

12.1 I have read the Regulatory Impact Assessment and I am satisfied the benefits justify the costs.

Signed.....

Date.....

James Purnell, Parliamentary Under-Secretary of State, DCMS

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