

A new Liquor Licensing Law for Jersey

The intention behind this consultation is to present to the public the work carried out by the then Economic Development Department on a new Liquor Licensing Law in 2015.

The principles underpinning the draft legislation were published in September 2014 as part of a wider report on Alcohol and Licencing Policy. That report was intended to demonstrate the position the law had reached at that point.

<http://www.statesassembly.gov.je/AssemblyReports/2014/R.139-2014.pdf>

This paper is not intended to revisit every aspect of the licensing work and focusses on the principles behind the new policy and those points that have been revised since it was last consulted upon.

It addresses the following-

1. The Licensing Objectives
2. A replacement for the Licensing Authority
3. The Alcohol and Licensing Policy Group
4. Alcohol price control
5. Personal licences- removal from consultation
6. Consideration of fee structures

As drafted in 2014, the Law contained 6 licencing objectives. This has now been reduced to five. The thinking behind that decision appears in section 1.

The Law also contained provisions to allow for a group of Ministers (the Alcohol Licensing and Policy Group or ALPG) to co-ordinate licensing policy, as well as retaining the Licensing Assembly in its current form. Following discussions with the Bailiff and Jurats, it was agreed in early 2015 that given the changes in the law it would be preferable to develop a new authority for the determination of liquor licences. To achieve this, the ALPG has met several times in its shadow form to discuss the policy around licensing and the preferred future system for granting liquor licenses. This work makes up section 2 of the consultation.

There has been a change in the membership of the ALPG to better reflect the involvement of the parishes in the licensing system, which is addressed in section 3.

The issue of price control has also been raised, with particular reference to the current policy on limitations on alcohol promotions and minimum price setting. The current involvement of the Solicitor General (SG) in the control of alcohol pricing is a function of the policy vacuum around liquor licencing, with the SG being required to involve themselves in the issue as there is no body specifically empowered to develop policy in this area. Under the new law, the responsibility for making decisions in that area of policy will fall to the ALPG. This is addressed in section 4.

The law had made provision for a personal licence system to sit alongside premises licences, akin to the system in the UK. After discussing the benefits and shortcomings of personal licence at length, and after a visit to the UK to meet with the Carmarthenshire Licensing Committee to discuss this (amongst other things), it has been decided to remove the system from the Law and replicate the benefits by other means. Section 5 details the thinking behind this.

Lastly, some consideration is given to the current fee system. Fees under the Licensing (Jersey) Law have not been updated to reflect RPI increases since 2008 when the fees were frozen. Some progress has been made towards such a review, but the fees cannot be made fair and representative until the category structure has been reconsidered and the law revised. Section 6 demonstrates the current thinking in this area.

1. The Licensing objectives

The Law will contain five licensing objectives. These will be points of reference for both policy-setters and those implementing the policy in order to ensure that the decisions taken under the law are consistent with its principles. They are-

1. to help reduce alcohol related crime and disorder
2. to better secure public safety
3. to help prevent public nuisance
4. to help protect children from alcohol related harm
5. to better protect and improve public health

These objectives are identical to those that appear in the Licensing (Scotland) Act 2005, which are themselves developed from those Licensing Act 2003. The Licensing Act 2003 as it applies in England and Wales includes only objectives 1 to 4 and does not include public health as a broader objective. It was decided at an earlier stage of work that the draft Law should give proper consideration to the health of the population.

These objectives have been included as they offer a succinct statement of what a licensing law is trying to achieve. The desired outcomes are generally the same in Jersey as they are in the UK.

A sixth objective has featured in previous consultations, 'to support the local economy'. This was considered to be an effective counterbalance to the other five objectives, which would ensure that any consideration of licence applications gave some weight to the economic benefit to the Island. However, after further thought on the part of the ALPG it has become clear that requiring an authority to balance this objective against the others would cause considerable difficulty.

Instead, in developing licencing policy, general consideration will be given to the economic factors, and the regulation imposed over the industry will be appropriate and proportionate to meet the five remaining objectives.

The intention of the law

As with objectives, the goals of licencing laws are similar the world over. Specifically, this law is intended to-

- Protect the public from crime, anti-social behaviour and noise nuisance by effectively regulating the night-time economy by restricting and conditioning licences to sell alcohol.
- Provide the States Police Force and Honorary Police with the necessary powers to take immediate action against licensed premises that are causing such problems.
- Provide a regulatory framework for alcohol which takes account of best practice elsewhere and which is responsive to public policy and the public interest.
- Ensure that local residents and local communities are properly represented in the process by maintaining the input of the parishes and including Connétables in the policy making process.

In setting policy around alcohol sales, it must be recognised that the majority of the population drinks, and that for the most part we do so sensibly and without causing harm or nuisance to others. Also, the new law must be fair to the majority of licensed premises which are well run and operate safely and without detriment to the local community.

A well-managed and well-regulated licenced sector is a key part of the social life of the Island, and is a very attractive element of our tourism offer.

What this means

Applications for licences under the new law will be considered against a published set of guidelines with clear criteria for approval or rejection. The effect on the local economy is no longer going to be a key factor in whether a particular business can operate. Economic effects will not be ignored, but the Authority won't be asked to balance monetary gain against harm to children, for instance.

2. A replacement for the Licensing Authority

Background

The decision to replace the licensing Assembly with a non-judicial system has had wide-ranging effects on both the technical development of the law and some key elements of the policy. In addition, there have been some other minor changes to the policy which are detailed below.

The proposed New Authority for Determining Applications

In this section the current judicial system is referred to as the Licensing Assembly. In order to distinguish the proposed new body, it will be referred to as the New Authority ('NA'), although no decision has been taken as to its final title.

Hearings of the NA to consider applications will be generally accessible to the public, and interested parties who currently attend sittings of the Licensing Assembly will be free to attend the New Authority, although there may be less seating capacity than a full court setting can provide. There may be occasions where the New Authority must sit in private (on the grounds of confidentiality or where sensitive information is being heard) but this will be the exception rather than the rule.

The NA will meet more frequently than the Licensing Assembly, and will be in a position to convene at need, rather than meeting on a fixed schedule with exceptional meetings in emergencies.

The NA will make use of existing government resources to the fullest possible extent. The current intention is to find a suitable meeting place within an existing government facility. This will avoid rental costs that would otherwise be the most expensive element of the new system.

The form of the New Authority ('NA')

Composition

There would be nine appointees in total, seven States members together with a lay Chair and a Vice-Chair. The Chairs will be appointed by the States on the recommendation of the ALPG following a selection process overseen by the Jersey Appointments Commission. They will be expected to have a background in a senior decision making role, and background in the licenced trade would be an advantage. However, it will be vital to the independence of the New Authority that any appointee should have no current financial interests or close connections in licensing.

Operation

Two States members and either the Chair or Vice-Chair (three people in total) would sit to determine applications.

It is not intended that the States members would be able to consider applications in their own electoral district (in keeping with the provisions of the local Planning Applications

Committee, and in keeping with UK best practice for Local Councils¹). Members who were “*personally acquainted with any of the parties in their case or their witnesses, or has commented adversely on the integrity of any of them*”² would be required to withdraw from considering an application on the grounds of ‘apparent bias’, as would those who “*personally affected by the application*”³, on the grounds of potential actual bias.

In the case of appeals, three or more members (including the Chair or Vice-Chair) who were not involved in the original application would consider the initial decision. The grounds for appeal would be that the original decision erred in law, that it was unreasonable or that it did not accord with the policy as set out by the ALPG.

Meetings

The assumption is that the NA will meet on a six-weekly cycle, with extraordinary meetings scheduled as required to deal with matters arising (such as a request for review a licence from the police). This six-week cycle will be laid out in advance on a year-by-year basis. The detail of the process is set out below

Resource implications

Adjudicators will sit on a rotating basis, and assuming twelve meetings per year with one additional day’s work in advance of each meeting to read papers etc. They will be expected to contribute 24 days per year. Additional meetings and engagements will be considered an integral part of the role. The sum of £40,000 has been estimated to cover all expenses including costs.

Policy guidance

The NA will be guided by a statement of alcohol and licensing policy (SALP) produced by the ALPG. This is addressed in Section 3.

Support

The current intention is that the NA will be supported by dedicated officer/s within the Economic Development, Tourism, Sport and Culture Department (EDTSC), which will be responsible for the administration of the NA. However, it is possible that at the time the NA comes into existence it will be possible to add functions to existing job roles to provide the necessary support, which would significantly reduce the cost. The administrative cost has been provisionally estimated at approximately £60,000 per year.

Currently, the cost of the Licensing Assembly is not fully visible. This situation is a consequence of the honorary nature of the Jurats and the distribution of support services across the court system. Thus the actual cost of making and supporting licensing decisions is unquantified. Moving away from the Licensing Assembly will crystallise this cost in

¹ This is not universally the case, but serious thought was given to the matter by UK councils following the introduction of the 2003 Act and a good example of a discussion document reads “*it is a matter of policy for each individual Council ... if such an exclusion was not incorporated, then it would be a question for consideration on the particular facts each time a Ward Member was otherwise due to sit ... there is likely to be uncertainty each and every time the problem arises*” - Elmbridge Borough Council, ‘Legal Advice regarding Members’ potential Prejudicial Interests’ 2005.

² Licensing Committee, Kingston ‘Report by the Corporate Solicitor - Licensing Sub Committee Hearings – Ward members’ June 2015.

³ Ibid.

remuneration and officer support. These costs will be borne by the industry in increased licence fees, but in real terms, it is likely that the cost of the support will be less than is required to support the judicial Licensing Assembly, given the need to only have a single officer. However, the current costs of the Licensing Assembly are met by government and distributed across many officers within the Judicial Greffe and in general court support costs.

The proposed licence determination process

Note – [Appendix 2](#) shows the process steps in detail and [Appendix 3](#) gives indicative timings for licence determination.

The application process

The initial licence applications will continue to be processed by the Treasury Cashiers as per the current system. A new e-application system will be added alongside the current system. The Cashiers have significant advantages as a point of contact over a single EDTSC Licensing Officer as they are skilled customer service agents with inbuilt absence cover in a publically-accessible location.

Applications must identify the individual or company who is making the application, as well as the premises to which it relates. The boundaries of the area to be licenced including any desired 'al fresco' areas outside of the physical structure of the premises must be clearly marked.

Applications must be accompanied by reports obtained by the applicant from the States of Jersey Police, the Fire and Rescue Service and Health Protection Unit⁴ detailing the opinion of those services on the proposed licence (see section 9.4). An independent surveyor's report is also obtained. These reports may or may not require inspection of the premises by the reporting bodies at their discretion. This is a change from the current system as the burden of collecting the reports will fall on the applicant at the initial application stage, rather than the Connetable at the Parish stage.

The application must also be accompanied by a declaration that the business in question has, if necessary, obtained planning consent, consent under the Control of Housing and Work (Jersey) Law 2012 and all other relevant permissions.

The application fee must be paid at this stage.

These will be passed to EDTSC (specifically, to the support officer for the NA) once received.

These applications will, as now, be sent initially to the relevant Parish Authority for consideration in advance of a determination being made, as below. EDTSC will do this, as well as passing the application to the designated consultees, within 3 working days.

The Parish process

The SALPG hope to discuss potential changes to the parish process with the Comité des Connétables in early February. The desired outcome is that Parish Assemblies become discretionary (subject to there being no objections received) and the turnaround time is reduced to 19 days maximum, less if a Parish Assembly is not needed.

⁴ The scope of the Health Protection Unit's consideration is limited, in respect only of the capacity of the proposed premises to accommodate the intended number of persons in a safe and sanitary manner.

The current intention is that under the new system Parishes could convene a Parish Assembly to consider the application as at the current time. The Connetable would: notify parishioners that a licensing application has been passed to the Parish; invite responses from interested parishioners and designated consultees, and confirm that a Parish Assembly will be convened if objections to the application are received, as under the current system.

Objections can be raised in respect of the applicant's suitability to hold a licence, as well as in respect of the premises and planned operations.

If no objections are received, the Connetable would not be bound to hold a Parish Assembly, but would forward the application to the NA with a note that no Parish Assembly was held. The option would be open to the Connétable if desired, and the Chef de Police if no Assembly is to be held, to append a submission detailing their position on the matter.

A Parish Assembly would be held if any parishioner submits an objection to an application. Under the new system this should be held within 14 days of the request arriving. The Parish Assembly would hear from any parishioner and, if appropriate, receive the formal opinion of the Honorary Police through the Chef de Police or their designate, having taken representations from the wider Honorary Police of the Parish. The recommendation of the Parish Assembly would then be sent to the NA within 5 working days.

The burden on the Connétables should be reduced as applicants will have provided the necessary reports and information at the point of application, rather than at the request of the Connétable at this stage in the process.

It is hoped that the Comité will be satisfied with this proposal and be able to commit to the changes.

The decision making process

This section uses terms as defined below-

- 'Administrative Decision' – a decision of the NA that takes place after informal discussion (including communication by telephone or email) and does not require an officer recommendation.
- 'Applicant' - the person making the application. If a company, the duly appointed employees (or directors etc) of that company.
- 'Designated consultee' - a body or person who must be offered the opportunity to comment on an application
- 'Representor' - a body or person who has made a submission to the NA in respect of a licence application. Automatically includes the designated consultees even if they have not commented and the applicant themselves. This does not include the applicant's representatives in person, although they may continue to act on behalf of the applicant.
- 'Statement of Licensing Policy' (SLP) – the policy of the ALPG which will guide the NA in making decisions about licensing applications. This will specify which applications must be heard by the NA and which can be dealt with on an administrative basis, as well as outlining the criteria for making decisions and special

consideration that might need to be given to licences of a certain type or in a certain area.

If the recommendation of the Parish Assembly (if convened) or the Connétable is in favour of the application, and if no other objections are raised by designated consultees, the NA may approve the application as an administrative decision if this is permitted by the policy guidance of the ALPG. The NA will give consideration to any submissions raised by other parties and may choose to hold a public hearing if it considers that any objections received have merit. The administrative process for this grant of licence should take no more than 7 days following the return of the responses from the Parish and consultees. This gives a 30-day turnaround for administrative approval as detailed in Appendix 3.

If the recommendation of the Parish Assembly is against the application, or if a designated consultee has raised an objection, a public hearing will be held. This should be within 10 days of the objecting response being received.

If the NA decides to grant a licence subject to any conditions that are not the usual mandatory conditions, it will inform the applicant of its decision and the conditions that it intends to impose. The applicant may accept these conditions or request that the matter is considered at a formal hearing.

The NA will give notice to applicants of the date and location of the hearing.

Applicants will respond-

- Agreeing to attend and specifying if they will be represented,
- Designating a person who will represent them, or
- Stating that no hearing will be necessary (i.e. agreeing to any decision of the NA).

If the applicant considers that no hearing is necessary, the NA will decide whether to deal with the matter administratively or hold a hearing in the absence of the applicant. If the application is to be heard in absentia then the applicant will be notified. Written representations will be considered, and if a hearing is held other parties may address the NA.

If an applicant gives reasonable notice (to be defined in policy) that they cannot attend a hearing, it will be rescheduled. If this happens more than once, it will be up to the NA to decide if the hearing should be rescheduled or the application heard in absentia.

The NA will decide upon its general operational procedure and the conduct of meetings, subject to the guidance of the ALPG and the general principles of procedural fairness. The ALPG guidance will itself be subject to the provisions of the relevant legislation and should not conflict with procedural fairness.

The applicant and other parties will have the right to cross-examine one another, subject to the approval of the NA. The NA has the right to make any relevant enquiry of any party making any representation to it. This will include inquiries intended to establish the history, conduct and character of the applicant or any party to be involved in the business, so far as the NA considers it necessary in the public interest.

Any party may make a written submission to the NA in respect of any application. If these take the form of an objection, the NA will decide whether any issues raised are of sufficient value to warrant a formal hearing, unless the objection arises from a 'designated consultee',

in which case a formal hearing must then be held. The status of 'designated consultee' is granted by decision of the ALPG.

Unlike the current system, the representative of an applicant need not be a lawyer (although this is not disallowed). However, the NA will take note of whether the primary purpose of the representative is to circumvent the applicant's lack of the English language. This would raise concerns as the applicant's capacity to grasp their legislative duties.

Hearings will generally be heard and decisions taken in public. Where the NA decides that it is fair, just and reasonable (to the applicant or to any other party) to hold a hearing in private, it will be able to do so. Notice that a hearing or part thereof will be given where possible, but lack of notice shall not preclude a hearing being held in private, for instance where an unexpected matter arises.

Public hearings will be recorded (either verbatim or by notation) and either a transcript or notes of the hearings will be recorded and published. Private hearings will be recorded but not published.

Clerical mistakes in any publication or communication from the NA will not give rise to commitments and can be corrected by the NA by means of a statement.

Decisions taken at variance to the stated procedures of the NA will not be void. Initially, the NA must be alerted to the matter and have the opportunity to correct any error made. If this is not done or if there is disagreement as to whether an error occurred the matter may be raised in writing with the ALPG, who may (or may not) choose to issue advice on the matter to the NA.

If the applicant or their representative does not attend the hearing, they will be notified of the decision of the NA as soon as practical. Officers will then turn the decision into a licence with conditions as appropriate and pass this to the applicant within 7 days following the sitting.

This gives a total turnaround time for the authority decision process of 41 days, see [Appendix 3](#).

If an applicant or other representor is dissatisfied with the decision or the procedure followed by the NA then this may form the grounds for an appeal, which must be made within 21 days of the decision being made.

Representation and access

The NA would receive input into its decisions from generally the same parties that have rights of access to the Licensing Assembly in the current Law – the Fire and Rescue Service, the Health and Social Services department, the licensee, applicants and other interested parties. In addition, the States Police would have a legal right of address to the NA. Unlike the current system, legal representation will not be expected even in contentious applications, and the system will be designed to be accessible to any applicant by the use of plain English and a clear, approachable format. Applicants would have the same opportunity to address the NA as they do the Licensing Assembly.

Unlike the current system, many applications will not be considered by the NA at all. If an application is deemed to be non-contentious (as defined by the Statement of Licensing Policy) and if no objections are received, then licences will be granted automatically. If a licence is contentious (a nightclub, for instance, or a pub within an area designated by the

Statement of Licensing Policy as being of concern) then the NA will sit to consider it, and receive all of the relevant representations.

The involvement of the Parish system will be retained, and the NA will not automatically pass any licence that has not been supported by the Parish Assembly. The decisions of the Parish Assembly will be taken into account as it is at the current time and Connétables will have the right to address the NA, as per the present system.

What this means

Applications should be processed more quickly, especially at times of the year where the Licensing Assembly is not sitting. Licences will be granted according to published and agreed criteria and the discussions of the decision-makers will be recorded.

The overall cost of the system should be no higher than the current time but that cost will be clearly accounted for. The licenced industry will have to meet this cost through fee payments.

3. The Alcohol and Licensing Policy Group

The purpose of the Alcohol and Licensing Policy Group (ALPG) will be to oversee the development and implementation of a States of Jersey Alcohol and Licensing Strategy on behalf of the Council of Ministers, and to evaluate the success of the strategy.

It will make recommendations and provide advice to Ministers on licensing matters and on the Alcohol and Licensing strategy

It will interact with the NA by periodically issuing a 'Statement of Alcohol and Licensing Policy' that will serve to guide the NA in its determinations. This Statement will establish sound principles and practical guidance to the NA in respect of any matters related to the issuing of all alcohol licences and associated conditions of licence

Whilst the Ministers will act collaboratively to discharge their responsibilities in relation to Alcohol and Licensing Strategy, each Minister will retain their own statutory obligations as set out in Law.

It will consist of-

1. Chief Minister (or designate) (Chair)
2. Minister for Economic Development, Tourism, Sport and Culture (or designate)
3. Minister for Health and Social Services (or designate)
4. Minister for Home Affairs (or designate)
5. Connétable of St. Helier
6. Representative Connétable for the rural parishes

Other Ministers will be invited as appropriate, with relevant departmental policy officers providing advice and support as required.

It is the intention of the SALPG that a Licence Holders Stakeholder Group be formed to provide advice to the ALPG with regard to the development, implementation and administration of the Liquor Licensing Law and the Alcohol and Licensing Strategy. This group would advise on the Statement of Alcohol and Licensing Policy as required, advise the ALPG on matters affecting the industry, work with the uniformed services to help meet the licensing objectives and provide a point of contact between government and the industry.

The Statements of Policy

This will assist the NA in deciding upon-

- The general desirability of each category of licence.
- Special consideration that should be given to specific types of licence (i.e. nightclubs).
- What areas of the Island warrant special consideration in terms of the cumulative impact of licensed premises.
- How and if the treatment of licences should vary across Parishes (set by the ALPG after discussion with the Connétable concerned).
- How the NA should treat breaches of licence (i.e by the application of conditions or by suspension or withdrawal).

What this means

The plan for a policy group has been in place for some time and has been consulted upon before. The group will decide on the policy on licensed premises for the Island which will be applied to individual licences by the new authority. This will mean that these decisions are taken in a more predictable and accountable way.

4. Alcohol price restriction

This section considers the policy on drinks promotions in Jersey, which is currently under the operational management of the Solicitor General (SG). Officers have had very productive discussions with the SG in recent weeks and agreed that the policy will fall to the ALPG to manage when the new legislation comes into force.

The current arrangements

In the absence of any specific body to make alcohol policy, the control of drinks promotions falls to the Licensing Assembly as the determining authority for licences.

Since 1987 the position of the Licensing Assembly has been that *'any kind of practice which encourages the taking of drink other than by buying it over the counter for the normal price, is something the Assembly does not wish to encourage'*. The Assembly has gone on to say that *'in [its] opinion licensees who use blatant schemes of this kind are not fit and proper persons to hold a licence [and if] any licensee does persist in this practice we ask that the licensee individually be referred to us and in such event the Assembly would give serious consideration to the removal of the licence altogether'*.

The control here seems to emerge from the 'fit and proper' person requirement for the registration of managers under Article 18 of the 1974 Law. This position emerged from a statement made by the Attorney-General in 1987, and that statement still represents the core policy direction on alcohol price promotions.

The position detailed by the Attorney-General is amplified and expanded by the Attorney-General's statement on the matter, regularly re-issued and currently dated November 2010. It is clear from the statement that the Attorney General will refer any licensee to the Assembly if they are found to be (amongst other things)-

- Using loyalty cards to allow access to discounted alcohol
- Buy one get one free (BOGOF) offers
- Time-specific tariffs or price offers

The statement also provides that a licence may be referred to the Licensing Assembly if it sells alcohol at a price more than 10% below that which is *'generally charged in other premises'*.

The current policy is that it only applies to on-licenses, with off-licensed premises able to offer whatever deals they wish.

On and off-licences

It is worth noting in this context that there has been a shift in the consumption pattern of alcohol since the previous law came into force. A far higher proportion of total alcohol consumption flows through off-licences than in the 1970s. It is not possible to determine exact values for the on-licence/off-licence division, but it has been suggested (anecdotally but from several sources) that approximately two-thirds of alcohol reaches the public through off-licence sales, compared to an estimated one-third in the 1970s. No official statistics on this are recorded, and this statistic is provisionally adopted as the best available estimate.

Anecdotal evidence suggests that apart from drinking at home being much cheaper, it is more difficult to drink in moderation at home. The evidence base indicates that drinks are not measured and are usually prepared by a person getting more inebriated as the evening goes

on. A person might have the same number of drinks at home as on a night out but find themselves inebriated much more cheaply.

There is an unavoidable differential between the prices at which alcohol can be sold in on and off-licences, as off-licences will tend to have a much lower overheads per unit of alcohol sold. This disparity in price between on and off licences has significant effects on behaviour, not least in the phenomenon of 'front-loading'. This is the consumption of alcohol, usually at home, with the intention of visiting a licensed premises later. This behaviour typically arises from cost considerations. Having already consumed large quantities of alcohol, people can then arrive in licensed premises to find that they are still getting drunker (usually from the rapid consumptions of spirits) or that they are simply near a threshold where drunkenness will have significant behavioural effects. In either of these instances an on-licensed operator can find themselves dealing with the consequences of the sale of alcohol by another licensee.

The effects of the current policy

Taken together, the restrictions mean that in practice normal commercial offers are not available to the on-licensed industry, and that there is an underpinning price control that creates a 'price floor' below which they cannot drop. The result of the comparable price control over off-licences is that in both general retail stores and specialist off-licences alcohol seems to be advertised, discounted and subject to offers (including time-limited offers and BOGOFs) like any other product. The price differential may have played a part this in the shift in consumption patterns towards the off-trade but there is not enough evidence available to attribute it to this or any other factor.

There is a question of what the current policy really does to limit the excessive consumption of alcohol. First, it has no effect on alcohol purchased from off-licenses. Second, off-licenses are currently believed to be the source of two-thirds of the alcohol being consumed. This is especially true when one considers that the alcohol the policy omits is the cheapest available option. It appears to affect a narrow band of people – those who drink in on-licensed premises and are price-sensitive enough to drink more if it is cheaper, but who are not so price-sensitive as to choose to drink at home instead.

Concerns about the current policy

Any policy that increases the differential in cost between on and off licenses will tend to keep people out of on-licenses in favour of drinking at home. There is an emerging consensus that on-licenses are a better environment to consume alcohol in as drinkers are monitored and the licensee is responsible for their drunkenness, whereas off-licenses are much less accountable as they treat alcohol generally as another product amongst many (albeit with an age restriction), and they are not responsible for the condition of the customer post-consumption, nor do they have to deal with the customers behaviour. This potentially has a number of negative effects, not merely to the on-licensed trade by way of falling sales, but also in terms of impacts to public order and public health.

The Channel Islands Competition and Regulatory Authority (CICRA) has expressed an opinion on this matter. Its concern is that the policy reduces the scope of competitive pressures and could offer 'cover' for inefficient market operation and at worst anti-competitive actions amongst on-licenses. The structure of the on-trade in Jersey is highly concentrated with only two major players, and this type of market structure tends to exacerbate any anti-competitive factors and inefficiencies that may exist.

The major concern for CICRA is that while this policy is in place it is unable to effectively analyse the market as operators could simply point to the pricing policy as the reason for any

price distortions. This means that CICRA cannot give the industry the normal level of consideration.

Comparable conditions?

A majority of respondents to the UK's recent consultation on licensing conditions thought that the application of differing conditions to the on and off trades was not appropriate⁵. This consultation preceded the most recent formal statement on the subject in the form of a House of Commons Standard Note in March 2015, which, amongst other things, affirmed the limitation imposed on both on and off-licences in May 2014 banning the sale of alcohol below the 'permitted price' (defined as alcohol duty plus VAT)⁶.

This demonstrates that there is support in the UK for compatible conditions, and that the UK has made a move towards creating a level playing field by the imposition of a minimum price arrangement. This minimum price will have a much more significant effect on off-licences than on-licences due to the lower prices they usually charge and the tendency of larger off-licences to discount alcohol to attract sales of other goods.

Summary

The current policy on alcohol pricing does not affect the majority of alcohol sales in Jersey, it tends to exacerbate price differentials between the sectors of the market and it pushes consumers towards consuming alcohol in what is arguably a less desirable context.

The proposal for consultation is therefore that policy should be modified to apply restrictions on *'promotion, pricing policy and other acts'* to all licences, including off-licences. This would mean that any special offers, BOGOFs, time-limited price reductions and bulk discounts on alcohol would be disallowed. Careful consideration would need to be given to equivalent provisions for 'loyalty card' schemes as this might capture general store loyalty cards. Likewise there would be no desire to capture general cashback or value-returned offers such as the co-op dividend scheme. The wisdom of the 10% price limitation is also under consideration, as it is unclear what actual effect this has on alcohol pricing.

This would be enforced by mandatory conditions on all licences.

⁵ Home Office "Analysis of responses to the consultation on delivering the Government's policies to cut alcohol fuelled crime and anti-social behaviour", July 2013, p.22

⁶ House of Commons Library, Standard Note SN/HA/5351 – 'Mandatory conditions for the sale of alcohol', 24.03.15

What this means

If these proposals are taken forward then the biggest change will be that special offers on alcohol will not be allowed in off-licences, including corner shops, supermarkets etc. This does not mean that alcohol could not be sold at low prices, but that offers which encourage people to buy alcohol in large amounts, or to buy now at a special low price would not be allowed.

This would probably mean that the cheapest discounted alcohol would be more expensive, but it would not affect prices in pubs or the usual price of alcoholic drinks.

Work is being done on the effect of removing the 10% cap on on-licence prices at the same time. This would probably have the effect of making pub prices slightly cheaper, but this is a complicated situation and the ALPG will make a decision on this matter at a later date.

5. Personal licences- removal from consultation

One of the planned changes under the new law was the introduction of a personal licence scheme akin to that operating in the UK. The development of such a system was proposed in the original Green Paper consultation in 2009, where it was supported by both governmental and industry stakeholders⁷.

The rationale behind the introduction of a personal licence has been that-

1. The licence would not be directly connected to any premises and would therefore be portable, enabling the licence-holder to move jobs with no requirement for re-vetting.
2. It would ensure that those people responsible for licenced premises would be fully capable and suitable, by restricting the grant of licence to those with accredited training and who had undergone the necessary vetting.
3. It would be subject to scrutiny by all statutory consultees, and to approval by the Licensing Assembly.
4. It would be recorded on a central, publicly available register, helping to promote transparency, and enabling the conduct of the licence-holder to be monitored separately from the operation of the premises.
5. It would be subject to periodic review (the UK personal licences run indefinitely⁸, and consideration is to be given the term in Jersey), which would allow the suitability of the licence holder to be reconsidered, providing a mechanism for removing unsuitable people from the industry.
6. A variant of personal licence could allow people and companies to provide limited amounts of alcohol at locations not usually used for licensable activities without having to extend the licence assigned to some premises. This could include people such as outside caterers who wish to provide wine with a meal, or small businesses or societies which sell alcohol products at events such as fêtes.

It was intended that both types of licence would be required for alcohol to be sold, although the personal licence-holder need not be on the premises, providing they take all reasonable precautions to ensure the premises operate within the law.

The rationale for removal

After discussions with local authorities in the UK, and after an extremely useful visit to the Carmarthenshire County Council to discuss licensing, it has become apparent that there are considerable doubts about the personal licensing scheme.

The Central Government in the UK consulted in 2013 about the wisdom of continuing its personal licence system. Although no changes have yet been made, the concerns expressed about the system are clearly articulated - [The Home Office has] *become concerned that this system may not be effective in ensuring responsible sales and tackling crime and disorder. For example, although all alcohol sales must be at least authorised by a personal licence holder, it is not always the case, in practice, that a personal licence holder is present on the premises at all times to do this. Moreover, no person working at licensed*

⁷ 65% of Green Paper respondents were in favour, 4% (1) was not in favour and the rest made no comment.

⁸ Previously 10 years, changed in March 2015 by the UK's Deregulation Act 2015 (p.69).

*premises except the [Designated Premises Supervisor] is required to hold a personal licence. All this would seem to restrict the system's ability to prevent those with criminal records and a poor understanding of alcohol harms from working at, or even managing, a licensed premises.*⁹

The official position of the UK Government appears to be to maintain the status quo at this time. This seems to be based in part on responses to the consultation which were against a change. It is notable that key reasons for the responses against were licensees concerns about potential "*inconsistency between licensing authority areas in terms of applying training conditions*"¹⁰ and police concerns about a "*lack of consistency in training which could arise*".¹¹

The concerns expressed in the UK relate primarily to the suggestion by the UK Government that local authorities would have the right to set differing requirements to replace the personal licence system. Discounting those concerns (as Jersey will have a single licensing authority) the majority of objections fall away, while the concerns remain.

Local councils, the bodies responsible for the operation of liquor licensing, are even less satisfied with the personal licence. There is a feeling that they have not provided benefits that could not be achieved by other means.

Some shortcomings of the personal licence system are particular to the UK -

- They cannot be withdrawn by the issuing authority (only by a Court).
- They remain under the administration of the issuing authority even if a holder moves to another authority.

It would be possible to design the law to manage out these problems, by allowing withdrawal by the issuing authority and by maintaining a central register. However other issues arise that are more intrinsic-

- Personal licences would require a separate recording system, and because of their long period they would remain 'live' even after individuals leave the industry.
- They would not promote the intended level of accountability as the holder could designate an alternative individual to take responsibility for a premises.

These disadvantages must be weighed against the advantages of the system as detailed above.

Taken all together, the personal licence system offers greater individual accountability, ensures training is undertaken and avoids re-vetting managers, in return for the cost of administering a separate licensing system, which must be carefully structured to avoid unnecessary complexity.

Given that any personal licence system will impose a burden on the industry and on government, it has been decided to remove provisions for it from the law and legislate instead to require that-

⁹ The Home Office "Personal Alcohol Licences: Enabling Targeted, Local Alternatives", September 2013, para 9, page 6.

¹⁰ Home Office, "Personal Alcohol Licences: Enabling Targeted, Local Alternatives - Government response to the consultation", 24 March 2014, para 2.5

¹¹ Ibid, para 2.6

- Registered managers of licenced premises (both on-and off-licences) must have the training required by the ALPG from an accredited provider, and keep that training up to date
- Any person in charge of a licensed premises in the absence of the registered manager must have such training.
- Managers will be vetted on the basis of being generally fit and proper, but the more demanding vetting process will be waived if they are moving from one premises directly to another.
- Transfers of register managers will be approved by the NA on an administrative basis, with a presumption in favour (this will mean that the transfers will be automatically accepted unless they are challenged).
- Separate provision will be made for limited provision of alcohol at locations not usually used for licensable activities.

This will capture the benefits of a personal licence system without requiring the management of a separate administrative structure.

What this means

The new licensing system will look more like it does now and less like the UK system. Managers and staff will still need to be properly trained and have certificates to prove it, Managers transferring from one premises to another will need to notify the NA that they are doing so and a transfer may be objected to by the Police or other body if concerns exist. The Connetable of the relevant parish may also request a meeting with any new or transferring manager.

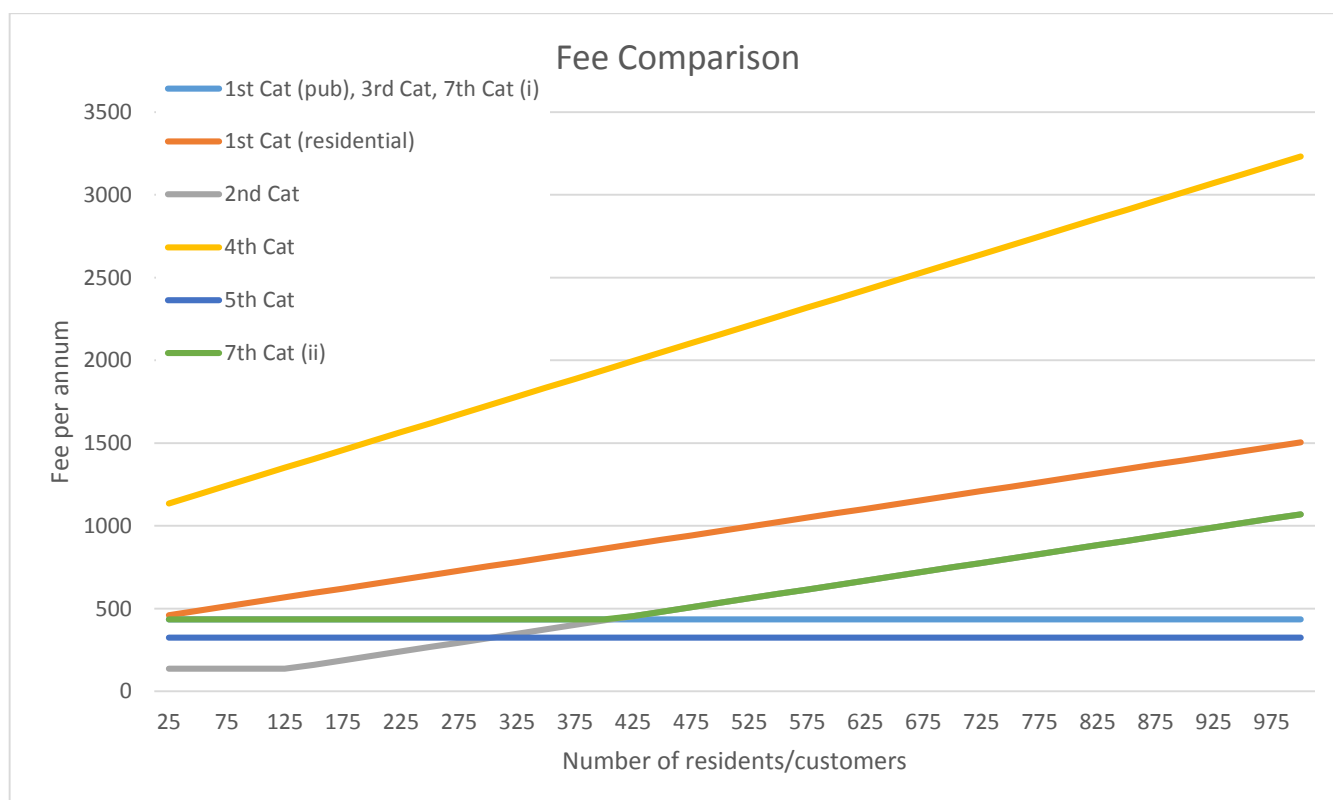
6. Consideration of fee structures

The current fee structure

The structure of the current fee arrangements was developed in 1974 and has broadly remained unchanged since that time. It provides for a mix of flat-rate fees and scaled fees which try to reflect the size of a business.

The fees are dependent on the category of licence, generally the more permissive the regime the higher the cost of the licence.

The current fees for the various types of business are as follows-



- First Category - a Taverner's Licence (public houses) allowing the sale of alcohol from a bar until 11.00pm. This costs £434, plus a fee of £1.07 per person who may be 'accommodated for reward'. This does not refer to the number of customers a pub may have but the number of people who can stay overnight as guests. Business that operate simply as pubs therefore pay the flat rate of £434 per year regardless of size.
- Second Category - a Residential Licence allowing residents of a hotels etc to buy drink on the premises until 1am. This costs £1.07 multiplied by the number of approved residents, with a minimum fee of £136.
- Third Category - a Restaurant Licence allowing the sale of alcohol with a meal to seated customers. This costs £434 per year, regardless of the number of customers that can be seated.

- Fourth Category - a Comprehensive Licence allowing the activities under first, second and third categories. This costs £1,082, plus a fee of £2.15 multiplied by the number of residents
- Fifth Category - a Club Licence allowing the sale of alcohol to members only. This costs £324.
- Sixth Category - an Off-Licence allowing the sale of alcohol for consumption off of the premises. This costs £114.
- Seventh Category - an Entertainment Licence allowing alcohol to be sold ancillary to some other entertainment being provided, with two sub-divisions,
 - (a) cinemas, theatres, which cost £434.
 - (b) places of entertainment other than cinemas and theatres (i.e. nightclubs), which cost £1.07 per the number of persons mentioned in the Bailiff's entertainment permit, with a minimum fee of £434.

For information, Appendix 1 shows the current levels of fees charges for each type of licence.

Current fee income and distribution

The current income derived from licensing fees is approximately £264,500 per year.

This income comes from 559 premises, 198 of which hold off licences (including 13 of which that hold both on and off-licences).

Why licence fees are charged

In order to effectively revise the structure, the philosophical underpinning of the fee regime needs consideration. Liquor licensing can be seen as purchasing the right to sell alcohol.

Any licence system should be 'fair', the difficulty is in determining what this means in practice, and who the system is trying to be fair to. A licence system based on the amount of alcohol sold could be argued to be fair, as could one based on profit derived from alcohol sale, or by some measure of harm caused to wider society by the availability of alcohol from a business.

There can be no doubt that the availability of alcohol in a society has associated costs that are borne by government and thus ultimately by the taxpayer.

In the UK alcohol is estimated to account for 10% of the burden of disease and death, and in 2012 alcohol cost the NHS £3.5bn per year, equal to £120 for every tax payer¹². Statistics for Jersey are not collected in an identical manner, but in 2014, the Health and Social Services Department estimated that it spent at least £2 million a year dealing with hospital admissions for alcohol-attributed conditions.

¹² House of Commons Health Committee, 'Government's Alcohol Strategy (Third Report of Session 2012–13)', July 2012, The Stationery Office Limited, p.9.

In total alcohol misuse costs England around £21bn per year in healthcare, crime and lost productivity – just under £400 per person¹³, of which £11bn was the cost of alcohol-related crime year (2010-11 costs, England)¹⁴

Applying the UK's total alcohol misuse figures to Jersey would suggest that the total direct and indirect dis-benefit of alcohol use in terms of costs and lost economic activity is in the region of £40m per year. This is at best a rough estimate and takes no account of any differences between the jurisdictions. However, even allowing for a very great margin of error, it is undoubtedly true that the availability of alcohol costs Jersey millions of pounds per year, and this helps to place licence fees into a conceptual framework.

This social cost is balanced by the profitability of alcohol sales, from which the government benefits through tax revenue, and by the enjoyment that the majority of the population finds in alcohol consumption. Alcohol is such a part of our social fabric that very few people, including non-drinkers, would wish to see its complete removal from our society. That being said, the costs cannot be ignored.

The costs of alcohol availability fall widely on society, as the economic effects and government expenditure are spread across all taxpayers, including businesses which may be directly affected – for example by absenteeism. In contrast, the economic benefit of such availability is concentrated amongst the retailers who profit from its sale.

The justification for licence fees are therefore-

- A. To take advantage of profits generated by an activity with significant negative effects
- B. To disincentivise the conduct of that activity
- C. To fund the operation of the licence system

The proposed overall level of fees

A new fee system will be developed based on all of the justifications above. This does have implications for the cost to the industry. The current fee income from licencing is approximately £264,500 per year, roughly £470 per licensed premises. Had this continued to rise with inflation since the fees were frozen in 2008, it would be in the region of £320,000.

This money does not fund the licensing scheme directly, but has become an integral part of government revenue. At a time when the government is seeking to balance its expenditure, it is simply not feasible to redirect this money to a new organisation as no 'new money' can become available to fund the services that this would leave unsupported.

This means that government will be looking to obtain updated fees in the region of £320,000 as a baseline, in addition to funding the cost of a new authority from industry fees. The rationale behind P.94/2015, which sought to update the licensing fees to 2015 levels, was to provide a clear separation between these two increases in cost to the industry.

The current estimated cost of the NA will be £100,000 per year. This cost will for the first time become both visible and transparent. While the real cost of the current system cannot be precisely quantified, any service that requires the Bailiff and the majority of the Island's Judges will incur significant opportunity costs.

¹³ NHS choices, 'Social drinking: the hidden risks', National Health Service, March 2014, on-line.

¹⁴ Home Office, 'A Minimum Unit Price for Alcohol: Impact Assessment, Alcohol Strategy Consultation', November 2012, The Stationary Office Limited p. 5.

The current estimation for fees under the new law will be in the region of £420,000 per year. This is approximately £750 per business in the sector.

The proposed division of fees

The fee structure will be based on the following principles-

1. **Simplicity**_- the calculation of charges should be as simple as possible, and have the lowest possible administration costs.
2. **Verification**_- information required for the calculation of fees should be easily verifiable.
3. **Adaptability**_- the underlying structure should be sufficiently adaptable to reflect a changing market environment, while providing certainty to the industry.
4. **Licensing objectives**_- the fee structure should implement the licencing objectives as part of the wider policy.

The mechanism by which fees will be set has not yet been decided, but some aspects of the scheme can be predicted from the work done so far.

The preferred option at this time is that the new fee structure takes account of the value of the licence to the business, primarily as reflected in the profit made from those sales. This is considered to be the fairest position to take in respect of the licensees.

If this option is adopted, either businesses must be required to declare their profit from alcohol sales separately, or some proxy must be found by which profitability can be judged.

This proxy could be-

- The number of people that can be served in the business (a variation on the currents system)
- The floor area devoted to alcohol sales
- The value of the business (i.e. rateable value as in the UK)

(The overall profitability of businesses in Jersey is not available for consideration as the zero/10 tax regime means that the government does not have the necessary detailed annual information.)

All of these proxies are imperfect, and it would be possible to point to any one of them and find an outlying example of a business that would be affected. The advantage of these proxies is that they rely on information that is already known or can be easily ascertained and verified.

The alternative of trying to establish the precise profitability of alcohol sales is likely to be highly intrusive and place an enormous demand on businesses. It would also require self-declaration, which in turn would require some system of verification. This would be likely to introduce additional administrative costs into the fee regime.

It must be recognised that the fee structure will be an emotive issue for the licensed trade, and that no fee structure will be perfect. There will undoubtedly be winners and losers in any

revision of the system, and it is partly the recognition that this is a significant issue for the industry that makes it worth taking the time to get the fee structure correct.

The on-off disparity

Off-licence fees have increased incrementally alongside the fees for other types of premises since the introduction of the current Licensing Law in 1974. As the fees are locked into step there has been no change in the comparative value between on and off licences.

It is understood that there has been a shift in the consumption pattern of alcohol since the previous law came into force. A far higher proportion of total alcohol consumption flows through off-licences than in the 1970s. It is not possible to determine exact values for the on-licence/off-licence division, but it has been suggested (anecdotally but from several sources) that approximately two-thirds of alcohol reaches the public through off-licence sales, compared to an estimated one-third in the 1970s. Off-licences account for approximately one third of the total number of licensed business in Jersey.

Licensing fee income is currently not recorded by category (although this will change from 2016) and so it is difficult to see what proportion of fees are being paid by each type of business. Off-licence income is easier to quantify as it is entirely flat-rated, and the number of off-licences is known. Currently, off-licences pay approximately 8.5% of all licensing fees¹⁵, and given the number of off-licensed premises and their significant sales, it seems likely that the off-licence sector of the industry is under-paying by any objective measure.

Further work on fees

Work on the fee structure is ongoing, and, together with the detail of licence categories, will form the second tranche of legislative work to follow the enabling Liquor Licensing Law.

Consultation on these specific areas will follow later in 2016.

What this means

The fee structure has very little connection with how much money a business makes or how much harm it causes. Over 90% of the fees come from on-licences, although these business probably sell considerably less alcohol overall than off-licences.

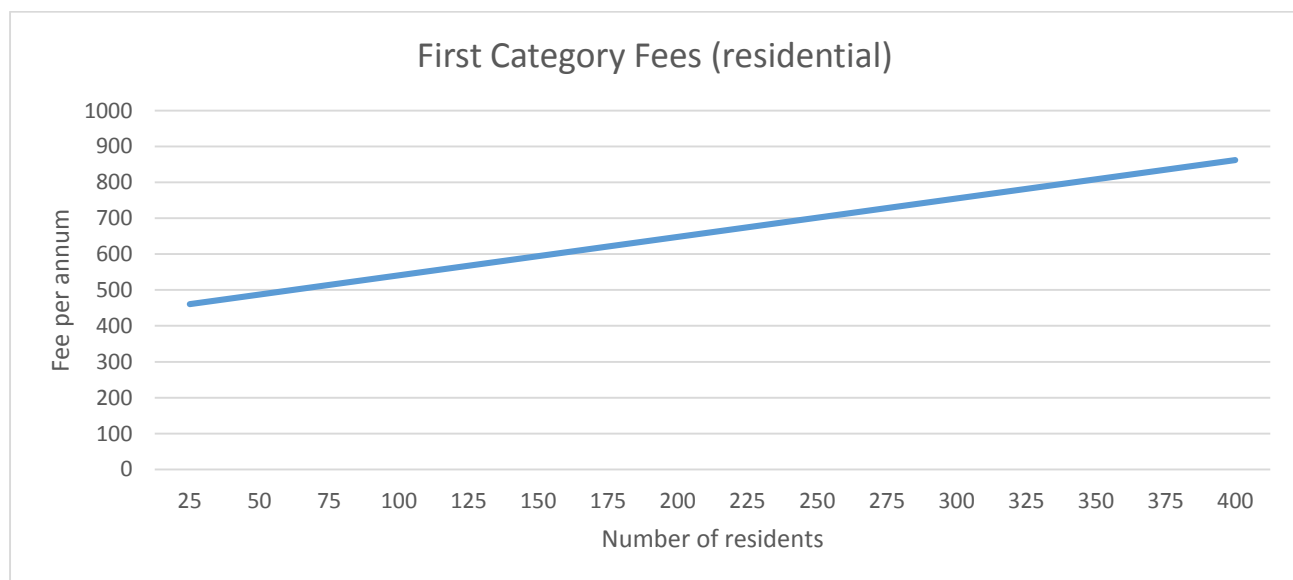
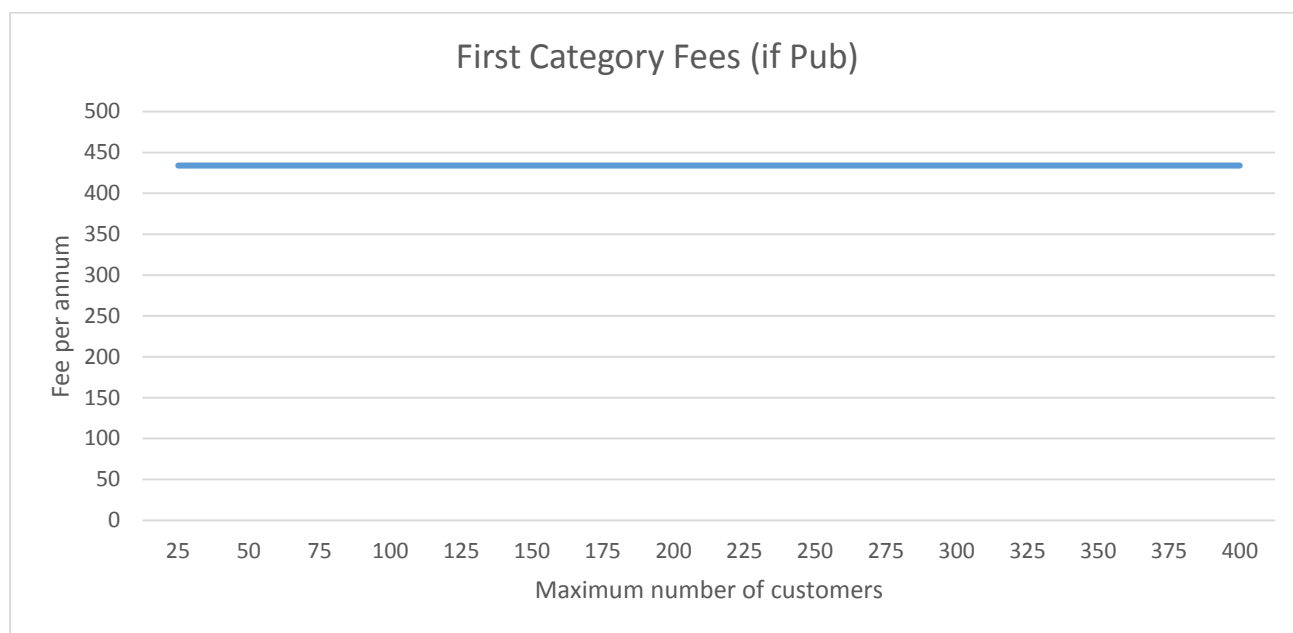
Licensing fees will rise under a new law to fund the creation of a new Authority to decide on Liquor licences. Off-licence fees are likely to rise considerably more than on-licence fees.

Separately from any increases to meet the cost of a new scheme, fees have been frozen since 2008, and government intends to apply cost of living increases from 2008-2016 to the current fees. This would have happened with or without the new law.

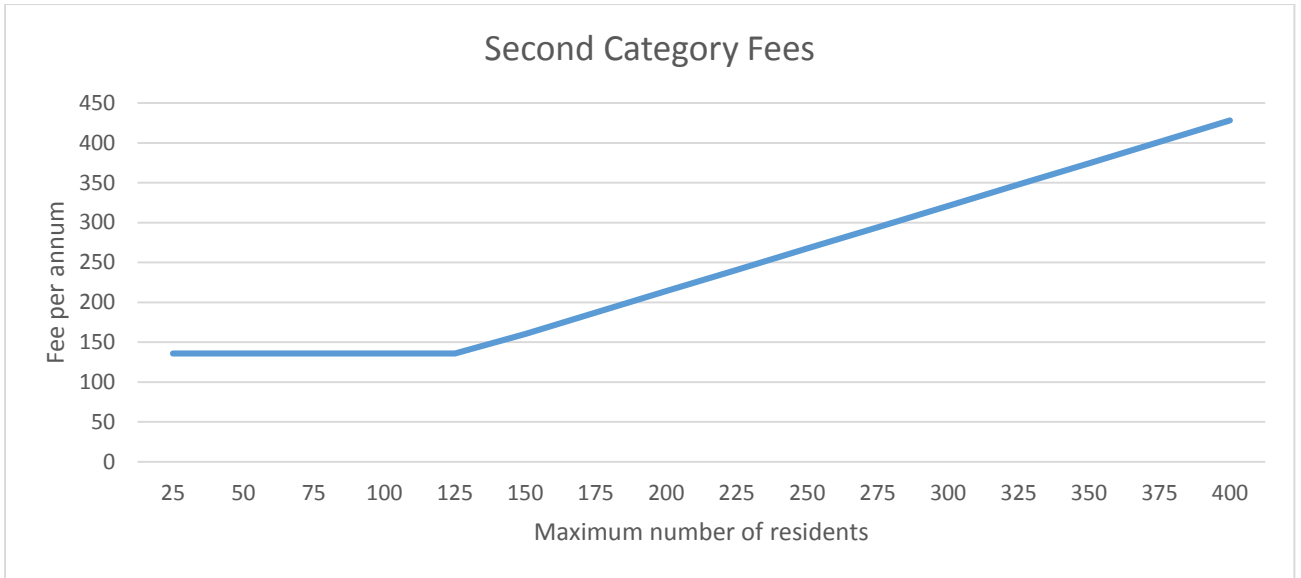
¹⁵ Fee income per year is £264,500. Off-licence cost per year is £114. 198 off-licences are held, for a total fee income of £22,572, 8.5% of £264,500.

Appendix 1 – details of current fees

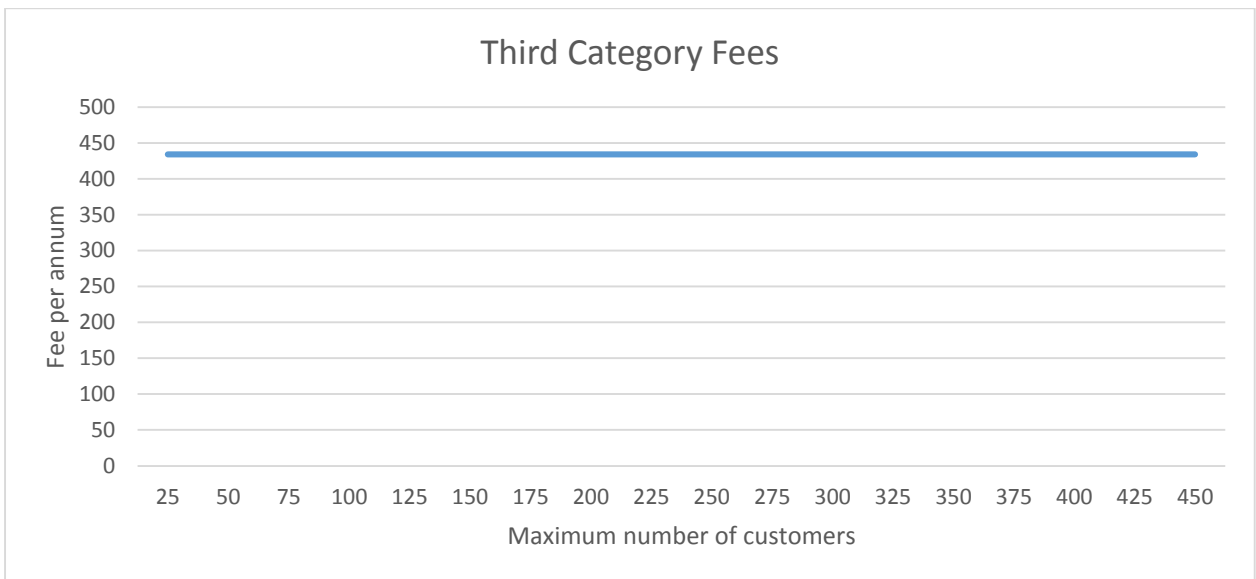
First Category - a Taverner's Licence allowing the sale of alcohol from a bar until 11.00pm. This costs £434, plus a fee of £1.07 per person who may be 'accommodated for reward'. This does not refer to the number of customers a pub may have but the number of people who can stay overnight as guests. Business that operate simply as pubs therefore pay the flat rate of £434 per year regardless of size.



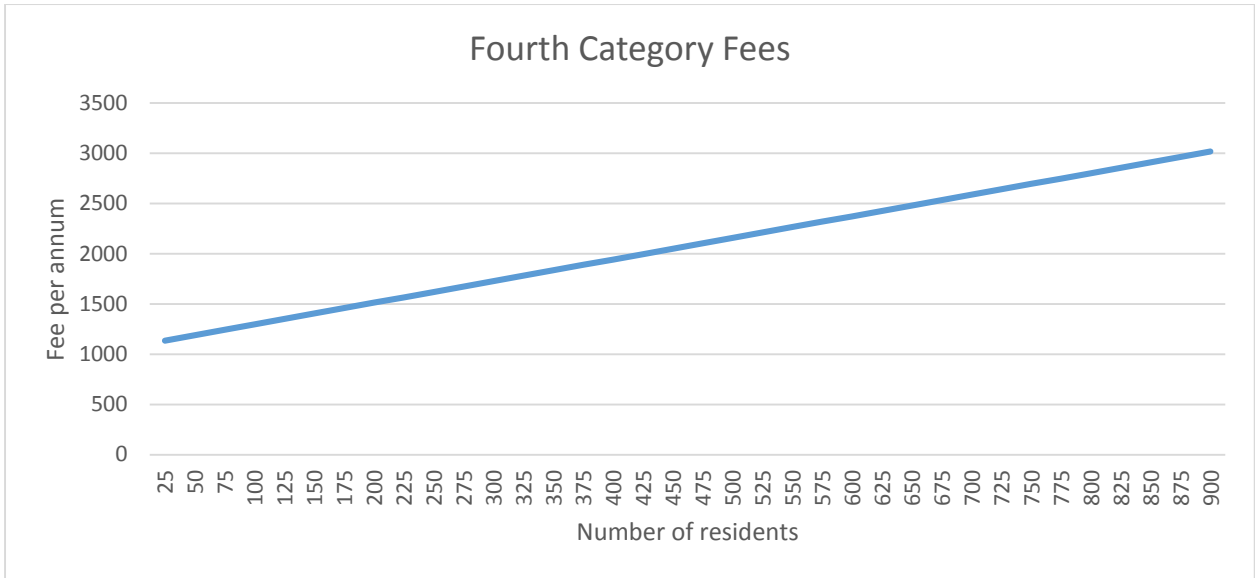
Second Category - a Residential Licence allowing residents of a hotels etc to buy drink on the premises until 1am. This costs £1.07 multiplied by the number of approved residents, with a minimum fee of £136.



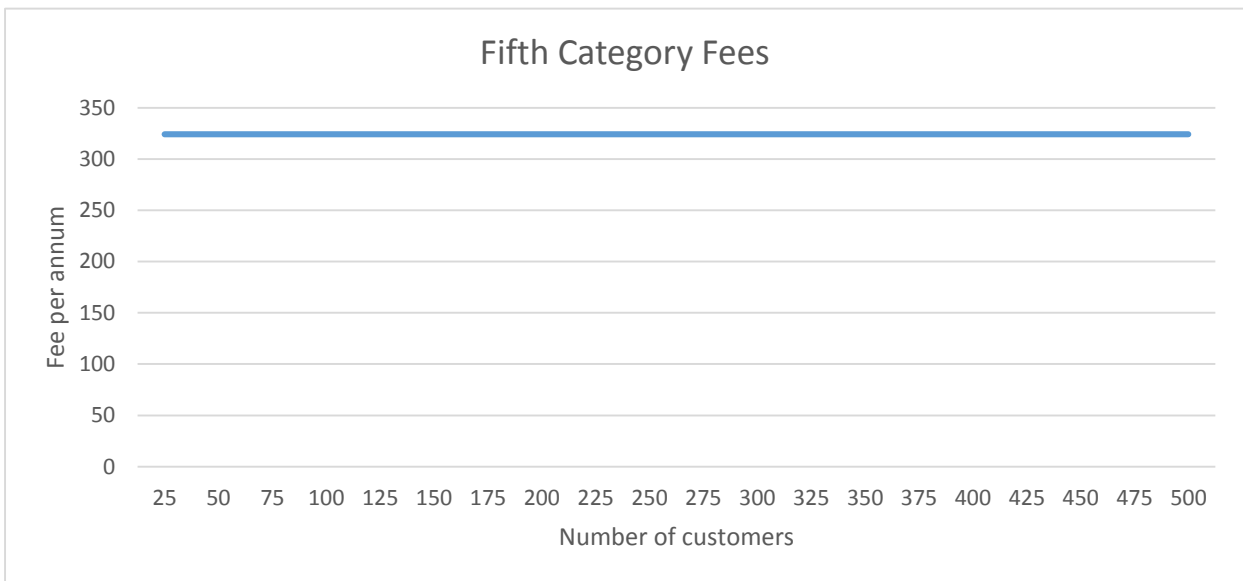
Third Category - a Restaurant Licence allowing the sale of alcohol with a meal to seated customers. This costs £434 per year, regardless of the number of customers that can be seated.



Fourth Category - a Comprehensive Licence allowing the activities under first, second and third categories. This costs £1,082, plus a fee of £2.15 multiplied by the number of residents.



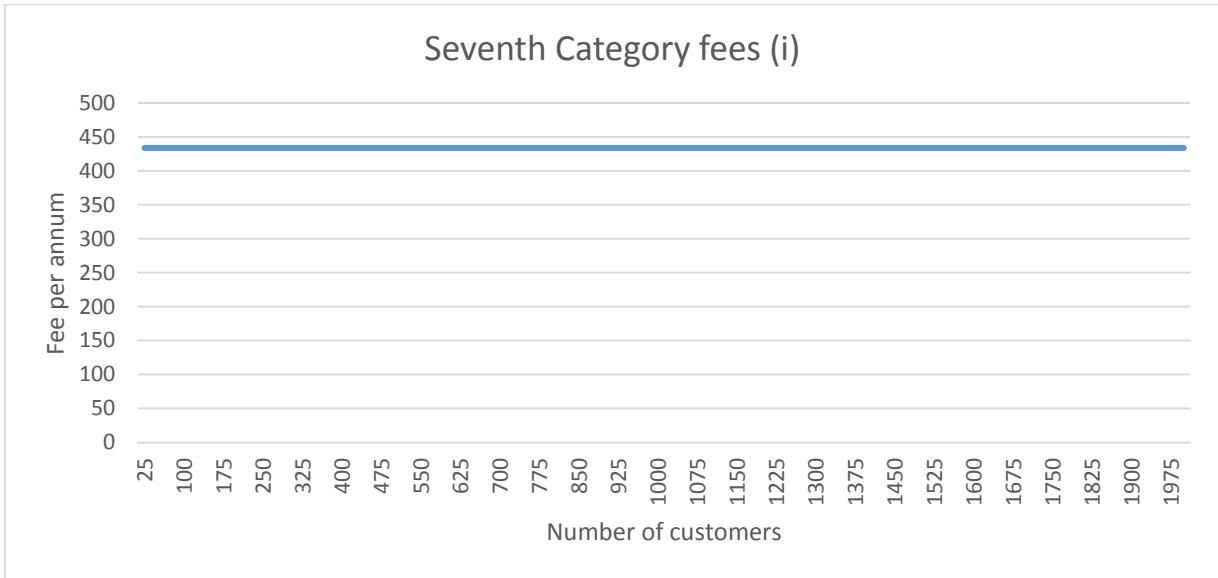
Fifth Category - a Club Licence allowing the sale of alcohol to members only. This costs £324.



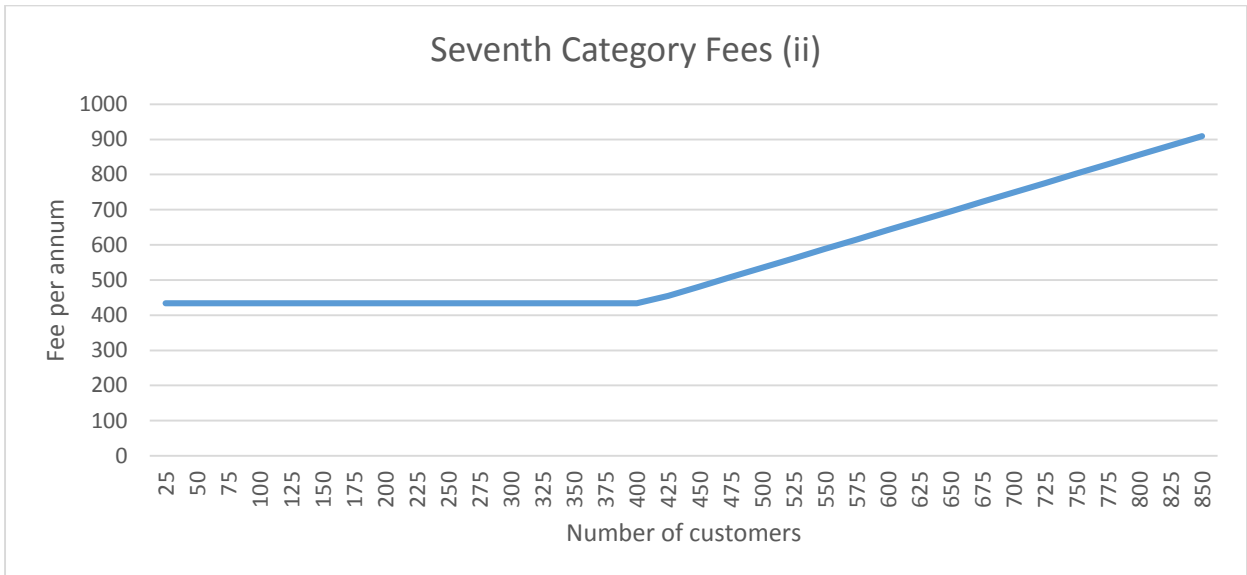
Sixth Category - an Off-Licence allowing the sale of alcohol for consumption off of the premises. This costs £114.

Seventh Category - an Entertainment Licence allowing alcohol to be sold ancillary to some other entertainment being provided, with two sub-divisions,

- (c) cinemas, theatres, which cost £434.

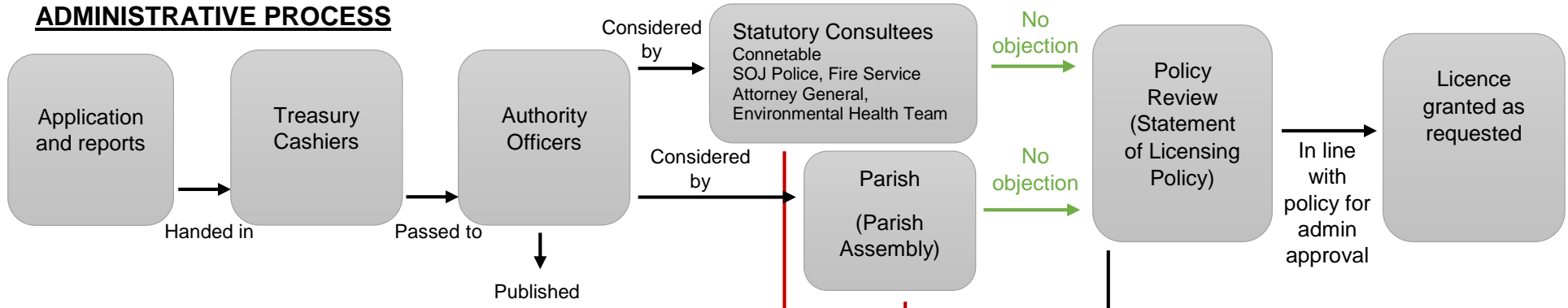


(d) places of entertainment other than cinemas and theatres (i.e. nightclubs), which cost £1.07 per the number of persons mentioned in the Bailiff’s entertainment permit, with a minimum fee of £434.

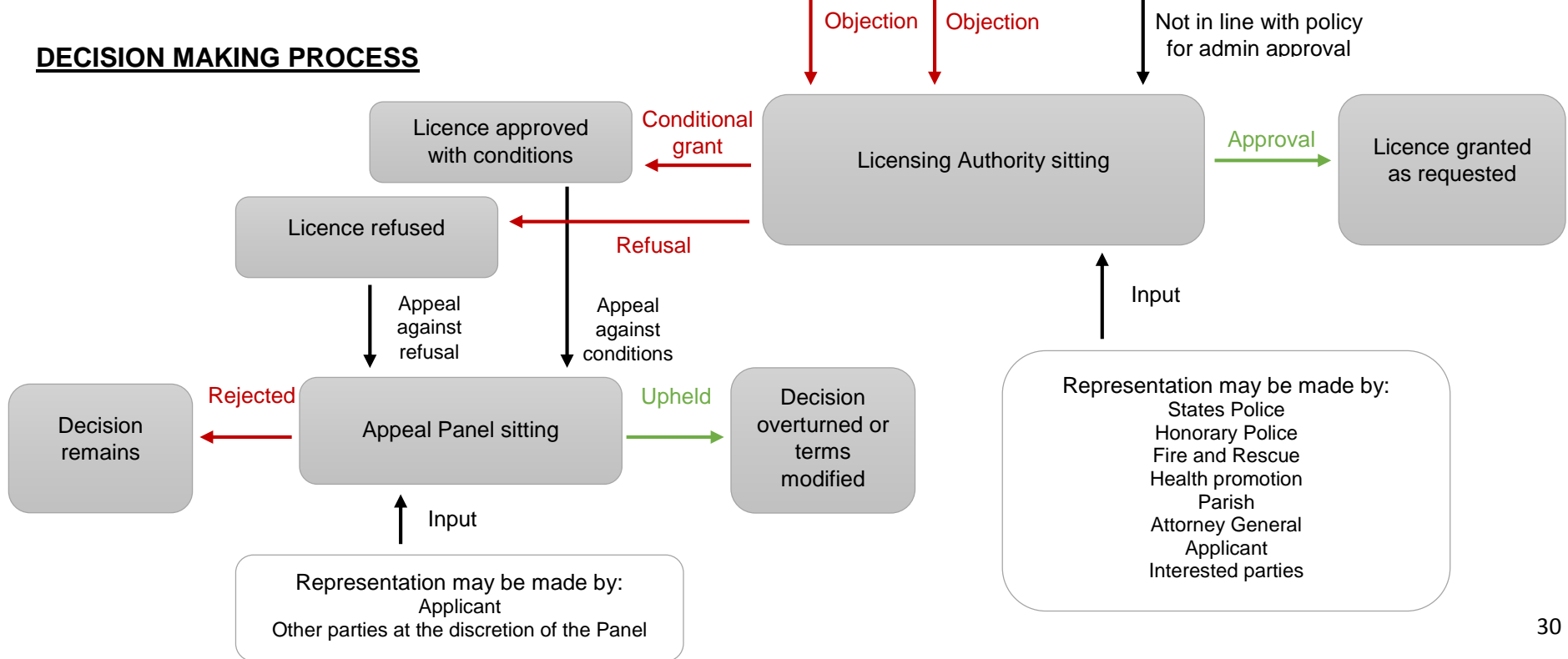


Appendix 2 – the application process

ADMINISTRATIVE PROCESS



DECISION MAKING PROCESS



Appendix 3 – Process timings

Administrative Approval			
Step	Action taken	Time for action	Total time elapsed
Treasury Cashiers receive application	Pass to New Authority ('NA') officers	1 day	1 day
NA officers receive application	Check if all required documentation is present, pass to Parish and consultees	3 days	4 days
Parish and consultees carry out process	<ul style="list-style-type: none"> • Parish assembly advertised • Parish Assembly held • Response passed to NA. • Consultees develop recommendation • Recommendation passed to NA. 	19 days	23 days
NA officers receive positive response and recommendation, <u>there are no objections</u>	Administrative process to grant licence as requested	7 days	30 days

Authority decision process			
Step	Action taken	Time for action	Total time elapsed
Treasury Cashiers receive application	Pass to NA officers	1 day	1 day
NA officers receive application	Check if all required documentation is present, pass to Parish and consultees	3 days	4 days
Parish and consultees carry out process	<ul style="list-style-type: none"> • Parish assembly advertised • Parish Assembly held • Response passed to NA. • Consultees develop recommendation • Recommendation passed to NA. 	19 days	23 days
NA officers receive response and recommendation, <u>objections have arisen.</u>	Officers prepare agenda papers for NA sitting, distribute agenda, applications and supporting documents ready by members	10 days	33 days
NA sitting is held	Decision taken on licence application	1 day	34 days
Officers develop licences in line with decision of NA	Applicant receives licence	7 days	41 days

Current process timings

The Licensing Assembly sits four times annually, with exceptional sittings as required.

The dates are variable but it must sit once between-	14 th to 24 th March
	14 th to 23 rd June
	20 th to 29 th September
	15 th to 24 th December

The timing of a licence application is set by the current Licensing Law and works backwards from the day of the sitting into the previous month-

- By 5th of month before the Licensing Assembly sits, the application must arrive at Treasury.
- 10 days later, by 15th of the month before the Licensing Assembly sits, the application must arrive with the Parish.
- 13-17 days later, by the 1st of the month in which the Licensing Assembly will sit, a Parish Assembly must have been held.
- 4 days later, by the 5th of the month in which the Licensing Assembly will sit – the outcome of the Parish Assembly must have been notified to the Licensing Assembly.
- 13-28 days later, on 14th-29th of month – a Licensing Assembly is held and the application is decided

The total process takes 45-61 days, depending on month and timing of LA. In the worst case, where an application were to arrive just out of time for a sitting, the next scheduled sitting could be up to 137 days away.

An example of the current timings would be-

On 5 th February	Applications for March sitting must be with Cashiers
On or by 15 th February	Applications must arrive with the relevant Parish.
On or by 1 st March	Parish Assembly must have been held
On or by 5 th March	Responses from Parish returned
On 14 th to 24 th March	Licensing Assembly sitting held

Example new process timings

An example of the timing detailed in Section 2 using 2016 dates would be-

First cycle

On 6 th January	Applications for first sitting must be with Cashiers
On or by 7 th January	Applications passed to EDTSC
On or by 10 th January	Applications passed to the relevant Parish and the consultees
On or by 24 th January	Parish Assembly must have been held
On or by 29 th January	Responses from Parish and consultees returned

IF NO OBJECTIONS

On or by 5 th February	Licence granted as requested.
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IF OBJECTIONS

On or by 8 th February	Papers considered by NA, sitting arranged etc.
On 9 th February	Sitting held, decision made

On or by 16th February Decision developed into licence, if approved

Second cycle

On 17th February Applications for second sitting must be with Cashiers
On or by 18th February Applications passed to EDTSC
On or by 21st February Applications passed to the relevant Parish and the consultees
On or by 6th March Parish Assembly must have been held
On or by 11th March Responses from Parish and consultees returned

IF NO OBJECTIONS

On or by 18th March Licence granted as requested.

IF OBJECTIONS

On or by 21st March Papers considered by NA, sitting arranged etc.
On 22nd March Sitting held, decision made
On or by 29th March Decision developed into licence, if approved

This would be repeated for 8 cycles.

These timings would allow for 8 sittings in 2016, although it is most unlikely that they would all be required. They would fall as follows-

- 16th February
- 29th March
- 10th May
- 21st June
- 2nd August
- 13th September
- 25th October
- 6th December