



Submission to the
ALL PARTY PARLIAMENTARY BEER GROUP
COMMUNITY PUB INQUIRY

From the
ASSOCIATION OF LICENSED MULTIPLE RETAILERS

February 2006



ALL-PARTY PARLIAMENTARY BEER GROUP COMMUNITY PUB INQUIRY

INTRODUCTION

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to submit written evidence to the All Party Parliamentary Beer Group's Inquiry into community pubs and in particular the impact of regulation on those outlets. We should be happy to provide further oral evidence as part of the inquiry.

By way of background, the *ALMR* is the only national trade body solely dedicated to representing the interests of pub operators. Currently 89 companies are in membership, between them operating around 30,000 outlets or just under half the UK pub estate. Members include major pub companies such as Punch, and Enterprise, retail pub chains such as Regent Inns and Laurel and the retail estate of regional brewers. However, over two-thirds of our membership is derived from small independent companies operating 50 pubs or less under their own branding. Together with the regional brewer estates, these are predominantly community pubs operating in suburban and rural locations. As such, the core *ALMR* membership is the focus of this inquiry.

Overview

The *ALMR* believes that this is a vital and timely inquiry. In the past, much political attention has been focused on other parts of the pub trade – with positive support for rural and village pubs and much negative attention focused on the high street and late night sectors. The community pub – the traditional 'local' - has at best been overlooked and at worst seen as part of an homogenous sector. As a result, its economic and social role in the communities within which it is situated has not been recognized and the way in which regulation and red tape damages it has not been taken into account. Many community locals are under threat and fighting for their survival and we hope that this inquiry will be a first step towards raising awareness of the problem and starting the process of addressing it.

The question of the effect of red tape on the economic viability of the sector as a whole and community outlets in particular has been one which the Association has been tackling since 2000 when it established the trade's Red Tape Campaign. Our submission draws heavily on the research undertaken by the Red Tape Campaign in 2000 and 2004 reflecting the experiences and perceptions of individual tenants/lessees operating community pubs. In addition, the *ALMR* has undertaken a snapshot survey of the views of a number of its members – all independent small businesses operating fewer than 50 pubs. This exercise aimed to assess their attitude towards regulation in general and identify specific areas of concern. We have concluded by providing some specific examples of issues of concern, the unforeseen consequences of regulation and measures which could be taken to address the problem.

The Market

The pub sector is diverse, eclectic and vibrant – from rural inns to city centre wine bars, gastro pubs to traditional locals – but at its heart is a truly 'public' house. These community pubs are social spaces and play a vital and positive role in maintaining a social centre within local communities. They are often used as alternative community centres, hosting informal meetings; drawing together local sports teams and encouraging charitable events. Last year, British pubs raised £120 million for charity.



Hospitality is a £20 billion a year industry employing more than half a million people – equivalent to 5% of GDP. Crucially, 1 in 5 of all new jobs are created by the sector. It generates public sector revenue - alcohol duty alone raises £13 billion, with business taxes, gaming duty, VAT and PAYE on top of this¹.

Community pubs are a vital and vibrant part of this industry, albeit the Cinderella of the sector. They are an important source of employment, providing flexible and part-time jobs in all regions – city, suburban and rural areas. They offer the first taste of work for many people, equipping them with basic transferable skills. At a local level, pubs and bars contribute significant sums of money to the public exchequer and local services such as street cleaning and litter collection. At a very basic level, they are a provider of leisure and tourist facilities for residents and visitors alike.

This positive social and economic contribution cannot be taken for granted, however, and is in jeopardy. Increasing levels of red tape now mean that the cost of complying with Government legislation is now estimated to be £30,000 per outlet per year². A recent survey by the Red Tape Campaign in 2004 of over 3,000 pub tenants – all self-employed small businessmen – found that 60% spent between 2-7 hours a week dealing with paperwork. Three-quarters of them have had to employ external advisers in order to cope – further adding to overheads and costs. Small wonder that 1 in 5 of them feared becoming uncompetitive as a result of Government imposed red tape.

REGULATION AND RED TAPE – THE SCALE OF THE PROBLEM

In order to determine the overall effect of this regulatory burden, the *ALMR* has undertaken a series of surveys amongst its members in recent years. In 2003, around 3000 community pub tenants were approached for their views on the regulatory burden and the effect on their business. The objective was to identify and prioritise the issues of greatest concern and quantify the impact of legislation in terms of its practical effect on the business. A further snapshot survey of 74 companies was undertaken in early 2006 designed to review and update these original findings to see whether the situation had improved or worsened. *ALMR* received 24 responses representing 32% of *ALMR*'s managed outlets membership.

The surveys reveal major concerns about the volume and complexity of regulation and the level of red tape faced by an individual business on a daily basis. In 2003, 80% of community pub tenants surveyed were concerned about the level of red tape affecting their business and 83% felt this burden had increased in recent years. Just over half described the increase as dramatic. In contrast, those surveyed in 2006 were unanimous in describing the increase as dramatic – possibly as a result of the deluge of sector-specific legislation the industry has faced over the intervening period.

Since the Labour Government came to power over **240** separate pieces of legislation have been introduced which have a direct impact on pubs and bars. Details of these are attached at Appendix 1. In 2005 alone, the introduction of sector specific legislation on licensing, door supervision and gambling necessitated the detailed tracking and analysis of 20 individual regulations. A staggering three quarters of those imposed direct and indirect compliance costs on businesses, the remainder adding administrative burdens. The worst culprit was employment law, accounting for just over a third of the regulations introduced. Just 5% of the overall burden could be deemed to have a beneficial or deregulatory effect. Although the Government claims the new Licensing Act as part of its regulatory reform programme, few community pub operators would agree that the experience has reduced red tape and costs.

¹ Source – *Business in Sport & Leisure*

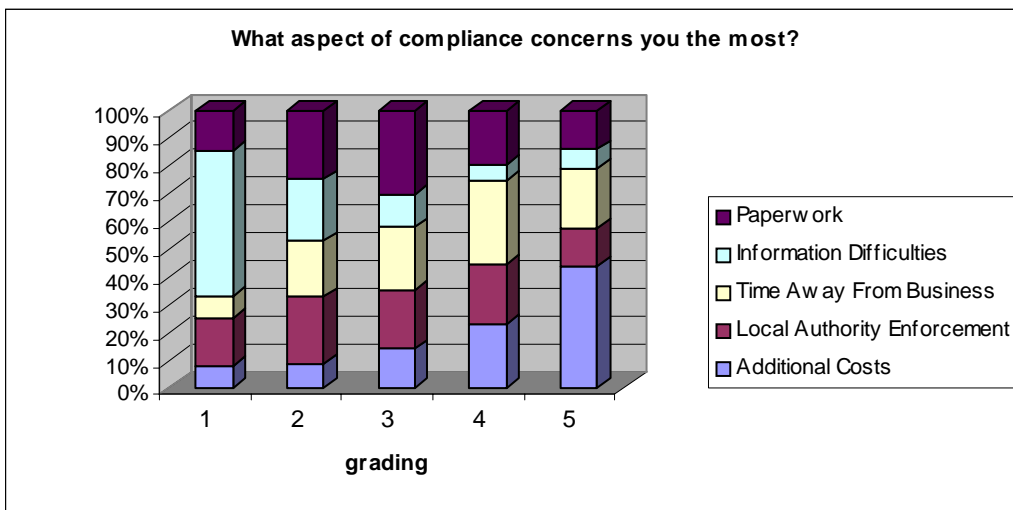
² Source: *Mitchells & Butler*



For community pub operators, it is the sheer volume of legislation that they have to deal with which causes the biggest problem; in some cases more so than the individual regulations themselves.

Community pub operators are worried that this volume of legislation may overwhelm or “suffocate” them. The volume and pace of legislative change led many to fear that they may not fully understand their obligations and, as a result may inadvertently fall foul of the law. However, with community pubs operating on significantly tighter net profit margins than other sections of the pub there is very real damage to the business arising from this cumulative burden of red tape.

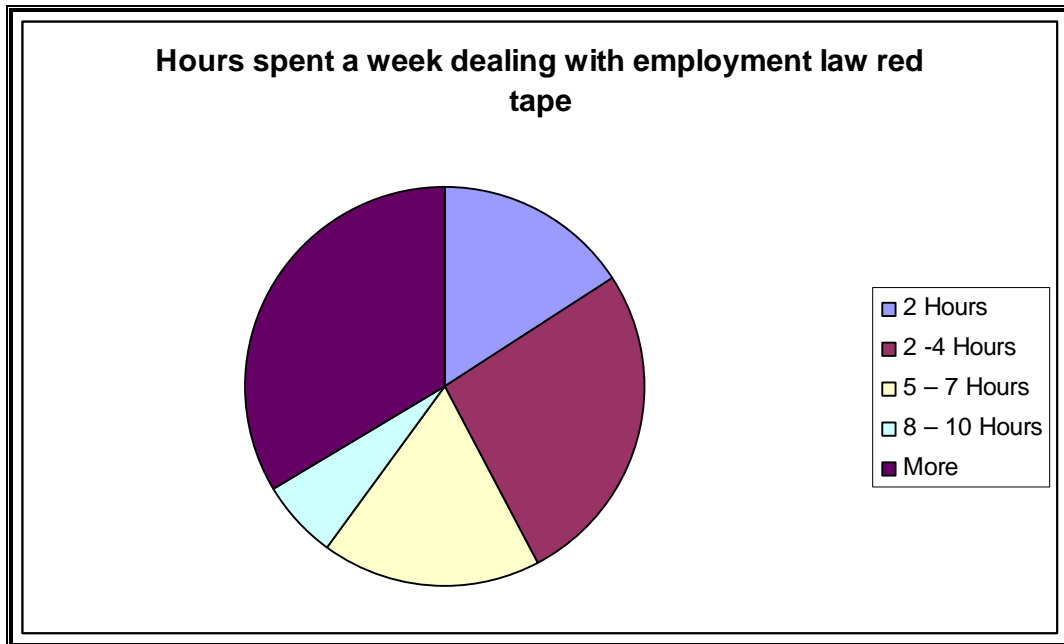
Respondents were asked what particular aspect of complying with legislation concerned them the most. They were asked to prioritise 5 commonly listed costs of compliance with 1 being the issue of least concern to them and 5 being the issue of most concern. The chart shows the percentage of respondents giving each issue a particular score, with the widest block in each column depicting the issue most commonly given that grading.



It is clear from the answers given that the cost implications of complying with legislation are at the forefront of the minds of individual community pub operators, closely followed by the time it diverts away from the business. The volume of paperwork and the burden of enforcement visits are accorded roughly equal scores, with the difficulty in keeping up to date with legislation being the least problematical.

The results of the *ALMR* survey reveals a section of the industry crippled by the spiralling costs of red tape and operators struggling to cope with the effect on their business. At the crux of the problem is the increasing complexity of modern regulation which makes it difficult to keep up to date with legislative changes and understand their implications for your business. It is now so complicated that many tenants find it too difficult to manage their own employment systems, as one respondent said, “You need a PhD in Maths just to read the forms.”

We asked respondents for information on how many hours a week they spent dealing with red tape associated with employment law.

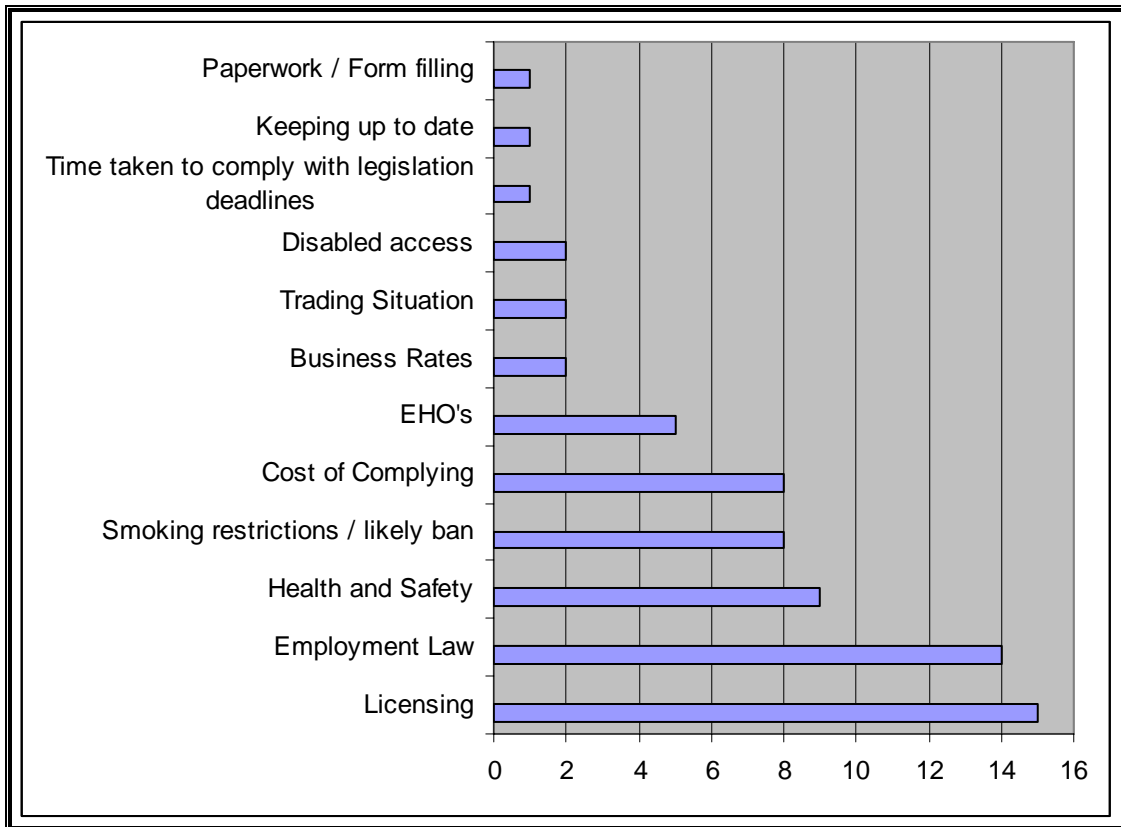


In addition to this, just over 72% of operators are forced to employ an external professional adviser to assist with employment issues. The volume and complexity of the regulatory burden is too much for an individual small businessman to deal with and distracts attention away from the running of the business. This in turn pushes up costs, hampering both competitiveness and productivity. As one respondent to our survey commented, “I’m so tied up in red tape that I haven’t time to concentrate on my business”.

REGULATORY MEASURES – A DISPROPORTIONATE BURDEN

As part of the ALMR’s regular surveys, we ask community pub operators to identify the 3 most pressing issues of concern to their business from a longer list identified following an initial survey carried out by The Red Tape Group in 2000. The longer list includes both legislation already in place, new government proposals and perceived threats.

The top 3 issues of concern in 2006 were licensing, employment law and health and safety. The smoking ban and the cost of complying ran in a close fourth.



The high priority accorded to licensing matters clearly reflects the headaches associated with the transition to the new licensing regime over the past year. The frustration has been particularly acute for community pub operators as these are the outlets most likely to be applying simply to convert their licences or trade an extra hour. They have therefore faced additional costs involved in reapplying for licences and few have seen the benefits of later trading with a high proportion of variation applications being deemed refused simply for falling out of time.

Employment law has remained a constant source of concern for the past decade – not unsurprisingly given the clutch of new regulations introduced over years. The pub industry employs a very high number of part time employees and casual staff and is therefore particularly affected by changes in employment law. The Government has sought to address concerns in this area by introducing common commencement dates for employment law. Ironically, whilst this makes it easier to keep track of and up to date with legislation, it also means that the costs of complying fall at the same time.

Whilst health and safety of staff remains a top priority, the often over burdensome enforcement at a local level, and the attachment of significant conditions to liquor licences in this area can make this a headache for many smaller community pubs. Although most operators acknowledge its importance, the introduction of several new and additional layers of checks e.g. noise levels, gas and electrical supplies etc all serve to increase costs and can affect viability.

The survey responses are clearly therefore a snapshot at a particular point in time. Certain issues will wane in importance as proposals are changed or further details become apparent. It is worth noting in this context that the results demonstrate that tenants and individual businessmen tend to be focused on today's issue or today's problem rather than the new threats emerging on the horizon. Respondents tended to prioritise the issues they were currently dealing with rather than



those which may, arguably have the greatest impact on their business.

Particular Issues of Concern

It is often difficult to drill further down into the discontent felt by many operators in order to identify individual pieces of legislation which cause particular problems. Small businessmen and tenants find it easy to articulate the general problem and the broad brush solution - far harder to pin point where the shoe pinches and what can be done to resolve it. However, we have tried to identify two particular issues which place a disproportionate burden on community pubs in particular.

Both of these are examples of a more general concern with much legislation directed at business: the unforeseen consequence or wider ramification than that intended by the legislator. A particular problem is identified which needs to be addressed by legislation, but badly drafted or loosely worded legislation means that its effects are far more widespread and the costs to business are therefore higher than anticipated.

These are complex topics and we have only provided an overview of them in this submission. We should be happy to provide additional information if desired.

Stamp Duty Land Tax

The 2003 Budget announced the Government's intention to modernise the existing system of stamp duty for all property transactions from 1 December 2003. The new tax was supposed to be fair, reduce distortions in the treatment of different transactions and better reflect modern commercial practice. The objective behind it was to close a tax loophole under the old regime which allowed many **large** transactions to avoid or minimize paying stamp duty. In announcing the change, the Chancellor also asserted that 60% of lease duty transactions would be exempt from the new charge.

The new tax had very real implications for the UK pub industry, however, despite Government assurances to the contrary. Three quarters of the sector operates on a leasehold basis, with community pubs most likely to operate in this way. The pub industry has, over recent years, moved away from traditional short term tenancy agreements towards longer term leases of between 15-30 years. Longer leases have an intrinsic value and enable an operator to enhance the asset and hence the value of the business which they can then sell on. Although this is classified as a 'long' lease within the industry, it is still of short duration in contrast to other property agreements – the supposed targets of the new tax.

However, despite the Government's assurances, we estimate that fewer than 10% of pub sector agreements would fall outside the scope of the tax (and then only if they are for 2 or 3 year terms). An average 25 year lease with an average rent of £50,000 would attract Stamp Duty Land Tax of around £6,740. In contrast, under the old regime, the same transaction would have attracted Duty of £1,000. The difference is patently not cash neutral and has dramatically raised the barrier to individuals contemplating entry to a small business. Many potential lessees are unaware of this substantial transaction cost until after they have made the decision to take on the lease.

The effects we predicted in 2003 have come to pass. Faced with a dramatic increase in start-up costs, many businesses have had to scale back their investment or reverted to shorter leases which provide them with proportionately less certainty for their business decisions. This is particularly the case in the community pub sector, which relies most heavily on leasehold property.

We asked respondents to our most recent survey to let us know how much of a concern Stamp Duty Land Tax was for their business by grading it out of 10, with 1 indicating no concern and 10 a major headache. Responses varied, depending on whether the individuals had recently been involved in property transactions and hence had had to pay the new tax. The average rating was

7



5.5 but the most frequent rating was 8. This suggests that for those businesses most affected by the tax, it is having a very real effect.

The *ALMR* originally proposed a series of amendments to the original proposals to ameliorate the effects of the tax – an increase in the threshold for exemption from the tax, a sliding scale or duty or the use of a more commercial discount rate to calculate the value of the lease itself. To date, officials have not been willing to review the real impact of the tax change, despite the fact that these have not been as predicted.

Planning Gain Supplement

There is a very real danger that a similar situation of unforeseen consequences may arise with a new proposal to levy a tax on gains in land values when planning permission is granted.

A Planning Gain Supplement was originally proposed as part of the Barker Review of Housing as a means of freeing up land for housing development. However, a new consultation would levy a tax on changes in land values arising from virtually all planning permissions. This would include not only new leisure developments but also alterations to existing premises and potentially changes of use of existing properties. We do not believe that this was the original intention or that the consequences of such a standard approach would have on business decisions and investments.

RECOMMENDATIONS

- **An Industry Champion:** Whilst most industries have an obvious 'sponsor' within Government, the pub trade does not. Food and drink production is covered by DEFRA and the pub sector has, by default, fallen under the same remit. However, this does not adequately capture the diverse regulatory environment affecting pubs, nor is it clear what this 'sponsorship' role entails. Little effort appears to have been made to coordinate or influence the regulatory burden affecting pubs.

Pubs and bars are distinct and separate from beer production and it would therefore be more appropriate for DCMS to take over the 'sponsorship' role for the sector. This should include an obligation to monitor the overall impact of regulation on the sector, coordinating the regulatory departments to manage the burden of legislation as it comes through and to promote the importance of the sector within Government. This in itself would help to ensure that the cumulative impact of regulation would be recognized and hopefully its crippling impact on individual businesses be taken into account.

- **Better Consultation:** Clearly one of the best ways of alleviating regulatory burdens is to ensure that any new legislation is properly researched and only introduced after a full and frank consultation process with affected sectors as well as after a detailed regulatory impact assessment has been produced. We welcome the attention which has been devoted towards ensuring that consultation is meaningful and that effort is made to fully understand the costs as well as the benefits of legislation.

However, problems do still exist. Insufficient time is often allowed to gather opinions – a particular problem in sectors made up of large number of small, independent businesses – the process is hurried and the impression is given that the final outcome has already been decided. This is particularly so in the case of employment law. Moreover, little consideration is given to the demands of the business timetable, with consultations often having to take place over Christmas or the summer months – the busiest time for most businesses.



- **Regulatory Reviews:** Moreover, however thorough and effective the consultation, scope still exists for concerns to be overlooked or ignored, for regulatory impact assessments to fail to take predict the true outcome or to simply get it wrong. There is no opportunity to revisit a regulatory impact assessment nor to check with the original assumptions behind the introduction of regulation were correct. This means that there is no mechanism for correcting legislation which has unforeseen consequences – such as the wider than anticipated reach of Stamp Duty Land Tax. There has been much discussion about the use of sunset clauses, with certain types of legislation having an in-built termination. However, we believe that there may also be merit in introducing a new obligation for the regulatory impact assessment to be subject to independent review 2 years after major legislation takes effect

- **Small Business Exemptions:** It is worth noting in this context that Government efforts to relieve the burden on small businesses have largely failed because the threshold for eligibility is set at such a low level as to render it a benefit in name only. Despite having many small businesses within its membership, the *ALMR* has yet to come across one which is benefiting from a small business exemption. For example, only 10% of pub transactions would fall below the proposed threshold for stamp duty (and then only if they are for 2 or 3 year terms); businesses need a turnover of below £100,000 to get any relief from VAT administration; only pubs which are economically unviable would have a rateable value low enough to benefit from mandatory rate relief. Employment law exemptions are based on a total headcount figure which disadvantages businesses with flexible working patterns such as pubs – full-time equivalents should be used instead. More realistic and consistent definitions must be introduced across the board.

- **Help with compliance:** Finally, we believe that small businesses should be given financial assistance to comply with particularly difficult pieces of legislation. Capital allowances are a relatively cheap way for the Government to assist small businesses in meeting their legislative objectives. They are currently used to encourage investment in IT and energy efficient equipment. We recommend that this concept be extended to cover investment in ventilation equipment and disabled access to ensure that best practice solutions are accessible to the smallest businesses.

CONCLUSION

The growth in regulation and its increasingly complex nature is having an impact on the competitiveness and productivity of individual businesses in the community pub sector. The survey clearly demonstrates that legislation costs and its effect are to hamper growth and restrict employment opportunities within the sector.

Red tape is the number one issue facing small firms. Too much legislation introduced too quickly is leaving business confused and uncompetitive. Many small businesses within the community pub sector are on the critical list and may not survive in the long term unless immediate action is taken on red tape