

Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No. 3) 2001 No. 287

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 287

Issued by the Authority of the Minister for Transport and Regional Services

Airports Act 1996

Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No. 3)

Section 252 of the Airports Act 1996 (the Act) provides that the Governor-General may make regulations prescribing matters that are required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 170 of the Act provides that the regulations may make provision for and in relation to prohibiting or regulating the sale, supply disposal or possession of liquor at a specified airport. Liquor in this context means wine, spirit, ale or beer or any liquid containing alcohol ordinarily used or fit for use, as a beverage.

Section 178 of the Act provides that the Minister must give each airport operator company notice that there is a proposal to make regulations and inviting the company to give a submission about the proposed regulations within 30 days after receiving the notice.

The Regulations amend the Airports (Control of On-Airports Activities) Regulations 1997. They introduced a sustainable regime to replace the interim arrangements that previously applied to the sale and service of alcohol at Sydney (Kingsford Smith), Bankstown, Hoxton Park and Camden Airports (the Sydney Basin Airports).

In 1998 the above airports, previously operated by the Federal Airports Corporation (FAC), were leased by the Commonwealth to government owned companies. The Act ensures that the public interest continues to be protected at the leased Federal airports.

Part 11 of the Act allows New South Wales law to control a range of existing on-airport activities, including the sale and supply of liquor, unless excluded or modified by regulations made pursuant to the Act. The previous Regulations, which purported to modify New South Wales law, were made under Part 11 to provide an interim regime. At the time they were made, it was expected that the New South Wales Government could be persuaded to take control of regulating the sale and service of alcohol on leased federal airports in that State. However, the Commonwealth's aim to bring the Airports within New South Wales law could not be achieved.

Section 77 of the Australian Constitution enshrines the principle of the separation of powers. It requires that a Court (including a State Court applying Commonwealth laws) must only undertake judicial functions. However, the Licensing Court of New South Wales, under the *Liquor Act 1982 (NSW) (the Liquor Act)*, undertakes both judicial (eg convicting and imposing fines and/or jail sentences) and administrative (eg issuing/suspending/cancelling liquor licences) functions. It cannot do this in a Commonwealth place, such as a leased federal airport.

As stated above, the interim arrangement, whereby the Secretary of the Department of Transport and Regional Services was responsible for administrative matters (eg. issuing new licences, approving managers and suspending/cancelling licences) and New South Wales was responsible for judicial matters (eg. convicting and imposing fines and/or gaol sentences) has now been replaced. This was necessary, even though extensive consultations between the

Commonwealth Department of Transport and Regional Services and the New South Wales Department of Gaming and Racing (which is responsible for the administration of the Liquor Act) were undertaken in an attempt to devise a long-term solution that would modify the Licensing Court's powers and ensure that New South Wales took the primary role in administering liquor control at the Sydney Basin Airports. The Department of Gaming and Racing was unable to put forward any viable mechanism to enable the Liquor Act to apply legally to the liquor outlets at these airports.

Further details of the amendments appear in the Attachment. A Regulation Impact Statement is attached.

The Regulations commenced on gazettal.

ATTACHMENT

Airports (Control of On-Airport Activities) Amendment Regulations 2001 (No. 3)

Item 1 - Name of Regulations

Item 1 provides for the name of the Regulations.

Item 2 - Commencement

Item 2 provides that the Regulations commenced on gazettal.

Item 3 - Amendment

Item 3 provides that Schedule 1 of the Regulations amends the *Airports (Control of On-Airports Activities) Regulations 1997*.

Schedule 1 - Amendments to *Airports (Control of On-Airports Activities) Regulations 1997*

Item 1 - insertion of Part 1A

Item 1 inserts a number of Regulations:

Division 1A.1 Preliminary

Regulation 4AA

provides that 1A applies to Sydney (Kingsford-Smith) Airport, Bankstown Airport, Camden Airport and Hoxton Park Airport from the date of gazettal of the Regulations.

Regulation 4AB

sets out the objects of the Regulations

Regulation 4AC

provides the definitions for the Division.

Division 1A.2 Liquor Licences

Subdivision 1A.2.1 Types of Licence

Regulation 4AD

describes the 3 types of licenses that can be granted and held under Part 1A.

Regulation 4AE

describes the activities that can be undertaken by a person who is granted a Passenger Terminal Licence (PTL).

The Secretary of the Department of Transport and Regional Services (the Secretary) issues PTLs only with respect to the sale or supply of liquor at Sydney (Kingsford-Smith) Airport. PTLs are issued to the owner-operator of the Airport to cover the international and domestic express

terminal buildings and to the Domestic Terminal Lessees (currently Qantas and Ansett) to cover activities involving the sale and supply of liquor in their terminal buildings.

A PTL authorises the holder (the Licensee) to sell or supply liquor anywhere in a passenger terminal. It also gives the Licensee the right to authorise other persons (sub-licensees) to sell or supply liquor in the passenger terminals. The Licensee is responsible for ensuring that its sub-licensees comply with the proposed Regulations. The grant of such sub-licences does not require authorisation by the Secretary.

Regulation 4AF

describes the activities that can be undertaken by a person who is granted a General Licence.

A general licence is tied to particular premises. These licences are issued to permit the sale or supply of liquor at Bankstown, Camden and Hoxton Park Airports. General Licences are also issued to allow premises such as hotels, taverns and bottle shops to operate on sites, other than passenger terminals, at Sydney (Kingsford-Smith) Airport.

General licences authorise the Licensee to sell or supply liquor on premises on an airport as *specified on the licence* and in accordance with conditions that are set down by the Secretary

There are additional requirements relating to the issue of general licences, dealing with public notification (for more detail see Regulation 4AI).

Regulation 4AG

describes the activities that can be undertaken by a person who is granted a Function Licence.

A Function Licence authorises the sale or supply of liquor at one or more functions on an airport site as specified in the licence. The conditions of the licence are also specified.

Subdivision 1A.2.2 Licence Applications and Grants

Regulation 4AH

provides that an application for a licence must be in a form approved by the Secretary and be accompanied by a plan showing the premises to be licensed. If the application is for a general licence the consent of the airport operator must also be provided.

Applications can be made by submitting a hard copy of the application form, available on request from the Airports Division of the Department of Transport and Regional Services or by accessing the Department's web-site. Provision for electronic lodgment was considered but is not cost effective given the limited application of these Regulations.

Regulation 4AI

sets out the additional requirements that must be met by applicants for a general licence to sell or supply liquor on an airport site.

The reason for this is that licensed premises outside the terminals at Sydney (Kingsford-Smith) Airport and all premises at Bankstown, Camden and Floxton Park Airports are more likely to be close to, and in competition with, off-airport liquor supply outlets. They are also more likely to affect the amenity of local residents.

There are also social issues to be taken into consideration relating to the objects of the Regulations. The General Aviation airports, including Bankstown at this stage, differ in their function from major Regular Public Transport Airports. There is limited or no commuter traffic and therefore less need to be concerned about providing facilities for use by the travelling public. This is not to say that liquor will not be consumed from time to time in these airports. However, Commonwealth policy is to ensure that the Department keeps a direct check on activities at the General Aviation airports and ensures that they do not become pockets for the unchecked and unregulated consumption of alcohol in New South Wales.

Regulation 4AJ

requires that the Secretary be provided with evidence that the applicant undertook the process set out in proposed Regulation 4AI. That evidence should take the form of copies of the notice as published and displayed under the proposed regulation and evidence that the notice was published. The applicant must also provide copies of all written comments received in response to the notice and certify that the Secretary has been provided with all of the comments received by the applicant.

There may be circumstances in which the applicant will be unable to produce this material for reasons that are outside the applicant's control. The Regulation makes provision for this in that applicants for a general licence will be taken to have complied with Regulation 4AI if they can provide evidence that they took all reasonable steps to ensure that the notice provisions were complied with.

The provision of this information will allow the Secretary to fulfil his obligations under Regulation 4AM when considering whether to grant or refuse a licence under Regulation 4AL.

Regulation 4AK

enables the Secretary to request further information from a variety of sources. The Secretary is empowered to consult a range of sources when making a decision under Regulation 4AL. However, if the Secretary asks the applicant for more information under the Regulation, and the applicant does not supply it within 30 days beginning on the day the request is made, then the application itself is taken to have lapsed.

Regulation 4AL

requires the Secretary to make a decision to either grant or refuse an application within 30 days (called the "decision period"). If the decision is not made within the decision period, the Secretary will be taken to have granted a licence. It should be noted however that where a request for more information is made by the Secretary, the decision period is suspended until the information is received, or the 30 day period referred to in Regulation 4AK expires, in which case the application is taken to have lapsed.

A decision to refuse to grant a licence must be conveyed in writing to the applicant and accompanied by the reasons on which the Secretary's decision was based. It is reviewable by the Administrative Appeals Tribunal.

Regulation 4AM

lists all the matters that the Secretary must take into consideration in making a decision on an application for the grant of a liquor licence.

The reason for including these matters is to assist the Secretary to make a decision that is consistent with the objects of the Regulations as set out in Regulation 4AB. It should be noted, however that there is no obligation on applicants to reveal the existence of a spent conviction.

Also, should the Secretary become aware of the existence of a spent conviction in relation to an applicant, he must disregard it in his consideration of the application.

Regulation 4AN

lists the general restrictions placed on the granting of a licence, irrespective of whether the application contains sufficient information to permit the Secretary to form a decision about the applicant's fitness to hold a liquor licence.

For example, licenses will not be issued to any person who wishes to sell liquor in conjunction with the operation of a petrol station or a general mixed business. The reason for including this restriction is to ensure public access to alcohol outside the special environment of regular public transport airport terminals is restricted. In so doing, the Commonwealth's intention is to ensure that driving under the influence of alcohol is not encouraged by default due as a result of the extended trading hours generally operating at airports.

Regulation 4AO

provides a mechanism to ensure that airport operators are made aware of and consent to activities involving the sale and supply of alcohol that are being undertaken by their tenants.

Regulation 4AP

gives the Secretary sufficient flexibility to ensure that the sale and service of alcohol on airport sites is conducted consistently with the objects set out in Regulation 4AB in particular and in a responsible manner generally. It permits the Secretary to impose any condition he sees fit when granting a licence, but also enables him to impose specific conditions as set out in subregulation 4AP(2).

A failure by a licensee to comply with the licence conditions set down by the Secretary is an offence under Regulation 4BT and has severe consequences in that it may result in the suspension or cancellation of a licence under Regulation 4AX.

The decisions of the Secretary made pursuant to this provision are reviewable by the Administrative Appeals Tribunal.

Regulation 4AQ

makes it clear that a liquor licence can only be issued to the person who applies for it. It also places an obligation on the Secretary to include some basic information on the licence itself.

Regulation 4AR

provides for the duration of licences and is self-explanatory.

Regulation 4AS

allows the Secretary to vary licences on his own initiative either by imposing or revoking a licence condition or imposing additional licence conditions. There are limitations on the way in which the Secretary goes about making such variations, including a requirement to give notice in writing to the Licensee about a proposal to vary the licence and a requirement to allow the Licensee a reasonable opportunity to make representations about the proposed variation.

The purpose of this provision is to give the Secretary some flexibility to deal with contraventions of the liquor-licensing regime without the need to resort immediately to the sanction of

suspension or cancellation of the liquor licence. Any decision that the Secretary makes pursuant to this provision is reviewable by the Administrative Appeals Tribunal.

Regulation 4AT

allows an existing Licensee to apply to the Secretary for a variation of the conditions of his or her liquor licence. Licence conditions may be varied in any way in which licence conditions can be varied under Regulation 4AS. The provisions dealing with requests for information (4AK), granting or refusal of variations (4AL), the matters to be taken into account in considering an application to vary the conditions of a licence (4AM) and some of the restrictions applying to the original grant of a licence (4AM(1)(a), 4AM(3), 4AN and 4AO) also apply to the variation of the conditions of a licence.

The Secretary's decision under this regulation is reviewable by the Administrative Appeals Tribunal.

Regulation 4AU

provides that where it is proposed to seek the Secretary's approval to vary the conditions of a general licence, similar provisions relating to public notification apply as they do in the case of an application for the grant of the original general licence.

Regulation 4AV

similarly provides that where a Licensee seeks to vary the conditions of a general licence, additional information about the notification process and its results, must also be supplied to the Secretary.

Regulation 4AW

provides that an application can be made to the Secretary for the transfer of a licence. The process applicable for an application for a licence (4AK to 4AO) is also applicable to an application for a transfer of a licence. Once the Secretary has approved the transfer, the transferee has the same authority conferred upon him or her as the original licensee and is subject to the same obligations. The term of the licence however, does not change. This means that a person who seeks the transfer of a licence close to the end of its expiration must make a fresh application for a new licence, regardless of when the transfer took place.

A decision by the Secretary relating to the transfer of a licence is reviewable by the Administrative Appeals Tribunal.

Regulation 4AX

empowers the Secretary, by notice in writing to a Licensee to suspend or cancel a liquor licence in certain circumstances. This action can be taken only when a notice has been given to the Licensee and reasons have been given to the Licensee for the decision. A reasonable opportunity must be given to the Licensee to make representations about the proposed cancellation.

Administrative guidelines are in place setting out a process for dealing with the circumstances in which the Secretary may be required to consider the suspension or cancellation of a liquor licence. The process is set out in the Secretary's *Guidelines for Issuing and Administering Liquor Licences in New South Wales Airports* and involves notifying the Licensee that a breach of the Act, Regulations and/or licence conditions has occurred and seeking rectification. This is followed up by a premises inspection to ensure that rectification has occurred.

If the Licensee does not effect rectification, a "show cause" procedure is implemented which is a request for the Licensee to show cause why his or her liquor licence should not be cancelled or suspended. The purpose of this process is to ensure that any decision to suspend or cancel a liquor licence is only taken after the person affected has had reasonable opportunity to explain and/or rectify the breach.

The final decision made by the Secretary under Regulation 4AX is reviewable by the Administrative Appeals Tribunal.

Regulation 4AY

makes it possible for a Licensee to surrender a licence at any time, by notifying the Secretary and returning the liquor licence.

Regulation 4AZ

places an obligation on the Secretary to maintain a Register of licences granted. The Register must contain certain information, be held electronically and be made available for inspection on the Internet.

Subdivision 1A.2.3 Nominees

Regulation 4BA

imposes the requirement that an applicant for a licence must nominate an individual to be the nominee for the licence. In addition to the nominee there must be an alternative nominee to act in the absence of the principal nominee. Applications for approval of nominees must be made by application at the same time the application for a liquor licence is submitted.

Regulation 4BB

enables the Secretary to consult a variety of sources when making a decision under proposed Regulation 4BD. However, if the Secretary asks the applicant for more information under the proposed Regulation, and the applicant does not supply it within 30 days beginning on the day the request is made, then the application itself is taken to have lapsed.

Regulation 4BC

requires the Secretary to make a decision to either grant or refuse an application within 30 days (called the "decision period"). If the decision is not made within the decision period, the Secretary will be taken to have approved the nominee and alternative nominee. It should be noted however that where a request for more information is made by the Secretary, the decision period is suspended until the information is received, or the 30 day period referred to in Regulation 4BB(4) expires, in which case the application is taken to have lapsed.

A decision to refuse to approve the nominee must be conveyed in writing to the applicant and accompanied by the reasons on which the Secretary's decision was based. It is reviewable by the Administrative Appeals Tribunal.

Regulation 4BD

lists all the matters that the Secretary must take into consideration in making a decision on an application for approval of a nominee and alternative nominee.

The reason for including these matters is to assist the Secretary to make a decision that is consistent with the objects of the Regulations as set out in Regulation 4AB. It should be noted, however that there is no obligation on applicants to reveal the existence of a spent conviction. Also, should the Secretary become aware of the existence of a spent conviction in relation to an applicant, this fact must be disregarded in the consideration of the application.

Regulation 4BE

provides that the Secretary may impose any conditions he sees fit on the approval of a nominee or alternative-nominee. The conditions must be made in writing and may include a requirement for the nominee and the alternative nominee to attend and complete a responsible service of alcohol course.

Decisions made by the Secretary relating to the imposition of conditions on a nominee or alternative nominee are reviewable by the Administrative Appeals Tribunal.

Regulation 4BF

provides that the nominee (and where appropriate the alternative nominee) are responsible for ensuring that liquor is sold or supplied on the premises only in accordance with the Regulations, licence and licence conditions.

A nominee of a Passenger Terminal Licensee is not responsible or liable for a sublicensee who conducts business in a manner that is inconsistent with the conditions of the Passenger Terminal Licence under which the sub-licence was granted, where the nominee has taken all reasonable steps to ensure that the sub-licensee's conduct is consistent with those conditions.

Regulation 4BG

provides that the Secretary's approval of a nominee or alternative nominee remains in force until certain events occur including withdrawal or suspension of the liquor licence, withdrawal from the position by the nominee or alternative nominee, the replacement of the nominee or alternative nominee, or when the liquor licence itself ceases to be in force and is not renewed.

Regulation 4BH

permits the Secretary, by notice in writing to the Licensee and the nominee to suspend or withdraw the approval of the nominee or alternative nominee in certain circumstances. This action can be taken only when a notice has been given to the nominee or alternative nominee for the decision. A reasonable opportunity must be given to the nominee and alternative nominee to make representations about the proposed suspension or withdrawal of approval.

Administrative guidelines in place setting out a process for dealing with the circumstances in which the Secretary may be required to consider the suspension or withdrawal of approval of a nominee or alternative nominee. The process is set out in the Secretary's *Guidelines for Issuing and Administering Liquor Licences in New South Wales Airports* and involves notifying the nominee and alternative nominee that the Secretary proposes to take the action and seeking rectification. This is followed up by a personal interview with the nominee or alternative nominee to ensure that rectification has occurred.

If the nominee does not rectify the problem, a "show cause" procedure is implemented, which is a request for the Licensee and nominee to show cause why the approval should not be suspended or withdrawn. The purpose of this process is to ensure that any decision to suspend or withdraw approval is only taken after the persons affected have had a reasonable opportunity to explain and/or rectify the breach.

The final decision made by the Secretary under proposed Regulation 4BH is reviewable by the Administrative Appeals Tribunal.

Regulation 4BI

will allow a nominee or alternative nominee to withdraw from that position at any time by giving notice in writing to the Secretary.

Regulation 4BJ

provides a mechanism for the nominee or alternative nominee to be replaced, provided the provisions for appointment (4BB to 4BE) are followed in respect to the persons whom it is intended will replace the original individuals.

Regulation 4BK

makes provision for the unusual situation where both the nominee and the temporary nominee are both unable to fulfil their duties for a continuous period of 28 days. In those circumstances the licensee must nominate, in writing to the Secretary, an adult who is reasonably able to discharge the responsibilities of the nominee for the 28-day period.

Subdivision 1A.2.4 Compliance returns

Regulation 4BL

sets up a mechanism by which the Secretary can obtain sufficient information to be satisfied that the liquor licensing regime is operating in accordance with the objects set out in Regulation 4AB and that PTL holders are meeting their responsibilities under the Regulations and Liquor Licence conditions.

For PTL holders, the Compliance Return must list the sub-licences in force during the year, the nominees for each sub-licence and a description of the way in which the PTL holder enforced its responsibilities under the Regulations. . It is important to note that the Regulation does not extend to requiring the provision of information identifying any person who has committed an offence.

The Compliance Return will not be used as an alternative means for the Secretary to directly regulate sub-licences held pursuant to a PTL. Direct control over sublicensees remains at all times the responsibility of the PTL Holders. The Secretary retains direct control only over General and Passenger Terminal Licences who in turn must report that they have acted in a manner that justifies the retention of their licences.

It should be noted, however, that failure to submit a compliance return does incur a penalty set at 10 units.

Division 1A.3 Sub-licences

Regulation 4BM

ensures that the distinction between the PTL holder as the Licensee and the businesses operating in the terminal that serve or sell alcohol as sub-licensees is maintained in this Division.

Regulation 4BN

makes it clear that the issuing of a sub-licence authorises the sub-licensee to sell and supply liquor for consumption, either on or off the sub-licensee's premises, in a passenger terminal at Sydney (Kingsford-Smith) Airport in a manner consistent with the Regulations and the conditions of the Passenger Terminal Licence.

Regulation 4BO

authorises applications for, and grants of, sub-licences at the passenger terminals at Sydney (Kingsford-Smith) Airport. It will also permit a licensee to grant a sublicense subject to conditions, or to refuse to grant a sub-licence altogether (provided reasons for such a refusal are given to the applicant in writing). A sub-licence can be renewed, transferred, varied, suspended or cancelled by the licensee. A decision to refuse to do any of these things must also be communicated in writing to the sublicensee.

Regulation 4BP

permits the Secretary to issue written guidelines to licensees to assist them in administering the sub-licensing regime in passenger terminals at Sydney (Kingsford-Smith) Airport. It requires that licensees must have regard to the guidelines when making decisions about sub-licenses.

The purpose of this provision is to ensure that licensees make themselves aware of the expectations of the Secretary in the administration of the liquor-licensing regime. This requirement should not be interpreted to mean that the guidelines must be treated as immutable. However, in light of the fact that licensees have been given a wide discretion to control the sale and service of alcohol in the passenger terminals, the guidelines will provide a valuable source of information on the manner in which the Secretary expects them to undertake the responsibilities with which they have been charged.

Regulation 4BQ

places a prohibition on the imposition of any fee or charge in connection with the administration of sub-licences. This includes applications, grants, renewals, variations, surrender suspension, cancellation of a sub-licence.

The reason for including this requirement is because the new liquor licensing regime is being put into place for public policy reasons associated with the inability of the New South Wales Government to regulate the sale, supply and consumption of liquor on the Sydney Basin Airports. In these circumstances, it is not appropriate that fees should be charged.

Regulation 4BR

gives the Secretary the ability to suspend or cancel a sub-licence in certain limited circumstances where a licensee has proved unable or unwilling to control the inappropriate sale and service of alcohol by a sub-licensee. Any decision the Secretary makes about suspension or cancellation of a sub-licence must be conveyed in writing to both the Licensee and the sub-licensee and be accompanied by reasons for it. This power exists concurrently with the Licensee's own powers to suspend and cancel sub-licenses.

Any decision made by the Secretary pursuant to the provision is reviewable by the Administrative Appeals Tribunal.

Regulation 4BS

deals with the situation where a PTL is cancelled, suspended or surrendered under Regulations 4AX or 4AY.

Upon cancellation of a PTL, all sub-licences cease to be in force and each sublicensee is taken to hold a general licence, subject to the same terms and conditions of the sub-licence.

Upon suspension of a PTL, all sub-licences cease to be in force and each sub-licensee is taken to hold a general licence, subject to the same terms and conditions of the sublicense for the period of the suspension of the PTL.

Upon surrender of a PTL under Regulation 4AY, each sub-licence ceases to be in force and the sub-licensee is taken to be the holder of a general licence for a period of 90 days starting on the day the PTL is suspended. However, if within 60 days the commencing on the day on which the PTL was suspended, the sub-licensee applies for a general licence to replace the sub-licence, the terms and conditions of the original sub-licence remain in force until the application for the general licence is finally determined.

Division 1A.4 Enforcement

Subdivision 1A.4.1 Offences relating to the supply or consumption of liquor etc

The proposed subdivision creates a number of "strict liability" offences. The effect of these provisions is that a breach of one of them is automatically an offence unless proved by the alleged offender to be otherwise. There is nothing novel in this. It is common practice to exclude the requirement to prove that there was a mental element involved in the commission of the offence. This is merely a regulatory expression of a well accepted criminal law principle.

The offences under this subdivision are also "infringement notice" offences. This means that a person who is charged with an offence under this sub-division may be issued with an infringement notice pursuant to Part 7 of *the Airports (Control of On-Airport Activities) Regulations 1997*.

Regulation 4BT

provides that the sale or supply, or permitting the sale or supply, of alcohol by an unlicensed person is an offence punishable by a fine of 20 penalty units.

Regulation 4BU

provides that a licensee, sub-licensee or nominee must not sell or supply liquor at an airport in contravention of a licence condition. A fine set at 50 penalty units is applicable to an offence under this provision.

Regulation 4BV

makes it an offence to sell or supply liquor at an airport to an intoxicated person. This offence applies to the general public as well as to corporations, licensees, sublicensees and nominees. If the offence is committed by a corporation, a licensee, sublicensee or nominee, the applicable fine totals 50 penalty units. If the offence is committed by any other person, that person will be liable to a fine totalling 5 penalty units.

Regulation 4BW

creates an offence of selling or supplying alcohol to minors on an airport site. If the offence is committed by a corporation, a licensee, sub-licensee or nominee, the applicable fine totals 50 penalty units. If the offence is committed by any other person, that person will be liable to a fine totalling 5 penalty units.

Regulation 4BX

makes it an offence, subject to a fine of 5 penalty units, for a minor to consume liquor on an airport site.

Regulation 4BY

makes it an offence for minors to falsely represent themselves as adults in order to acquire or consume liquor at an airport, or to enter or remain on a licensed premises to undertake an activity which contravenes any of the proposed provisions in this subdivision. The offence is subject to a fine of 5 penalty units.

Regulation 4BZ

creates an offence of drunk and disorderly behaviour creating a nuisance at an airport that is punishable by a fine totalling 10 penalty units.

Regulation 4CA

ensures that a licensee does not undertake a licensed activity without there being a nominee for the licence. A licensee that permits such an activity will be liable for a fine of 50 penalty units. Similarly a nominee must exist for a sub-license and the same fine is payable if it does not.

Regulation 4CB

provides for the prominent display of licenses and signs relating to the prohibitions on the sale and service of and consumption of alcohol by and to minors and intoxicated persons and for fines of 10 penalty units for failure to comply with this requirement.

Subdivision 1A.4.2 Authorised officers

Regulation 4CC

defines the class of persons who have the ability, pursuant to the proposed regulations, to enforce the provisions of proposed Part 1A.

Regulation 4CD

enables the Secretary to issue identity cards to employees of the Department of Transport and Regional Services to enable them to identify themselves as officers authorised to carry out functions involved in enforcing Part 1A of the Regulations. An employee who does not return his or her identity card after ceasing to be an authorised officer is liable to pay a fine of 1 penalty unit. This is a strict liability offence.

Regulation 4CE

requires that all authorised persons, who seek to exercise his or her powers under Part IA of the Regulations, produce proof of his or her identity or other identification as an authorised officer upon the request of any person who seeks to inspect that persons identity.

Regulation 4CF

permits authorised persons to enter a licensed premises at any time of the day or night.

Regulation 4CG

allows authorised officers to require the production of a liquor licence, sub-licence or evidence of the approval of a nominee from any person who appears to be in charge of a licensed premises. Upon receiving such a request, the person must immediately produce the documents. Refusal or failure to do so is subject to a fine of 20 penalty units, except where the request is made to a person who is in fact not in control of the premises, or there is a reasonable excuse for not producing the licence, sub-licence or approval.

Regulation 4CH

permits authorised officers to approach individuals to ascertain their age.

Regulation 4CI

allows authorised officers to require suspected minors to leave licensed premises using, if appropriate, necessary and reasonable force.

Subdivision 1A.4.3 General matters relating to enforcement

Part 16 of the Airports Act **1996**, which deals with proof of offences that involve a corporation, employees or agents and section 227 of the Airports Act 1996, which deals with false or misleading statements also apply to offences under Part 1A of the Airports Regulations.

Regulation 4CJ

ensures that a person who is convicted of an offence under proposed Part 1A can also lose his or her licence. The provision also applies in reverse.

Regulation 4CK

sets out the requirements for providing suitable evidence of age.

Regulation 4CL

sets out the conditions for entry by a licensee onto a sub-licensee's premises for the purposes of Part 1A.

Division 1A.5 Miscellaneous

Subdivision 1A.5.1 Administrative Review

Regulation 4CM

sets out the procedure by which an aggrieved sub-licensee can seek review by the Secretary of a decision by a licensee in relation to the grant, variation renewal, transfer, conditions, suspension or cancellation of a sub-licence.

The provision provides a mechanism within the Regulations to allow licensees and sublicensees to resolve disputes over sub-licenses and their conditions without immediate recourse to the civil courts. Any decision that the Secretary makes, pursuant to the powers to be given him is reviewable by the Administrative Appeals Tribunal.

Regulation 4CN

sets out the decisions of the Secretary that are reviewable by the Administrative Appeals Tribunal.

Subdivision 1A.5.2 General

Regulation 4CO

provides for electronic lodgement of applications, notices and other documents.

Regulation 4CP

applies to a licensee that is a corporation and provides for the provision of information relating to the directors of the corporation, either by the corporation itself, or on request of the Secretary. A penalty of 10 units will apply where the information is not provided.

Regulation 4CQ

provides for service of documents by the Secretary.

Subdivision 1A.5.3 Transitional

The sub-division provides the mechanism for the transfer of existing liquor licenses, issued under the previous Part 2 of the Regulations. This effected a seamless transition to the new licensing regime and did away with the need to individually examine and transfer all existing licenses to the current regime.

Regulation 4CR

provides the definitions for the sub-division.

Regulation 4CS

assists in the interpretation of the transitional provisions by making it clear that a reference to the "Regulations" is a reference to the previous Regulations, while a reference to this "Part" is a reference to the new Regulations.

Regulation 4CT

provides the actual mechanism for the transfer if the liquor licenses issued under the new Regulations.

Regulation 4CU

deals with the licence conditions under which liquor vendors previously operated. Those conditions generally continue to operate, except in two circumstances

- (i) any requirement to consult with or seek approval from a State of local authority or a law enforcement agency in respect of a liquor licence was replaced with a requirement to consult with the Secretary; and
- (ii) PTL Holders will be specifically empowered to vary the existing conditions of the newly transferred sub-licenses to add conditions that will enable it to comply with its responsibilities relating to compliance with the licensing regime. No other variations are permitted while the sub-licence is in existence (i.e., until the term of the concessionaire's sub-lease expires) and the PTL Holder is prohibited from charging fees in relation to this process.

In addition, the PTLs were issued subject to the requirements of the new Regulations and an hotelier's licence, currently held by Sydney Airports Corporation, became a General Licence under

the new Regulations. The latter licence will expire on the same date that it would have expired if it had remained an hotelier's licence under the previous Regulations.

Regulation 4CV

provides for the conversion of the position of "approved manager" under the previous Regulations to "nominee" under the new Regulations.

Item 2 - Insertion of a new heading

Item 2 ensured that the new Part 1A heading replaced the previous Part 2 heading.

Item 3

Deleted Part 2 Division 2.

Item 4

Deleted Schedule 1 in its entirety.

REGULATION IMPACT STATEMENT

1. ISSUE IDENTIFICATION

In 1998, airports previously operated by the Federal Airports Corporation (FAC) in the Sydney basin (Kingsford Smith, Bankstown and Hoxton Park) were leased by the Commonwealth to government-owned companies who now operate the airports. New laws through the *Airports Act 1996* (the Act) were put in place to ensure that the public interest continued to be protected at these leased federal airports.

Part 11 of the Act allows New South Wales law to control a range of existing on-airport activities, including the sale and supply of liquor, unless excluded or modified by regulations made pursuant to the Act. The *Airports (Control of On-Airport Activities) Regulations* (the current Regulations), which purport to modify New South Wales law, were made under Part 11 of the Act to provide an interim regime. At the time the current Regulations were made, it was expected that the New South Wales Government could be persuaded to take control of regulating the sale and service of alcohol on leased federal airports in that State as happened in other States and Territories. However, the Commonwealth's aim to bring the Sydney basin airports within New South Wales law has not been achieved.

Section 77 of the Australian Constitution enshrines the principle of the separation of powers. It requires that a Court (including a State Court applying Commonwealth laws) must only undertake judicial functions. However, the Licensing Court of New South Wales, under the *Liquor Act 1982 (NSW)* (the Liquor Act), undertakes both judicial (eg convicting and imposing fines and/or jail sentences) and administrative (eg issuing/suspending/cancelling liquor licences) functions. It cannot do this in a Commonwealth place, such as a federal leased airport.

As stated above, an interim arrangement is currently in place, whereby the Secretary of the Department of Transport and Regional Services is responsible for administrative matters (eg. issuing new licences, approving managers and suspending/cancelling licences). New South Wales is responsible for judicial matters (eg. convicting and imposing fines and/or jail sentences). Extensive consultations between the Department of Transport and Regional Services and the New South Wales Department of Gaming and Racing (DGR) attempted to devise a long term solution that would modify the Licensing Court's powers but ensure that the State took the primary role in administering liquor control at the Sydney basin airports. DGR was unable to put forward any viable mechanism to enable the Liquor Act to apply legally to the liquor outlets at these Airports.

2. DESIRED OBJECTIVES

To introduce a sound sustainable regime to replace the interim arrangements of the On-Airport Regulations in relation to the sale and supply of liquor at the federal leased Airports in New South Wales that will:

1. control, in the public interest, the sale and supply of liquor;
2. control the standard and use of premises on which liquor may be sold or supplied; and
3. promote harm minimisation practices associated with the sale and supply of liquor.

3. IDENTIFICATION OF OPTIONS

Option 1: Status Quo

As pointed out above, New South Wales law notionally applies at the Sydney basin airports. However, the refusal of the New South Wales Government to enforce liquor licensing laws on

Commonwealth-owned sites has resulted in an unsatisfactory situation where the sale and supply of alcohol in these airports is being conducted without the option of enforcement action being available for the irresponsible sale and supply of alcohol. This poses a risk to persons who use the airport and its facilities in the following ways:

- Minors may be served alcohol because vendors will have no fear that their actions will lead to prosecution;
- Inebriated persons may continue to be sold alcohol and continue to drink to excess, putting their own health and the safety of others, including airline staff who must deal with them on aeroplanes, at risk;
- The Sydney basin Airports could become islands for the unchecked, unregulated consumption of alcohol within New South Wales. Quite apart from the social undesirability of this, the New South Wales Government considers the development of such a situation within the geographical confines of that State, to be unacceptable.

Option 2: Modify New South Wales law to overcome the existing constitutional difficulties

Under this option, the fundamental Constitutional problem referred to above would be resolved through substantial amendment to the Liquor Act.

The New South Wales Government has, despite a range of suggestions from the Commonwealth, been unable to put forward any viable long-term mechanism to enable the Liquor Act to apply to the liquor outlets at these airports, by properly separating the exercising of administrative and judicial functions.

In any event, the current structure of the Liquor Act is too inflexible to deal with the sale and supply of alcohol in the unusual environment of an airport terminal, where the travelling public arrives from different time zones and seeks refreshment at hours of the day and night that would not normally be legal in the general community. Additionally the sorts of businesses that operate in the terminal seek to cater to a particular kind of customer. For example, Airport Fine Foods wished to promote Australian food and wine at Sydney International Terminal. Under the New South Wales system, it would have to be issued with an hotelier's licence. Such a licence is very expensive, but more importantly is not representative of the business conducted at the airport. There is no licence available under the Liquor Act to properly reflect the nature of the business Airport Fine Foods conducts.

Again, the New South Wales Government has been unable to find a mechanism to allow the Liquor Act to deal with the special circumstances at the Airports.

Option 3: Commonwealth Passenger Terminal Licence Regime

Under this option the Commonwealth would control the sale and supply of liquor in federally owned New South Wales Airports through the *Airports (Control of Liquor Activities in New South Wales) Regulations 2001* (the Regulations). New regulations could be made pursuant to section 170 of the *Airports Act 1996* to replace those currently in force and which are described above. The Secretary of the Department of Transport and Regional Services would administer them.

Under this option, all liquor licences, previously issued by the New South Wales Government that are operating at the Airports at the time the Regulations commence could be automatically transferred into the new system. The benefit of this for the Commonwealth would be that the costs that would otherwise be incurred in cancelling the old licences and assessing applications and issuing new licences would not be incurred. The advantage for the Licensees would be that the only change to their current practices and conditions would be a requirement to deal with the

Commonwealth Department of Transport and Regional Services rather than the New South Wales Department of Gaming and Racing. There would therefore be no substantial changes required to current business practices, arising from a move to Commonwealth supervision.

The need to make the regulatory change is the result of the difficulties relating to enforcement of New South Wales law as discussed above. Under this option, the existing inability to enforce the terms of New South Wales law and licence conditions would be replaced by a licensing and enforcement regime designed specifically to deal with the unusual situation at the Sydney basin Airports.

Under Option 3 certain authorised persons will be able to issue infringement notices to persons who commit an offence relating to the supply or consumption of liquor on an airport. These offences exist under the current legislation and are enforced in the same manner as is proposed under Option 3. In this regard there would be no change to existing liquor licensing practices. However, one difference is that the penalties applicable to person issued with an infringement notice would be lower than those existing in the Liquor Act. The New South Wales Government has indicated that it would prefer the penalties to remain commensurate with those applying in New South Wales, however, the Commonwealth is limited by its criminal law policy in the size of the penalties it can impose by regulatory means.

With the capacity to issue sub-licences for the sale and service of alcohol, all Licensees would be encouraged to issue those sub-licences subject to similar considerations that were taken into account when the Commonwealth issued the Passenger Terminal Licence.

Under this option, the Commonwealth would encourage Licensees to adopt practices and procedures concerning the sale and service of alcohol that remain as close as possible to those practiced in New South Wales generally. This would be the case even though, as pointed out above the actual licensing process and administration would need to be more flexible than the one currently conducted by the New South Wales Government under the Liquor Act.

In New South Wales, various Acts, in addition to the Liquor Act control the sale and service of alcohol. In this context, there are four basic points that are relevant to responsible serving practices:

- A person shall not sell or supply liquor to a person under the age of 18 years.
- A licensee shall not permit intoxication or any indecent, violent or quarrelsome conduct on their licensed premises.
- A person shall not sell or supply any liquor to any person who is, at the time, in a state of intoxication.
- Where a person is intoxicated on licensed premises, the licensee shall be deemed to have permitted intoxication on the premises unless they, and their employees took all reasonable steps to prevent intoxication on the licensed premises.

Under this option, the Commonwealth would incorporate these familiar principles into its regulatory regime. As is the case in New South Wales, Licensees and sub-licensees will be encouraged to develop and maintain house policies on harm minimisation and responsible service of alcohol. Existing policies, developed in accordance with the requirements of the Liquor Act would generally be considered acceptable under a Commonwealth regime. In addition, applicants will be encouraged to access the New South Wales training programs that have long been in place for the purpose of ensuring that liquor licensees learn about and practice the responsible service of alcohol in that state.

Under this option, 3 different classes of licenses could be issued:

A **Passenger Terminal Licence for the** sale or supply of liquor at Sydney (Kingsford-Smith) Airport. Such licences could be issued to the owner-operator of the Airport to cover the international and domestic express terminal buildings and to the Domestic Terminal Lessees (currently Qantas and Ansett) to cover activities in their terminal buildings. The creation of the Passenger Terminal License for the sale and supply of liquor in the Sydney (Kingsford-Smith) Airport Terminals recognises the interests of landlords in ensuring a competitive situation prevails for the sale and supply of liquor to potential users of their facilities in amenable surroundings. It is proposed that the three passenger terminal landlords at Sydney Airport -Sydney Airports Corporation Limited, Ansett and Qantas - be authorised to sub-licence their terminal liquor concessionaires to sell liquor for consumption within the terminal buildings and to sell liquor to take away for consumption at a later time. It is considered that the landlords are the appropriate parties to manage sub-licensing requirements (within the parameters set out below) in view of the fact that they control all commercial and operational issues within their respective passenger terminals.

A **General Licence** will be tied to particular premises. These licences are to be issued to permit the sale or supply of liquor at Bankstown, Camden and Hoxton Park Airports. They authorise the Licensee to sell or supply liquor on premises on an airport as specified on the licence and in accordance with the conditions set down by the Secretary.

General Licences could also be issued to allow premises such as hotels, taverns and bottle shops to operate on airport sites, other than passenger terminals, including at Sydney (Kingsford-Smith) Airport.

A **Function Licence will** authorise the sale or supply of liquor by caterers at a single function on an airport site specified in the licence. The conditions of the licence will also be specified. A Function Licence will also be required where a person, other than a Passenger Terminal Licence holder, holds a function in a Sydney (Kingsford-Smith) Airport passenger terminal. Passenger Terminal Licence holders will not be required to have a Function Licence for functions they hold in their own terminal areas.

Option 4: Commonwealth Individual Licence Regime

Another alternative that would also address the existing problem is individual licensing by the Commonwealth of all individuals who sell and supply liquor in terminals or on airport sites generally. This option offers one advantage in that it would provide the Government and licence holders with the greatest amount of flexibility in dealing with the sale and supply of alcohol on airport sites.

However it has significant disadvantages from a resourcing perspective to oversight a trading activity in an airport environment which should be regarded as a low to medium enforcement risk. The regulation of the sale and supply of liquor is traditionally a state responsibility. Most states have dedicated Departments or officers who are trained in administering liquor-licensing regimes. The Commonwealth does not have this luxury. This is new ground for the Commonwealth, which, apart from activities on Defence Force establishments, has never had to involve itself at this level of administration before.

Given the compact location of the liquor outlets (the vast majority are contained within the passenger terminal buildings at Sydney (Kingsford-Smith) Airport) and therefore the manageable risks involved, a more efficient, yet accountable approach can and should be implemented as proposed under Option 3.

4. IMPACT ANALYSIS

There are a number of parties that could potentially be affected by the proposed amendments, including airport operators, businesses operating at airports, businesses operating off airport

(competitive neutrality issues), the New South Wales and Commonwealth Governments and the public (travellers, those accompanying travellers and those on airport for commercial/business reasons).

- *Terminal Landlords (Passenger Terminal Licence Holders)*

The transfer from the Liquor Act would impose some additional administrative responsibilities on terminal landlords. However, those additional burdens will be offset by a cleaner and more efficient system overall.

At the present time, landlords must apply to the Secretary of the Department of Transport and Regional Services either on their own initiative or on behalf of their tenants for a separate licence for each business that proposes to sell and serve alcohol. Having obtained such a licence, there is no active intervention by the Department of Gaming and Racing in terms of enforcement. The terminal landlords have picked this role up themselves in the interests of ensuring the amenity of the travelling public.

The transfer to Commonwealth control will require this defacto enforcement role to be formalised, resulting in the need for terminal landlords to put formal compliance reporting procedures into place. This will mean that costs will be incurred in establishing a system for gathering and reporting information to the Commonwealth, however terminal landlords are willing to take on this role as "quid pro quo" for maintaining closer control of commercial activities within terminal buildings.

Terminal landlords will be able to undertake commercial development with greater certainty and efficiency under the proposed regime. They will continue to have control over persons who sell and supply liquor within their terminal buildings, but under a more efficient and effective regulatory regime. As the nature of business on the privatised airport sites changes, with more income becoming available to landlords from commercial development of airport sites, the opportunity to have direct control over this aspect of trading has been welcomed.

Under Option 3 the airport operator company has an incentive not to restrict unnecessarily the supply of sub-licenses in order to maximise the rental income from these sites. If supply of sublicenses were to be restricted, then each liquor outlet would have market power, as happens under the New South Wales liquor control regime in the guise of a "needs test" which effectively restricts competition. This practice provides monopolistic benefits to the liquor tenants and reduces competition and hence consumer benefits. Under Option 4, liquor licences would be issued by the Department and therefore there would be no incentive to restrict supply of sub-licenses. However, given the relatively small size of the on-airport liquor market, the differences, from a competition perspective, between Options 3 and 4 would be negligible.

- *Businesses*

Businesses operating at the Sydney basin airports will be provided with a cheaper and more efficient liquor regime than would be available even if the New South Wales Government was prepared to enforce the provisions of the Liquor Act. If Option 3 is adopted, business operating within terminals will no longer be required to deal with the Government as well as the terminal landlord.

No fees will be charged for the issuing of a licence or sub-licence. This is in stark contrast with the substantial up front licence fees payable under the Liquor Act. In addition, as stated above, the penalties that would be payable if Option 3 is chosen are in some cases lower than those applicable under the Liquor Act.

The administrative simplicity of the system will further reduce costs for businesses that would normally instruct specialist lawyers, trained to advise on the complexities of the Liquor Act, to

assist with licence applications. Further, it is not expected that any training will be required for business operators in relation to the system proposed under Option 3, other than in the responsible service of alcohol, a requirement which is, as discussed above, already in existence under the current law and which will also be required under the proposed new regime.

Government

If New South Wales law is to no longer apply for the supply or consumption of liquor, New South Wales will lose control of an area that is traditionally a State planning responsibility. However, New South Wales been unable to propose a viable long term arrangement to regulate the sale and service of liquor at the Sydney basin airports that is consistent with Constitutional requirements. As a consequence, there is no alternative but for the Commonwealth to regulate this area. The Commonwealth has paid regard to New South Wales's concerns relating to the responsible service of alcohol and its enforcement and accountability requirements.

Under Options 3 and 4, the Commonwealth would take on some new administrative functions. A comparison of the administrative costs of these options is provided in the table below. As indicated in the Table, the net present value (NPV) of the administrative costs of Option 4 is almost \$4 million greater than that of Option 3.

Table: Comparison of administrative costs of Options 3 and 4

OPTION 3		OPTION 4	
ITEM	COST	ITEM	COST
EL1 x 1 x 5% (annual) 11)	\$6,768	EL1 x 1 x 75% (annual) (1)	\$101,520
APS 4 x 1 x 30% (annual) (2)	\$26,395	APS 4 x 1 x 100% (annual) (2)	\$87,984
Total annual	\$33,163		\$189,504
NPV (3)	\$829,075		\$4,737,600

(1) Total annual cost of an EL1 is \$135,360

(2) Total annual cost of an APS 4 is \$87,984

(3) Assuming a long term real interest rate of 4% pa

- *The public*

Option 3 has the potential to give rise to a greater level of competition than Option 4, as under Option 3 there would be no incentive to restrict the supply of liquor licenses to outlets. Option 3 would therefore be expected to deliver additional benefits to consumers in terms of greater choice and amenity.

5. CONSULTATION

Section 178 of the Act requires that at least 30 days before regulations are made, the Minister must give affected airport-operator companies a notice:

- stating that there is a proposal to make regulations; and
- inviting the company to give the Minister a submission about the proposed regulation within 30 days after receiving the notice.

Even though a statutory obligation is placed on the Minister by section 178 to engage in basic consultation with airport operators, a decision was taken to work as far as possible with the

cooperation of those persons who would be most affected by the proposal. This was considered particularly important given the proposal to rely to a fair degree on self-regulation.

In preparing the proposed amendments, the Department has consulted on the potential effect of the proposed regulations with the following parties:

- Sydney Airports Corporation Limited;
- Bankstown Airport Limited;
- Ansett Australia;
- Qantas;
- Board of Airline Representatives of Australia;
- New South Wales Department of Gaming and Racing; and
- New South Wales Police

None of the parties consulted have objected to the proposal. In particular, SACL, Ansett and Qantas were supportive of the proposal and assisted with practical comments and regulatory sound suggestions adding greatly to the final version of the Regulations. Some objections were raised to some of the technical application of the proposed Regulations, however, these were resolved either by redrafting the Regulations where they did not achieve the required effect or by educating the stakeholders on the Commonwealth's public policy responsibilities, in which case the provisions were accepted, although not approved, by the stakeholders.

The Department of Gaming and Racing has been consulted on the development of the Regulations, and has provided useful comments and input on the implementation and enforcement of the Regulations that will be particularly useful during the review process.

6. CONCLUSION AND RECOMMENDED OPTION

Amending the On-Airport Regulations, in accordance with Option 3, to allow the Commonwealth to regulate is recommended. It will ensure that significant constitutional problems with the application of the Liquor Act to the Sydney basin Airports will be overcome. In addition, it has the support of the main stakeholders. It has benefits for business in that it provides the simplest and most flexible licensing regime consistent with public policy requirements and will also substantially benefit all parties who will be covered by it. It benefits the Commonwealth in that the proposal is efficient and cheap to administer.

Option 3 can also be expected to deliver the greatest consumer benefits through promoting more competition in on-airport liquor supply and would therefore be expected to deliver additional benefits to consumers in terms of greater choice and amenity. This must be considered against the extra administrative cost of almost \$4 million from implementing Option 4.

7. IMPLEMENTATION AND REVIEW

The airport operator SACL and the Domestic Terminal lease holders (Qantas and Ansett) will each be issued with Passenger Terminal licences for their terminal buildings at Sydney (Kingsford-Smith) Airport. Existing concessionaires in the passenger terminals will be deemed automatically, upon commencement of the new Regulations, to be operating pursuant to a sub-licence under the Passenger Terminal Licences on substantially the same terms and conditions as they currently have.

The holders of Passenger Terminal Licenses will be permitted to issue sub-licences to new concessionaires who wish to sell and supply liquor within their terminals. The sub-licences could be on or off-licences or a combination of the two. Each new sublicense will be required to be registered with the Department.

Existing operations outside the Passenger Terminals will be deemed automatically, upon commencement of the new Regulations, to be operating pursuant to a general licence issued by the Secretary of the Department of Transport and Regional Services on substantially the same terms and conditions as they currently have.

Any proposal for liquor sales and service outside the terminals would be considered separately by the Secretary. If a licence were granted it would be a separate offterminal licence, called a general licence.

Any one-off functions during which liquor may be sold or supplied must have a functions licence. Such a licence will be issued on application to the Secretary of the Department of Transport and Regional Services and will operate only for a limited time.

The criteria the Secretary would take into account when issuing such licences would be as follows:

- Whether the applicant is a "fit and proper person" to hold the licence;
- Whether the grant of a licence for the premises specified in the application would be detrimental to the amenity of the airport, or any part of the airport, on which the premises are situated;
- Whether there is a demonstrated need for the activity proposed under the licence
- Whether the activity proposed under the licence would be likely to encourage the misuse or abuse of alcohol;
- If the applicant is not the airport-lessee company for the airport on which the premises is situated - the views of the airport-lessee company or the passenger terminal licensee;
- The views of any other person consulted about the application by the Secretary; and
- Any other matter which the Secretary reasonably thinks should be considered

Arrangements will be made for the review of the regulatory regime set out under Option 3, within the first 5 years of its introduction. The proposed amendments to the Regulations that will be required if Option 3 is adopted will re-examined as part of that overall review.