

**Committee:** Licensing Committee

**Date:** 7 March 2007

**Title:** Revision of Licensing Act 2003 Secretary  
of State's Guidance

**Author:** Catherine Nicholson ext 420

**Agenda Item**

**4**

Item for  
decision?

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## Summary

The guidance produced by the Secretary of State under the Licensing Act 2003 has been reviewed and a draft revised Guidance has been issued for consultation by the Department for Culture, Media and Sport. The Guidance is intended to aid licensing authorities in carrying out their functions under the 2003 Act, and regard must be had to the Guidance by the Licensing Authority.

## Recommendations

Members determine what response (if any) they wish to make

## Background Papers

DCMS Consultation Document on draft revised Guidance to be issued under S182 Licensing Act 2003 available at [www.culture.gov.uk/Reference\\_Library](http://www.culture.gov.uk/Reference_Library)

## Impact

Communication/Consultation	None
Community Safety	None
Equalities	None
Finance	None
Human Rights	None
Legal implications	Once the amended Guidance is confirmed, the Licensing Authority will be legally obliged to have regard to the Guidance in exercising their functions under the Licensing Act 2003

Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

## Situation

1. The full review of the Secretary of State's Guidance began in May last year and addressed two areas, substantive policy issues and the format and style of the Guidance. Members should be aware that they should have regard for the Guidance when taking decisions under their Licensing Act functions. It should be noted that the Guidance cannot amend the legislation or regulations made under the Act
2. The full consultation paper and amended draft guidance in full is available. However, the key substantive policy issues have been set out below, and the proposed wording in the guidance has been extracted at Appendix 1:-
  - a. 'in the vicinity' – to be an interested party and therefore able to make relevant representations a person must live or be involved in a business in the vicinity of the premises. Vicinity is not defined, and the current guidance gives some factors to consider. There have been calls for the guidance to be expanded with additional factors including routes home from a premises, however the DCMS propose to make no change and leave it to local discretion.
  - b. 'Incidental Music' – the provision of entertainment by live or recorded music is not regulated entertainment to the extent that it is 'incidental' to some other activity. Incidental is not defined, but the current guidance provides some factors that can be considered in making an assessment. The new proposal is to expand the factors that Licensing Authorities may wish to consider
  - c. Cumulative Impact policies – These are referred to in the current guidance and are essentially a special policy for areas where there is a potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. Some groups would like to see these special policies applied to areas other than towns and cities, such as suburbs, shopping centres and to include off-sales premises. However, the DCMS recommends that the current Guidance should not be changed as there is nothing in the current guidance to prevent special policies being established for other areas, albeit in exceptional circumstances.
  - d. 'Conditions' – Annexes to the current guidance include pools of conditions which can be applied to licences in promotion of each of the licensing objectives. Some groups have commented that having pools of conditions discourages the use of other innovative conditions, and the lists are treated as exclusive; alternatively, the lists of conditions

Licensing Committee, Item 4

provide a useful source of advice and encourages a consistent approach, but could be updated. The DCMS seeks views therefore on which option should be pursued

- e. Role of Councillors – The DCMS recommends that the Guidance be amended to clarify the role of Councillors in the licensing process in accordance with the Code of Conduct and to advise that there is nothing to prevent ward councillors being notified of licensing applications as long as the information they are provided with is neutral.
- f. Role of DPS and Personal Licence Holder – The proposed amendments will consolidate advice previously given that neither the DPS or any other personal licence holder needs to be on the premises all the time, but may authorise others to sell alcohol. In addition it is proposed to add that giving written authorisation to non-personal licence holders for sales of alcohol is recommended
- g. Variations – The original Guidance used the expression 'major' variation as a means to describing all variations other than change of name or address or DPS, which are simplified processes with a reduced fee. Groups have advised that the use of the term is confusing as it implies the existence of a special statutory procedure, and that generally the term is not helpful. In addition, stakeholders would like to see more guidance on when it was appropriate to apply for a new licence as opposed to a variation. The DCMS proposes to remove the term 'major', explain the exceptions that are subject to a simplified process and clarify when a new licence is required.
- h. Evidence to support representations – currently interested parties are not required to provide supporting evidence for representations. However, some groups are concerned that conditions can be imposed where there is no history of problems, and are of the view that representations must be evidence based. In addition it has been mooted that the guidance should contain guidelines to committee members on deciding the weight to be given to representations of various kinds. The DCMS considers that the existing guidance contains all the necessary information, and that any further advice should be included in guidance for interested parties, rather than statutory guidance for licensing authorities
- i. Representations: Disclosure of names – The Act requires an interested party to provide their name and address and in some cases residents have been reluctant to make representations for fear of intimidation. The DCMS are minded to amend the Guidance to include advice on how isolated fears of intimidation may be managed, including approaching a responsible authority or to withhold name and address from the applicant, and give only such details that enable the determination of vicinity. The alternative would be not to amend and leave it to licensing authorities to use a common sense approach
- j. Control of nuisance / crime and disorder outside licensing premises - Some groups have suggested that licensees should be responsible for

## Revision of Licensing Act 2003 Secretary of State's Guidance

### Licensing Committee, Item 4

taking reasonable measures to control drinking outside their premises, for example, on the pavement outside a pub or in a beer garden and for orderly dispersal of customers, and that conditions should be imposed on areas available for consumption. The DCMS propose to provide further guidance on what can be done within the Act to control crime and disorder outside licensed premises.

- k. Longer hours- Groups felt that the current guidance indicated a presumption in favour of longer hours, which was unjustified. In September 2005 the Secretary of State had written to all licensing authorities emphasising that there was no presumption and the licensing objectives were paramount in any decision. The DCMS proposes to reflect the terms of the letter in the guidance.

- 3. Whilst comments on the draft policy are invited in general, the DCMS poses the following specific questions to which it seeks responses:

- 1: Do you agree that the current Guidance on vicinity should remain unchanged?
- 2: If not, what factors do you think should be considered and why?
- 3: Do you agree that the current Guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental?
- 4: If not, please explain why and outline any alternative.
- 5: Do you agree that the current Guidance on cumulative impact policies should remain unchanged?
- 6: If not, what amendments do you think should be made, and why?
- 7: Do you agree that the pools of conditions in Annexes D-H should be:  
Option 1: Removed from the current Guidance, but consider establishing an alternative central source of good practice advice? Or  
Option 2: Retained and updated/expanded as necessary.
- 8: Do you think that there are any other options that should be considered?
- 9: Do you think that, if retained, there is a risk that the pools of conditions may increasingly be considered exhaustive and therefore inhibit the promotion of innovative conditions by the police, other responsible authorities and interested parties to address emerging problems? If so, why?
- 10: Do you think that the pools of conditions have value in promoting consistency and/or best practice?
- 11: Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed?
- 12: If not, please explain why and provide brief details of any alternative proposal.
- 13: Do you agree with the proposed amendments to the guidance on authorisation of sale?
- 14: If not, please explain why.
- 15: Do you agree that the Guidance on variations should be amended as proposed?
- 16: If not, please explain why.
- 17: Do you agree that the Guidance on evidence to support representations should remain unchanged?
- 18: If not, please explain why.
- 19: Do you agree that it would be useful to add guidance on how licensing authorities might manage concerns about potential intimidation of interested parties?
- 20: If not, please explain why.

## Revision of Licensing Act 2003 Secretary of State's Guidance

### Licensing Committee, Item 4

21: Do you agree that guidance on the control of nuisance/crime and disorder outside licensed premises should be clarified/expanded as proposed?

22: If not, please explain why.

23: Do you agree that the Guidance on longer hours should be amended to reflect the Secretary of State's letter of 30 September 2005 and the current situation?

24: If not, please explain why and outline any alternatives.

### Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
The Guidance is over complicated, ambiguous or lengthy.	HIGH	HIGH Whilst local authorities will have access to specialist advice, over lengthy guidance will stretch resources in terms of Officer and Member time (including training). Further, whilst parts of the industry will have access to specialist advice, interested parties, and community groups or individual businesses will need to understand the guidance and the licensing authorities Statement of Licensing Policy which flows from it to assist them in making applications, representations and/or seeking reviews.	Make such comments as necessary to ensure the Guidance is as user friendly as possible.

## **APPENDIX 1**

### **PROPOSED AMENDMENTS**

#### **b. INCIDENTAL MUSIC**

In considering whether or not music is incidental, one factor may be whether or not, against a background of the other activities already taking place, the addition of music will create the potential to undermine the four licensing objectives of the Act.

Other factors might include some or all of the following:

Is the music the main reason for people attending the premises?

Is the music advertised as the main attraction?

Does the volume of the music disrupt or predominate over other activities?

Conversely, factors which would not normally be relevant include:

Number of musicians, e.g. an orchestra may provide incidental music at a large exhibition.

Whether musicians are paid.

Whether the performance is pre-arranged.

Whether a charge is made for admission to a premises.

#### **e. ROLE OF COUNCILLORS**

Ward councillors play an important role in their local communities. In addition to making representations on an interested party's behalf if specifically requested to do so, a ward councillor can make representations as an interested party in their own right. However, there are rules relating to prejudicial interests in the code of conduct for members which require that a member with a prejudicial interest in a matter (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public good) should withdraw from a meeting of the authority at which the matter is discussed. An individual councillor's decision would be subject to these provisions of the code. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.

8.9 These rules would apply to any member whether or not they were a member of the licensing committee. A member representing others or acting in their own right, who is also a member of the licensing committee, would be expected to disqualify themselves from any involvement in the decision-making process affecting the premises licence.

8.10 In addition, ward councillors that are not themselves an interested party or representing one may wish to be kept informed of licensing related matters within the area, such as applications and reviews. The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as 'soliciting' representations. It should be remembered that the 'licensing authority' in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.

Licensing Committee, Item 4

The Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the Licensing Act and conditions attached to the premises licence to promote the licensing objectives. *Is this paragraph in the right place? It looks as if it belongs better under the heading below.*

**f. ROLE OF DPS AND PERSONAL LICENCE HOLDERS**

**Authorisation by personal licence holders**

10.46 In addition, the licence must require that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

This in most instances will be the designated premises supervisor who must hold a valid personal licence. This does not mean that the condition should require the presence of the designated premises supervisor or any other personal licence holder on the premises at all material times.

10.47 Similarly, the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol during the course of an evening, but may be absent at times from the premises when a transaction takes place. However, the responsible personal licence holder will not be able to escape responsibility for the actions of anyone authorised to make sales.

10.48 "Authorisation" does not imply direct supervision of each sale of alcohol by a personal licence holder. The question arises as to how sales can be authorised. In the Government's view it is not possible to state categorically how the requirement of authorisation is satisfied, as the facts and circumstances in each case will differ. Whether or not an authorisation has been given within the meaning of Act would, ultimately, be a matter for a court to determine on the evidence before it when the issue arose.

10.49 Nevertheless, the Secretary of State considers that where an issue comes before a court, the court could be expected to require the authorisation to have been meaningfully and properly carried out and not to have involved any abdication of responsibility. The Secretary of State considers the following factors should be relevant in considering whether there was real authorisation:

- the person(s) authorised to sell alcohol should be clearly identified;
- the authorisation should have specified the acts which may be carried out by the person being authorised;
- there should be an overt act of authorisation, for example, a specific oral or written statement given to the individual(s) being authorised; and

Licensing Committee, Item 4

there should be in place sensible arrangements for monitoring by the personal licence holder of the activity authorised by him or her on a reasonably regular basis.

10.50 The Government considers that, whilst not a requirement of the Act, it may be preferable for personal licence holders to consider giving specific written authorisations to individuals, as in doing so they are more likely to be able to clearly demonstrate due diligence to the enforcement authorities. However, it must be remembered that whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises.

**i. REPRESENTATIONS – DISCLOSURE OF NAMES AND ADDRESSES**

Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.

9.14 In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

9.15 Where licensing authorities consider that the interested party has a genuine and well-founded fear of intimidation and may be deterred from making a representation because of this, they may wish to consider alternative approaches.

9.16 For instance, they could advise interested parties to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.17 The licensing authority may also decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details (such as street name or general location within a street) which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. However, withholding such detail should only be considered where the circumstances justify such action.

**j. CONTROL OF NUISANCE OUTSIDE THE PREMISES**

Licensing authorities should develop effective strategies with the police for the management of the night-time economy. Central to this would be the enforcement of the law relating to the sales of alcohol to drunk and underage people and drunkenness or disorder on the premises. Targeted enforcement of this kind should have a positive impact on the immediate vicinity of the licensed premises concerned. In addition, following reviews that have identified problems with a particular



premises, licensing authorities may consider imposing conditions as appropriate, such as preventing customers from taking open containers outside the premises.

## **k. LONGER OPENING HOURS**

### **Hours of opening**

1.17 The Government strongly believes that, prior to the introduction of the Licensing Act 2003, fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times; and one of the causes of disorder and disturbance when large numbers of customers were required to leave the premises simultaneously.

1.18 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided.

1.19 The four licensing objectives should be paramount considerations at all times and licensing authorities should always consider the individual merits of a case.

### **Hours of trading**

10.18 In some town and city centre areas where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, longer licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises.

10.19 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

10.20 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.

### **Licensing hours**

Licensing Committee, Item 4

13.34 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government recommends that statements of policy should recognise that, in some circumstances, longer licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided.

13.35 This can help to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists. Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.

13.36 Statements of licensing policy should indicate that shops, stores and supermarkets, are free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there. Statements of licensing policy should therefore reflect this general approach.