

11 April 2007

Licensing Guidance Review Team  
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Dear Sir/Madam

**Consultation on revised draft Guidance issued under Section 182 of the Licensing Act 2003**

The Association of Licensed Multiple Retailers (*ALMR*) welcomes the opportunity to comment on the second stage review of Guidance issued to local licensing authorities under the Licensing Act 2003. By way of background, the *ALMR* is the only national trade body solely dedicated to representing the interests of bar, club and restaurant operators – principally small, independent companies with fewer than 50 outlets.

**Overview**

The Association has been actively involved at a Ministerial Working Group level during the development of both the initial Guidance and its subsequent review, and is therefore pleased to see many industry proposals brought to fruition in the consultation document. As the scope of the revisions is limited to Guidance, however, this review on its own does little to address operators' principal concerns with the operation of the Licensing Act 2003. It is vitally important, therefore, that the additional deregulatory initiatives outlined in *Lifting the Burden* are taken forward as a matter of urgency.

The *ALMR* supports the decision to update both the structure and the content of the Guidance. Whilst the Guidance is intended to aid licensing authorities, it is also used as a source of information and advice by operators and other stakeholders. As the new draft is clearer and more logically laid out, it is easier for these other audiences to navigate and interpret. We are however concerned that, in the redrafting, the broadly neutral tone of the earlier draft has been lost and the impression given that the new Act is principally about controlling licensees.

We have also been working closely with our colleagues in the industry and endorse and support the representations made separately by the Bar, Entertainment and Dance Association and by the British Beer and Pub Association.



## **SUBSTANTIVE ISSUES**

We have restricted our comments to those issues raised in the consultation document of relevance and concern to our members.

### **Question 1: Do you agree that the current Guidance on vicinity should remain unchanged?**

Whilst some of our members have expressed concern about licensing authorities accepting representations from a wide radius around the premises, on balance we agree with the proposal that the existing Guidance should remain unchanged.

### **Question 3: Do you agree with the proposed amendment?**

The *ALMR* supports the proposed amendment in respect of incidental music. This is clearly an issue for case-by-case consideration, with the assessment being made, in the first instance, by the operator themselves. The revision provides greater clarification of the issues relevant to the assessment, and the inclusion of issues other than simply the volume at which music is played is helpful.

### **Question 5: Do you agree that the current Guidance on cumulative impact policies should remain unchanged?**

Notwithstanding the Association's continued opposition to guidance on a matter which is not provided for in the Act itself, we agree that the existing text is sufficient.

We support and endorse the additional comments made by BEDA on this issue in respect of the research they have commissioned.

### **Question 7: which of the options [in respect of conditions] do you agree with?**

The *ALMR* has always believed that the inclusion of a pool of conditions in the main body of Guidance runs counter to the intentions of the Act - namely that all applications should be treated on their merits, with any conditions being necessary, proportionate and tailored to that specific application. Whilst the intention of the Annexes was to provide a pool of sample conditions from which local authorities could draw as appropriate, in practice they have been used as a standard conditions, often duplicating existing legislation. We therefore support Option One, the proposal to remove annexes D-H.

If an alternative source of advice is to be established, then we believe it must do more than simply replicate the Annexes in a separate document. The aim should be to explain when certain conditions may be relevant through the use of case studies. Any central best practice should be drafted in consultation with stakeholders.

### **Question 8: Do you think that there are any other options that should be considered?**

No. The only workable options are those set out in the consultation document.

### **Question 9: Do you think that, if retained, there is a risk that the pools of conditions will 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?**



We have no evidence from members to suggest that responsible authorities feel inhibited in developing or promoting innovative conditions. In our experience, where an application throws up a unique or different problem, then the responsible authorities seem to have no problem in identifying the solution.

The fundamental problem with the existing pools of conditions lies in the fact that the responsible authorities appear to feel obliged to work through them to decide which ones should be applied before then considering the individual details of an application and developing specific – and possibly innovative – conditions to address the particular issues which it throws up.

Whilst the retention of the pools of conditions does not inhibit innovation, we believe that the removal of the Annexes would actually foster it.

**Question 10: Do you think that the pools of potential conditions have value in promoting consistency and/or best practice?**

It is the very fact that the pools promote consistency which has caused particular problems in their application. As drafted, the Annexes encourage a blanket approach and the application of standard approach to specific types of application, resulting in the imposition of many unnecessary conditions which duplicate existing legislation.

**Question 11: Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed?**

The ALMR supports the proposed amendments.

**Question 13: Do you agree with the proposed amendments to the guidance on authorisation of sale?**

Whilst we support the further clarification regarding the presence of the DPS and/or a personal licence holder on the premises, we are concerned that the proposals on authorisation of sale will introduce a further and unnecessary layer of bureaucracy on the trade.

We therefore support new paragraph 10.45 but do not support redrafted paragraph 10.50

**Question 14: If not, please explain why?**

The Association expressed its views on the way in which sales are authorised in its submission to the initial review of Guidance, drafted in conjunction with the British Beer and Pub Association. We therefore support and endorse the points raised by the BBPA in its response to this consultation.

The expression of a Government preference for or recommendation of written authorisation will quickly become an absolute requirement and will impose significant and onerous burdens on licensed premises, as set out by the BBPA. Explicit written authorisation was successfully ruled out when the Bill was debated in the House of Lords in 2003, and the Government accepted at that time that a contract of employment sufficed. We fail to see what has changed since then to justify such a revision to Guidance.



**Question 15: Do you agree that the Guidance on variations should be amended as proposed?**

We agree that the use of the term 'major variation' causes confusion at present, particularly since many businesses which had operated under a Public Entertainment Licence were accustomed to a separate approval process for minor works or alterations to the premises.

However, in light of the fact that this continues to be a bone of contention within the licensed retail trade, we believe it would be helpful to signal the Government's intent to introduce a simplified process for 'minor variations' which do not impact on the licensing objectives. This would address operators' concerns and may prevent opposition to the proposed revisions to Guidance. It would also help to ensure that Guidance remained up to date for longer. For this reason, it may be premature to remove the term 'major variation' altogether and the revisions should instead focus on clarifying what is intended to be covered.

We support and endorse the points made by BEDA in respect of the need for a minor variation procedure.

Although outside the scope of the review of Guidance, a number of our members have highlighted that they have been inhibited from applying for specific and often minor variation to their licence for fear that it will open up the entire licence to scrutiny. For example, a variation to apply to remove a restriction on re-admissions to manage the forthcoming smoking ban could see new conditions on hours or capacity being applied.

**Question 17: Do you agree that the Guidance on evidence to support representations should remain unchanged?**

We strongly support the Government's decision to leave these sections of Guidance unchanged.

**Question 19: Do you agree that the Guidance on representations should be amended?**

We support the Government's revisions to paragraphs 9.13-9.17 of the revised Guidance. In addition, we agree with the BBPA's sensible recommendation that the reasons for the withholding of names and addresses should be disclosed at the hearing.

We believe that there may also be merit in amending this section of the Guidance to clarify that representations may be made by those in support of, as well as opposed to, the application. Several members have found that licensing authorities have ruled positive representations as being irrelevant, whilst others have been happy to accept and consider them as part of the application. The lack of consistency and fact that the Act and Guidance are silent on the acceptability of these representations suggests that it may be helpful for the Government to clarify this point.

**Question 21: Do you agree that the Guidance should be amended as proposed?**

Whilst the Association supports the proposed amendment, we are concerned at the general tenor of the debate on this subject and would seek to draw a firm line in the sand under it. The control of nuisance and disorder outside licensed premises must be dealt with on a case by case basis and through the use of targeted conditions and enforcement activity against identified problem premises; it can not be dealt with by means of a blanket approach.

The licensing regime was never intended to be – nor should not be used as - a mechanism for dealing with general crime and disorder in public spaces. Whilst licensees can and should



manage the immediate vicinity of their premises, they cannot be held responsible for customer behaviour once they are beyond this.

**Question 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?**

The Association believes that the existing Guidance had achieved a balance between longer hours and the promotion of the licensing objectives and that there was no presumption in favour of longer hours. Whilst we therefore see no real need to revise the Guidance, in the interests of updating and consolidating all information and advice, we are happy to support the proposed revisions.

**Question 25: Do you agree that Chapter 11 of the Guidance should be removed?**

A number of our members have expressed concerns about the way in which police powers are being deployed in practice, with reviews and closure being reached for as a weapon of first, rather than last resort, and the threat of immediate closure being deployed during inspections for minor or routine issues.

Whilst we are therefore happy to support the proposal to remove this Chapter of the Guidance, this is conditional upon it being revised and included in more general guidance on the policing of the night-time economy. In particular, we would like to see the development of a national enforcement protocol to promote more consistent standards, best practice and a greater understand of how various police powers should be deployed.

**Question 27: Do you agree that Chapters 12 and 14 should be deleted from the Guidance?**

As with Chapter 11, we are happy to see these Chapters deleted and re-written as a best practice guide.

**Question 29: Are you happy with the overall format of the revised Guidance?**

The revised format is more logical and user-friendly and, in general, we support the revisions. In particular, we support the repositioning of Chapter 3 on Statements of Licensing Policy which should help to ensure that such statements are written and read in the light of the Guidance on other aspects of the Act and its application.

As noted above, we are concerned about the tone of the revisions to the Foreword and the introductory chapter, which suggest a more negative impression of the licensed trade.

**Question 31: Are there other issues that you would like to see addressed in the revised Guidance?**

We have a number of concerns about the drafting of some elements of the revised Guidance, as well as some more substantive issues which we believe it would be helpful for this review to address. These are set out below in the order in which they arise in the text. In some cases, we acknowledge that these may fall outside the scope of the review of Guidance.

- Paragraph 2.3: the purpose of the licence is to regulate the conduct of licensable activities being carried out on licensed premises, and not the behaviour of customers. This paragraph gives a misleading impression and is directly counter to direction given in the original Guidance. It should be removed.



- Paragraph 2.5 – 2.16: references to ‘conditions’ should always emphasise the need for them to be appropriate, necessary and proportionate to avoid implying that they should always be applied. Guidance should also stress that conditions should only be applied where there is an identified risk or evidence of problems. We support the BBPA proposed revisions to this section.
- Paragraphs 2.32-2.38: again, it should be stressed that conditions should only be applied where there is an identified risk or evidence of problems. We support the BBPA proposed revisions to this section.
- Paragraph 2.41: we note the intention of the Government to allow free admission to children without restricting conditions. A number of our members have reported that, in converting their existing permissions, restrictions on the access of children in bar areas have also been carried over – in our view incorrectly. Those councils which we have raised this with have expressed sympathy and agree that the carrying over of the embedded restriction runs counter to the spirit of the Act. We believe it would be helpful for Guidance to clarify that such conditions have been wrongly incorporated into new licences.
- Paragraph 2.45: we support the BBPA revisions
- Paragraph 4.21: given the importance of speed in changing the DPS, the acceptability of certified copies rather than original licences is of vital importance to multiple operators. We therefore support the recommendation to revise Guidance to make this clear.

We note that a DPS may resign immediately but need not inform the premises licence holder of this for up to 48 hours. It would be helpful to clarify the implications for the premises licence during this 48 hour period if the premises licence holder is unaware of the resignation. There may be merit in clarifying that, for the purposes of the Act, the resignation does not take effect until this period has passed.

- Paragraph 7.1: this is somewhat misleading since it implies that TENs are only applicable to unlicensed premises. TENs also give temporary permission to licensed premises to extend their licensable activities or licensing hours and this should be made clear.

We acknowledge that the use of TENs by licensed premises has been viewed with suspicion in certain circles. We therefore believe it would be helpful to clarify that, in this respect, they carried over the previous regime of Special Order of Exemption – rather than granting new flexibilities or permissions – and that a flexible approach to the granting of licences will help to avoid overuse of TENs by licensed premises.

- Paragraph 8.23: there would be merit in clarifying the acceptability of electronic applications here.
- Paragraph 8.40: we believe that it would be helpful to signal the Government’s intention to review the advertising requirements, as indicated in *Lifting the Burden*. The requirement for newspaper advertising is one of the most costly and least effective means of bringing applications to the attention of residents.



- Paragraph 8.68: although outside the scope of this review, we believe that the 7 day period for seeking interim authority is inadequate.
- Paragraph 9.18: Whilst Guidance makes clear that hearings can be dispensed with by the agreement of all parties, there is evidence that some local authorities are taking a very rigid approach to the calculation of timetables by which hearings must be held. It would be helpful if the Guidance could clarify that, where parties are in negotiations/mediation and a resolution is in prospect, the licensing authority should have the discretion to extend the time before which a hearing must be held.
- Paragraph 10.2: we believe it would be helpful to reiterate at this point that conditions can only be attached to a licence if the discretion of the licensing authority is engaged by means of a relevant representation; that the conditions must be necessary to secure the licensing objectives; and that they must be proportionate to the identified risk.
- Annex K: we support the BBPA proposal that this be removed.

Please contact me if there are any issues that require clarification or further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nick Bish', with a stylized flourish at the end.

**Nick Bish**  
**Chief Executive**