

**LICENSING ACT 2003
REVIEW OF DCMS GUIDANCE**

(Report by Head of Administration)

1. Introduction

- 1.1 The Department of Culture, Media and Sport have begun a two stage review of the statutory guidance to licensing authorities that they are required to publish under the Licensing Act 2003. The initial review will be completed by March 2006 and will focus on providing clarification or additions to the Guidance on issues where there is a high degree of consensus among stakeholders, including matters raised during the transitional period. Views will only be invited from licensing authorities and other key stakeholders. It is intended that supplementary Guidance will be laid before Parliament in early spring, 2006.
- 1.2 In parallel with the initial review, the DCMS will be conducting a comprehensive formal review of the Guidance, including full public consultation, which will be completed by summer 2006. Following consideration of the responses, a revised version of the Guidance will be laid before Parliament by the end of 2006.
- 1.3 Comments are invited on the Guidance with a closing date of 17th February 2006.

2. The Guidance

- 2.1 The Committee will be familiar with some of the difficulties that were encountered in implementing the Licensing Act throughout the previous year. Some of those were unique to the transitional period but others are more fundamental. Some have emerged from the practicalities of situations that were not foreseen when the Guidance was originally published. Although some of these can be addressed by variations to the Guidance, others require changes to the Act itself or the secondary regulations.
- 2.2 Issues that can be addressed in revisions to the Guidance, a copy of which has been supplied previously to all members of the Committee, are summarised below.

3. Authorisation of Alcohol Supplies

- 3.1 It is a mandatory condition of a premises licence permitting the supply of alcohol that every supply of alcohol must be made or authorised by a person who holds a personal licence. The Guidance simply says that not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence but that every sale or supply must be at least authorised by such a personal licence holder.
- 3.2 Questions have arisen during the transitional period as to the extent to which a personal licence holder may 'authorise' a sale. For example, can an area manager of a supermarket group or pub chain personally authorise sales at various shops or pubs in the area? Can a designated premises supervisor authorise a sale if he is on an extended holiday elsewhere or, in the case of a

village hall, if the premises are let to a third party for a function? Amendments to the Guidance to address these issues would be welcome.

4. Definition of Premises

- 4.1 The Act requires a premises licence to be granted for any premises used for a licensable activity. Premises are defined as any place, including a vehicle, vessel or moveable structure. Although the Guidance advises on sports stadia with closing roofs, vessels, airports, ports, vehicles, trains and aircraft, it is silent on the definition of 'place'. This can lead to problems in terms of activities in the open air, especially when this involves temporary events. If, for example, alcohol is sold in a beer tent at a larger function, is it the tent only that requires licensing or the larger event? How should an event such as a Christmas lights switch-on be dealt with when there are different licensable activities taking place at different parts of a town? How should the sale of wine at a continental market stall be dealt with when the numbers at the market may well exceed the limit for a temporary events notice? Again advice in the Guidance would be helpful.

5. Licensing of Public Land

- 5.1 The Guidance invites local authorities to establishing a policy of seeking premises licences from the licensing authority for public spaces within the community in their own name to ensure that cultural diversity thrives. This could include village greens, market squares and similar public areas. Similar questions arise here with the definition of place and how operating schedules can be prepared which can deal with future possible scenarios. Further and better guidance is required.

6. Carol Singing

- 6.1 Regulated entertainment is exempt at religious services and places of worship. The same exemption does not apply to carol singing and the playing of festive music. The DCMS have suggested that people who sing carols spontaneously or who go from door to door do not require a licence. However if a band or choir play carols in a supermarket entrance or shopping mall, this would be no different to any other form of musical entertainment and would require licensing or the service of a temporary events notice. This created some confusion and adverse comment prior to last Christmas and advice should be incorporated in the Guidance for clarity.

7. Conditions

- 7.1 The Guidance contains a pool of suggested licensing conditions to promote the licensing objectives. As conditions could only be attached to licences if they were offered in operating schedules or to address representations from responsible authorities and interested parties, few applicants chose voluntarily to include conditions in their operating schedules that might restrict their activities. As a result many of the conditions that were proposed by applicants were meaningless and unenforceable. As few representations were received from responsible authorities, there proved little opportunity to include any of the conditions from the guidance in the licences that were granted. If the legislation restricts the ability of a licensing authority to attach licence conditions, the Guidance should be clearer as to the risk assessment

that should be carried out by applicants before completing their application and the conditions to be volunteered to promote the licensing objectives.

8. Opening Times

- 8.1 A licence is required for the supply, not the consumption, of alcohol. However application forms require opening times of premises to be listed and the same information must be shown in the licences issued. The Guidance also requires an operating schedule to include a description of the style and character of the business to be conducted, including areas such as a garden where consumption will take place, even though this is not a licensable activity. Clarity is required as to the requirements for opening times to be shown and for areas to be defined where no licensable activities will take place.

9. Conclusion and Recommendation

- 9.1 The Guidance issued has been useful but the DCMS should use this opportunity to provide clarity both for licensing authorities and those involved in the industry on some of the more practical issues that have arisen during the course of the past twelve months since the first appointed day.
- 9.2 The Committee are therefore

RECOMMENDED

to endorse the comments contained in this report on the statutory Guidance, together with any other issues that Members may wish to raise.

BACKGROUND PAPERS

Statutory Guidance issued by the DCMS

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