



department for
**culture, media
and sport**

Revised Guidance to the Licensing Act 2003

Summary of Consultation Responses

June 2007

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Section 1: Introduction

1. This document provides a summary of responses to the public consultation on revised licensing Guidance which ran from 16 January to 11 April 2007. Copies of all responses to the consultation will be available to view on the DCMS website by 11 July.

2. We received 162 responses to the consultation. A full breakdown by category of respondent is set out below.

Category of respondent	Number of response
Licensing authority	68
Licensed trade	23
Members of the public	12
Legal profession	11
Parish/town council	10
Police	8
Residents groups	7
Responsible authority	3
Musicians groups	3
Village Halls	2
Clubs	2
Arts	2
Surveyors	1
Individual councillors	1
Other Government Departments	1
Other	8
Total	162

3. Overall, a majority of all respondents and local authorities (LAs) agreed with our recommendations. A full breakdown of responses for each recommendation is provided at the Annex. However, there were some suggestions for further clarification and/or expansion of the guidance in certain areas and these are discussed below, together with the Government's response.

Definition of 'in the vicinity'. Recommendation: To leave the current guidance unchanged.

4. Some respondents were concerned that local authorities defining vicinity as a fixed distance (e.g. 100m from the premises) in their licensing policies might refuse to accept representations from outside that distance. Whilst the majority of councils that use this approach will take a more flexible view, we have amended the Guidance (paragraph 9.6) to emphasise that fixed distances should be used as guidelines only; and LAs should indicate in their licensing policy statements that they will consider any representations where the interested party can demonstrate that their business or residence is affected (or is likely to be affected) by licensed activities at the premises in question.

Incidental music: Recommendation: Amend the Guidance to expand on the factors that LAs might wish to consider in determining what is 'incidental'.

5. Some respondents, including some musicians' groups, did not agree that local authorities should take volume into account in determining whether music is incidental, although this was included in the original Guidance. We recognise that volume may be difficult to measure, for instance where it may increase and decrease over a time period (e.g. a landlord may turn up a jukebox late at night), but in these circumstances local authorities should take a pragmatic approach and consider the impact on the licensing objectives and the other factors listed in the Guidance (such as whether the music is advertised as the main attraction).

6. Some respondents also suggested that whether payment is made to enter a premises **should** be a factor in determining whether music is incidental. However, there are numerous instances where payment or the lack of it is irrelevant. For instance, paid entry to an agricultural show where a brass band is playing. Conversely entry to Radio 1's recent 'Big Weekend' in Preston recently was free, but featured several high profile bands which were the main reason for attendance. We have therefore retained payment as a factor which authorities would **not** normally consider in deciding if music is incidental.

7. We agree with respondents who pointed out that music may not be the 'main' attraction, but one of several at a particular event and have amended paragraph 3.22 accordingly.

Cumulative impact policies: Recommendation: to leave the current Guidance unchanged.

8. A minority of stakeholders suggested that special policies should be applied more routinely to the off-trade. However, we are not persuaded of the need for change. Special policies were intended specifically to address crowd control issues arising from large numbers of people emerging from pubs and bars and congregating in a particular area. The situation is entirely different in the off-trade where the vast majority of customers buy alcohol for consumption at home. The Guidance therefore states that such policies would *not normally* be applied on the basis of sales by shops and supermarkets.

9. The enforcing authorities have a wide range of powers to deal with underage drinkers and itinerants congregating outside off-licences, etc. including test purchase initiatives, reviews, prosecution for the new offence of persistently selling alcohol to children and Designated Public Place Orders. In addition, new powers will be available later this year to establish Alcohol Disorder Zones which provide a further,

more appropriate means of addressing issues which cannot be linked to particular premises.

10. We agree with respondents who suggested that the use of the phrase 'material variations' was not helpful in this section and we have removed it. We have also made it clearer throughout that variations to licences should also be included in special policies if they are likely to contribute to cumulative impact (paragraphs 13.32, 13.34, 13.35). We agree that special policies are not only applicable in city and town centres, but also in other urban centres and in the suburbs and have amended the Guidance at paragraph 13.25 accordingly.

Pools of licensing conditions: *Option 1: To remove the pools of conditions from the Guidance, but consider establishing an alternative central source of good practice; Option 2: To retain the conditions in the Guidance, updated and expanded as necessary.*

11. This was the only area where we gave options and opinion was more divided on this than on any other issue raised in the consultation. Nevertheless, a clear majority of respondents wanted the annexes to be retained in the Guidance (Option 2) and believed that they were valuable in promoting consistency across LAs. The only other options suggested were to place the annexes on the DCMS website or in a newsletter.

12. On balance, we have decided that the pools of conditions should be retained. However, we have updated the text to reflect regulatory and other changes (e.g. the new fire safety regime) and added a strong introductory statement to emphasise that conditions are not exhaustive, should not be imposed as blanket conditions or duplicate existing regulatory requirements and must be: tailored to the specific premises; proportionate; necessary; and capable of being met.

13. We do not propose to expand the pools of conditions any further at this point without further public consultation.

Role of councillors: Recommendation: *Amend Guidance to further clarify the role of councillors in the licensing process and to reflect the rules around prejudicial interest.*

14. We have further updated the Guidance at paragraphs 8.8 – 8.11 to reflect the revised Local Authorities (Model Code of Conduct) Order 2007 (in force from 3 May 2007) which relaxes the rules for councillors with a prejudicial interest in a matter speaking or making representations at relevant meetings, hearings, etc.

Role of the Personal Licence Holder/Designated Premises Supervisor: Recommendation: *To recommend written authorisation for the sale of alcohol in the Guidance.*

15. Some respondents were concerned that this recommendation would result in written authorisation becoming a 'de facto' legal requirement, imposing an unnecessary administrative burden on business. It was suggested that, if this recommendation was retained, a contract of employment should be included as a form of written authorisation to minimise bureaucracy.

16. Written authorisation was endorsed by a large majority of stakeholders and several trade bodies already recommend it to their members as strong evidence of due diligence in the event of legal action. The Government believes that this is the best way to bring clarity and reasonable consistency to what has been a troublesome

issue. Ultimately the courts will decide whether the sale of alcohol has been properly authorised, but we believe that written authorisation affords the greatest protection to employees in the licensed trade. On this basis, we have retained and strengthened further our original recommendation to ‘strongly’ recommend that the personal licence holder provides written authorisation for the sale of alcohol, whilst emphasising that this is not a legal requirement.

17. Although in certain circumstances, a contract of employment may be acceptable as a form of written authorisation, this is a legally complex area. We have clarified in paragraph 10.52 of the Guidance that it is the responsibility of the personal licence holder to decide on the form of written authorisation, according to the criteria set out in paragraph 10.51. This may include a contract in certain circumstances.

Variations: Recommendation: To provide further clarification of when a variation application is required.

18. Some respondents asked us to provide support in the Guidance for authorities that wish to provide a fast track, low cost route for minor, low risk variations to licences, particularly where licensees are seeking to vary features that have been included on the plan, but are not required to be shown under section 17 of the Act (e.g. moveable tables and chairs).

19. An application to vary must be made for any change to the licence, which includes the accompanying plan. However, we have amended the Guidance at paragraph 8.36 to recommend that licensing authorities consider whether a variation is required when the changes proposed are confined to features that are not required to be shown on the plans submitted with the original licence application and where the changes could not have any likely impact on the licensing objectives.

Evidence in support of representations: Recommendation: To leave the current guidance unchanged.

20. No substantive issues were raised in the consultation.

Representations: disclosure of names and addresses: Recommendation: Amend the Guidance to suggest ways in which LAs might manage isolated cases where interested parties fear intimidation.

21. No substantive issues were raised in the consultation.

Control of nuisance/crime and disorder outside licensed premises:

22. Although respondents generally agreed with our recommendation, a number felt that the Guidance provided did not go far enough to explain licensees’ responsibility for controlling nuisance, etc. outside their premises, particularly in view of the forthcoming smoking ban in public places.

23. We have therefore expanded the Guidance at paragraphs 1.23-1.27 to include some of the arguments and explanation rehearsed in the Consultation Document, i.e. that licensees can be expected to take reasonable steps to prevent noise, crime and disorder immediately outside their premises, where this is within their control, and LAs may also impose relevant conditions where necessary, e.g. preventing customers from taking open containers outside.

24. We have considered further guidance around the impact on licensing of the smoking ban, but having consulted colleagues in the Wales and in Scotland, where a ban has been in force since March last year, we consider that, although the ban may lead to more people consuming alcohol outside premises, it is unlikely to raise any new licensing issues.

Longer hours: Recommendation: Amend paragraphs on longer hours to reflect Secretary of State's letter to LAs of 30 September 2005 – i.e. that there is no presumption in favour of longer hours and the four licensing objectives should be paramount considerations at all times.

25. Some respondents wanted to see all references in the Guidance to the benefits of 'longer hours' changed to 'more variable' or 'flexible' hours. Some also objected to the mention of 'fixed and artificially early hours' in paragraph 1.17 of the Guidance.

26. The Government's policy intention in the reform of licensing was to move away from the previous situation of fixed closing times to more varied closing times which would allow customers to disperse in a more gradual fashion from licensed premises. We have therefore retained the reference to fixed and artificially early hours which explains the historical context, but amended all references to longer hours as suggested.

Chapter 11: Police closure powers. Recommendation: To remove this chapter from the Guidance and incorporate it in specific and separate advice for police officers.

27. A revised and updated version of Chapter 11 has been agreed with the Home Office, the Police Standards Unit and the Association of Chief Police Officers and published on the DCMS website as separate guidance to the police.

Removal of Chapter 12: Sale and Supply of alcohol to children and Chapter 14: Other Offences from the Guidance: Recommendation: To delete these Chapters from the Guidance (as they essentially repeat the Act).

28. No substantive points were raised on this issue.

Format

29. Respondents overwhelmingly approved of the revised format of the Guidance which they find clearer and more user-friendly. However, there were objections to the new section entitled 'Principles' (paragraph 1.14 onwards) in the introductory chapter on the grounds that it went beyond the core principles of the Act to include statements on licensing hours, etc. We have therefore amended the title to 'General Principles'.

Other issues

30. Respondents also took the opportunity to ask for further clarification on other parts of the Guidance. These were, in the main, minor points of technical/legal clarification and we have provided additional text where appropriate. However, one issue was raised which will be of general interest and this is discussed below.

'Positive' Representations

31. Several respondents asked for clarification in the Guidance that the Act allows representations in support of an application as well as against it on the grounds that

some LAs may be refusing to accept 'positive' representations. It was suggested that this might provide licensing committees with a more balanced view of a proposal.

32. There is nothing in the Act to rule out representations supporting an application or a variation to a licence and we have made this clear in paragraph 9.3 of the revised Guidance. We have also provided guidance in paragraph 9.19 on how local authorities can avoid the unnecessary expense of a hearing if they have only received positive representations in relation are received.

Amendments to the Act/Regulations

33. A number of respondents asked for changes which would require amendments to the Act or Regulations. All these suggestions will be considered as part of our ongoing monitoring and evaluation of the Act, including proposals for reducing the regulatory burden on businesses as set out in the Department's Simplification Plan (http://www.culture.gov.uk/Reference_library/Publications/archive_2006/simplificationplan_2006.htm).

Amendments to other DCMS Guidance

34. Some changes were suggested which are more relevant to other DCMS guidance, e.g. to interested parties, responsible authorities, etc. This guidance will be updated as appropriate.

Section 2: Annex Consultation on Licensing Guidance: Results

1. Overall responses

Category of respondent	Number of response
Licensing authority	68
Licensed trade	23
Members of the public	12
Legal	11
Parish/town council	10
Police	8
Residents Group	7
Other	7
Responsible authority	3
Musicians	3
Village Hall	2
Clubs	2
Arts	2
Surveyor	1
Councillor	1
OGD	1
Consumer	1
Total	162

NB:

- 1) References in the following paragraphs to 'all' respondents or 'all' LAs means all those that responded to the question.
- 2) Where we have received equivocal or conflicting information within a response, we have apportioned the response accordingly, e.g. 0.5 for the recommendation, 0.5 against.

2. Vicinity

Recommendation: No change to the current text

Recommendation	All respondents	LAs
Agree	80	46
Disagree	29	11

3. Incidental music

Recommendation: Include a list of factors that LAs should/should not taken into account in deciding what is/is not 'incidental'.

Recommendation	All respondents	LAs
Agree	94	55
Disagree	8	4

4. Cumulative Impact

Recommendation: No change to the current text.

Recommendation	All respondents	LAs
Agree	71	39
Disagree	22	12

5. Pools of example conditions in Annexes D-H

Question 7: Should the annexes be removed and migrated elsewhere (Option 1) or retained in the Guidance and updated (Option 2)?

Recommendation	All respondents	LAs
Option 1	35	17
Option 2	63	38

Question 8: Are there any other options?

Recommendation	All respondents	LAs
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Yes	12	7
No	42	27

Question 9. Will retention of the Annexes inhibit innovative thinking by LAs, etc

Recommendation	All respondents	LAs
Yes	16	9
No	63	39

Question 10: Are the Annexes valuable in promoting consistency across LAs?

Recommendation	All respondents	LAs
Yes	63.5	39.5
No	11.5	8.5

6. Ward Councillors

Recommendation: Amend Guidance to reflect DCLG rules on 'prejudicial interest' and to advise that LAs can copy applications to councillors.

Recommendation	All respondents	LAs
Agree	91	52
Disagree	10	7

7. Authorisation of sale

Recommendation: Written authorisation should normally be provided in the absence of the PLH/DPS.

Recommendation	All respondents	LAs
Agree	86	50
Disagree	13	8

8. Variations

Recommendation: Amend the Guidance to clarify when a variation application should be made (as opposed to an application for the grant of a new licence).

Recommendation	All respondents	LAs
Agree	86	51
Disagree	10	5

9. Evidence in support of representations

Recommendation: No change to the current text.

Recommendation	All respondents	LAs
Agree	86	52
Disagree	9	3

10. Intimidation of residents making representations

Recommendation: Amend text to include guidance on how to deal with isolated instances of intimidation.

Recommendation	All respondents	LAs
Agree	81.5	42.5
Disagree	14.5	11.5

11. Control of crime and disorder outside the premises

Recommendation: Amend text to clarify limited powers to control areas for consumption outside the premises.

Recommendation	All respondents	LAs
Agree	87	52
Disagree	9	2

12. Longer hours

Recommendation: Amend the text to emphasise that the licensing objectives must be paramount in any licensing decision.

Recommendation	All respondents	LAs
Agree	93	57

Disagree	1	-
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13. Chapter 11: Police powers to close premises

Recommendation: Remove Chapter from Guidance and incorporate in specific guidance for the police.

Recommendation	All respondents	LAs
Agree	67.5	38.5
Disagree	22.5	13.5

14. Chapters 12 and 14: Offences under the Act

Recommendation: Remove Chapters from the Guidance as they duplicate the Act.

Recommendation	All respondents	LAs
Agree	68.5	39.5
Disagree	24.5	15.5

15. Format

No recommendation: We asked respondents whether they thought the revised format was an improvement or not.

Recommendation	All respondents	LAs
Agree	91.5	51.5
Disagree	2	2



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