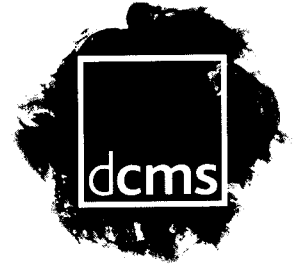


To All Chief Executives of Local Authorities

30 September 2005



Dear Colleague

## IMPLEMENTATION OF LICENSING REFORMS

As we draw towards full implementation of the licensing reforms, we wanted to clarify a couple of points in relation to the Statutory Guidance and set out what we have agreed with the LGA and LACORS about the monitoring and evaluation activity that will be initiated immediately following 24 November.

First though, we would like to reiterate our sincere thanks to local authorities and their licensing teams and councillors for all the work that has gone in to implementing this Act. Local councils successfully pulled out the stops to encourage licensees to apply during the summer, and we know that the process of hearing applications is now also taking up significant amounts of time and effort. Thank you for that.

The LGA raised the concern with us last week that some councils were being told that where objections have been received, there may be a presumption in the Act and Guidance in favour of longer hours, constraining a local authority's ability to reject or modify applications.

Let us make it clear - this is not the case. There is no presumption in the Act for longer hours over objections from local people and organisations. Where there are objections and the licensing committee believes that changing the hours would undermine the statutory licensing objectives i.e. on crime and disorder, public nuisance, public safety and the protection of children from harm, they can reject the application or grant it with appropriate conditions and/or different hours from those requested.

Indeed, at the outset the Guidance makes it very clear, that it is the duty of the licensing authorities to promote these objectives when carrying out their functions under the Act, and that these four objectives are paramount considerations at all times.

This is a significant enhancement of the existing arrangements whereby unelected magistrates make decisions on licensing matters based on an undefined concept of public interest. The experience of residents is that this has too often been ineffective in protecting their interests. The new regime provides a clear focus through the licensing objectives and gives elected councillors the power to resolve disputes. We know that many councils are already using these powers – our initial evidence is that two thirds of objections are being resolved by negotiation and that where objections come from residents, in 95% of cases licensing committees are responding by adding conditions and/or adjusting the requested hours. There also appears to be genuine variety in



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opening times, contrary to the view in some quarters that the Act is leading to a uniform but later closing.

From full implementation of the Act on 24th November, the new review mechanism will take effect. This is a central part of the Act –if problems occur with a licensed premises, then the police, residents or council officers responsible for issues such as noise nuisance, can ask for a review at any time. There are a wide range of options available to tackle problem premises after review, including changes to opening hours, not allowing certain activities, removing the premises supervisor or revoking the licence. This is a significant strengthening on the previous regime, and should change the incentives facing licensees, as they will know that flouting the licensing objectives risks action that will impact on their business.

While the licensing authority must be impartial, we have given various parts of the local authority the power to protect residents by making them responsible authorities under the Act e.g. environmental health, trading standards and planning officers. In addition, there is nothing to stop a local councillor making representations if asked to by residents, nor from seeking the views of their residents on licensing matters as they would for any other issues.

The whole point of the Act is that decisions on matters such as hours should be made locally on a case by case basis, not by Ministers in Whitehall.

## MATTERS OF PROCESS

We know that some local licensing authorities have identified technical issues in relation to some of the processes that they feel are inhibiting a smoother running of the regime. These include:

- **The number of councillors allowed on licensing committees.** We recognise that for some local authorities there is a real pressure during the transitional period, and that this has even impacted on other council business. The main rationale for a limit was to ensure that a deep expertise on licensing matters was developed by these members - a position we know that some local authorities agree with. Nevertheless, in retrospect perhaps better arrangements could have been made for the transition where pressures are greatest, which enabled greater flexibility. In the short run we know that some local authorities are training additional councillors so that they can slot in immediately where a vacancy arises. This may provide some useful flexibility. Of course, as we evaluate policy over the coming months this is an area where we shall listen carefully to arguments for change.
- **The time for residents to make representations and the effectiveness of arrangements for notification of applications.** We believe it is too early to determine if these arrangements are working effectively or not, and we will need to continue to gather evidence. In the short run we propose publishing further guidance to residents, augmenting existing central and local materials. A useful focus will be the new review mechanism that comes into force on after 24th November, but the guidance will also cover making representations and appealing decisions. This will also illustrate how councillors and other representatives can be involved.
- **A slip rule.** We have previously written to local authorities to encourage the adoption of a pragmatic and flexible approach where simple errors and omissions are made on applications. We recognise that many local authorities were well ahead of us! However we will look at whether authorities have been able, in practice, to exercise enough discretion, or whether we need to consider more formal arrangements. This will allow us to be a little clearer about the scope of any changes.

## FEES

We know that the issue of licensing fees remains a matter of concerns for local authorities. Let us reiterate that the regime will provide for the recovery of the full costs of local authority functions under the Act. We must, of course, await the outcome of the independent Elton Review regarding the actual position and any proposals for change. The LGA is fully engaged with the process.

## MONITORING AND EVALUATION

As we move beyond the second appointed day, rather than scaling back our Department's policy effort, it is our intention that the central/local partnership on licensing that has been so vital in getting us to this stage will be further strengthened.

We have agreed with the LGA and LACORS the following arrangements for the monitoring and evaluation of the licensing reforms. In particular in relation to how the appeals, review and enforcement provisions work in practice:

**A review of the guidance that accompanies the Act.** It will be necessary to update the existing guidance since much of it deals with the transitional period. This also gives us the opportunity to clarify and review any areas as necessary. The review of the guidance will be in two stages. The first will be within three months of the new Act coming into force. It will cover any immediate areas of concern and look at any evidence of where the Guidance could usefully be clarified or updated through the issuing of additional guidance. For example, to take the issue of what determines being in the vicinity of a premises, we would want to consider whether the commonsense approach outlined in the Guidance is being adopted.

In addition, we will consider with stakeholders where the Guidance needs to be redrafted, which would be completed by summer 2006 for the laying of a revised version before Parliament in the autumn.

- **Scrutiny group of councils.** We will work with a sample of local authorities to monitor how the Licensing Act is being delivered on the ground and whether the system has helped achieve the aims set out in each area's local licensing strategy. We are discussing with LGA/LACORS how we will identify a sample and will be in touch with local authorities shortly to set out those arrangements.

We hope this letter offers some reassurance that there is sufficient scope for local authorities to ensure that licensing decisions reflect the best interests of their local communities. Much of the system has yet to be tested and we are determined to learn quickly from experience and make the necessary adjustments if the outcomes of reform are not those that we, and all the partners who helped draw up the new system, hoped to achieve.

Our best wishes

Tessa Jowell.



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JAMES PURNELL