



CONSULTATION ON REVISED GUIDANCE MADE UNDER SECTION 182 OF THE LICENSING ACT 2003

To:

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The Bar Entertainment and Dance Association (BEDA) welcomes the opportunity to respond to this DCMS consultation. As an active participant in the pre-consultation process the Association is pleased to see how some of the discussions we had in committee have reached the consultation stage.

As a general point the Association would like to see greater clarity in the Guidance than in the first edition published in 2004 and we welcome and applaud this process to obtain greater lucidity.

QUESTIONS

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

BEDA supports the view that the current guidance on vicinity is sufficient. Given that there are many issues which need to be taken into account at local level the framing of an acceptable definition of vicinity doesn't seem to be either prudent or necessary.

Question 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?

Our only major concern in this area is where certain licensed premises are turning up the volume of music later in the evening and therefore making the music a special feature rather than incidental. By doing so they are directly competing with other businesses which are paying their requisite PPL and PRS contributions for specially featured entertainment. We would agree that once

the volume has been increased to the point where it is a feature rather than a background accompaniment, then it cannot any longer be defined as incidental.

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

The current guidance is sufficient, although it would be useful to clarify in the guidance that not all disorder in the public realm emanates from licensed premises. Our evidence from a piece of CGA research [insert stats and details] is that many individuals are now front loading with alcohol before they attempt to enter a licensed premise. This is causing a number of public order issues which could, in certain circumstances be misinterpreted as issues of over-supply. We do believe that over-supply continues to be a massive issue since it can lead to an overwhelming need to deep discount, especially when the licensees have to compete with very cheap alcohol being sold in off licences, supermarkets and convenience stores.

We believe that when a town or city is widely regarded as approaching over-supply, a great deal of attention needs to be focused on whether an additional licence should be granted which could, in turn, lead to deep discounting and the attendant public order issues associated with extremely cheap alcohol.

We continue to advocate Best Bar None as a socially responsible scheme which, by raising the standards in licensed retailing will help to curb some of the issues to do with cumulative impact.

Question 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.

Whilst both options have elements which are eminently sensible we would err towards creating a central source for good practice and would be only too happy to be one of the stakeholders who might contribute.

Question 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?

From our experience there is a good deal of knowledge on the ground as to conditions so it is not necessary to provide an exhaustive list. We continue to oppose blanket conditions as being unlawful and fundamentally unhelpful, but we are supportive of conditions if they are the result of ongoing issues between licensee and the authorities. We would also disagree that conditions are automatically applied based upon a type of premises on the understanding that a particular style of premises produces disorder. We would continue to argue strongly that well managed premises (regardless of they style of operation) need to be viewed without prejudice.

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

Since all conditions are determined and administered at local level, inevitably, for good or bad, there will never be complete consistency across the all local authorities. We agree though that advocating best practice within the guidance is the best way of guaranteeing a degree of unanimity.

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

BEDA agrees with the suggested changes.

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

BEDA would argue that although this process could be onerous, we agree that this process would help support a due diligence argument.

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

We refer to the work Jeremy Allen (from Poppleston Allen and BEDA's Legal Director) has done in clarifying these points.

"I welcome the paper proposing a new Minor Variations process and I think this is a helpful step forward in reducing the cost of licensing applications. It may also encourage holders of Premises Licences to submit applications where some are at present reluctant to do so because of the cost. This could lead to significant problems in the future when premises come to be sold that bear very little relationship to the plans attached to the Premises Licence.

One of the principal problems under the current Act is a different interpretation being put on it by licensing authorities. This particularly relates to items shown upon the plan that are not required to be placed there by Regulation 23 relating to plans. Examples of this would be bars that don't interfere in any way with an exit, AWP machines or fixed seating. Some local authorities are stating that if an item has been shown upon the plan attached to the licence and it is moved then an application for variation is necessary even though it's not specified in the plans regs.

Taken to a ridiculous conclusion this could mean that if there was a plant shown in the licensed area and it died then an application for variation would be necessary. It seems to us that it's reasonably clear that no application is necessary unless the item is specified within the plans regulations. This would mean that if an additional fire extinguisher was required by the fire officer an application for variation would be necessary. However, if a bar were to be moved from one corner of a room to another, or significantly reduced in size, then as long as it didn't interfere with the fire exit no application is necessary.

Birmingham council take the view that if the item wasn't specified upon the plans originally there is no difficulty but, if it is shown, then an application for variation is necessary, because it's specified in the plan attached to the licence. We are "almost" sure that that is not the case but there is considerable difficulty persuading any client

to challenge the authority on this. The result is that whilst we continue to make applications for variation that are, in our experience, unnecessary we've actually put up the cost to our clients of the new licensing procedure.

There obviously are some difficulties in this. Nowhere in the schedule does it mention tables and chairs. On the one hand, an area set out with tables and chairs would quite clearly look to anybody considering the plans like a restaurant area. If on the other hand they are removed, then it could look like a vertical drinking bar. It would certainly have an effect on the capacity. However, unless capacity is a condition attached to the licence then any increase by removing the tables and chairs is surely irrelevant. If it was thought that a variation was necessary then technically every time the table is moved from the position shown upon the plan then an application would be needed. This is clearly ridiculous.

We feel that in future it may be necessary to have inscribed upon the plans words to the effect that "Any items shown on the plans, that are not within the plans regulations, are shown for illustrative purposes only and do not form part of the application".

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

BEDA agrees.

Question 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?

We would err on the side of not amending the guidance as there is the additional problematic area that anonymity can sometimes lead to unfairness in the process. We would like to add that the presumption of intimidation plays to an unfair and prejudicial view that some individuals have of the licensed trade and the individuals who work in it.

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

Disorder outside licensed premises is an extremely thorny problem. For the last couple of years since the trade has made significant additional steps to prevent the sale to those underage or who are inebriated, the perverse effect is that these groups who are rejected sale of alcohol (or admittance or both) can react to the refusal in a threatening, intimidating or disorderly way.

Unfortunately this can sometimes be misinterpreted by the authorities as a problem created by the premises – thereby placing the licensee in an invidious situation. More guidance needs to be directed at disorder within the public realm – without the automatic assumption that the problem has originated from licensed premises.

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?

BEDA agrees.

Question 25: Do you agree that Chapter 11, explaining police powers to close premises, should be removed from the Guidance and incorporated in specific and separate advice for police officers?

BEDA would be much happier rather than just removing this section that it was revised, that duplication was minimised and that good practice guidance should be incorporated.

Question 27: Do you agree that Chapters 12 (Sale and Supply of alcohol to children) and 14 (Other Offences) should be deleted from the Guidance?

As with Chapter 11, BEDA would prefer if this section was re-written to remove duplication with the primary legislation. Suggestions of good practice guidance would be a useful addition. With Chapters 11 and 12 BEDA would happily offer to take an active role in the re-writing of the guidance.

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