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Andrew Opie
Director of Food Policy

Dear Mr Richardson

REVISED GUIDANCE TO THE LICENSING ACT 2003

The British Retail Consortium (BRC) welcomes the opportunity to comment on the draft guidance. The BRC represents the full range of retailers from independent outlets to multiple chains who comprise a large part of the off-licence trade in alcohol. Our members are acutely aware of their position in the community as responsible retailers of alcohol and recognise the importance of the guidance.

We have restricted our comments to those parts of the guidance that are relevant to our members and these are attached below.

Q1. Do you agree that the current guidance on vicinity should remain unchanged?

Yes we do not see a problem with the current guidance. We did not support suggestions such as encompassing routes home from licensed premises as this would have been unworkable for a retailer

Q5. Do you agree that the current guidance on cumulative impact policies should remain unchanged?

Yes, we have not seen a problem with this in the last 18 months. Cumulative impact policies do not generally apply to off-licences, which is appropriate as the way alcohol is bought and consumed from them is completely different to the on trade. The guidance does however retain flexibility to act should it be necessary.

Q11. Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed?

We think the clarification in the draft guidance is useful. We understand that there is a desire for transparency and as public and newspaper notices are in the public domain it is difficult to see why councils shouldn't be able to notify local councillors in a neutral manner. In the interests of consistency it is important to be clear when councillors should withdraw from discussions and we welcome the new guidance

Q13. Do you agree with the proposed amendments to the guidance on authorisation of sale?

We welcome the renewed confirmation that the Act does not require a designated premises supervisor or another personal licence holder to be present at all times and trust this will be noted by enforcement agencies. We accept the recommendation for written authorisation as clear evidence of the process. We trust this is seen as an internal procedure and not something licensing authorities would expect to see displayed, particularly as staff mover relatively frequently between stores and this would be subject to frequent changes

Q15. Do you agree that the guidance on variations should be amended as proposed?

We support the new amendments as proposed as there has been confusion and inconsistencies on when a variation can be used. We trust that by detailing the specific times when a variation can be used will avoid the current problems.

Q17. Do you agree that the guidance on evidence to support representations should remain unchanged?

No

Q18. If not, please explain why

Although we understand that by their nature there will be an element of speculation in representations against new licences, we do feel there should be more encouragement to produce substance to these

Q19. 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 do understand the purpose of the amendment, that in exceptional circumstances there may be problems with intimidation and it may be appropriate to withhold their personal details. This should not, however, interfere with the usual process of making an application, which may involve discussions with that person to resolve their issues and remove their objection, possibly saving money and time for all parties. We do not agree that the authority should make representations for the person, as suggested in 9.16 rather they should act as a safe intermediary for passing information between the person making the representation and the applicant.

Q21. Do you agree that the guidance on the control of nuisance/crime and disorder outside licensed premises, should be clarified/expanded as proposed?

Q22. If not, please explain why

We don't believe expanded guidance is necessary, accepting that there is a recognition that licensees have a limited capacity to tackle disorder beyond their premises. Licensing authorities are already imposing conditions such as the use of specific types of CCTV and other anti-crime measures that it is envisaged the enhanced guidance will lead to and, therefore, we don't see the need for the change. We also feel that this Act was not designed to tackle this type of crime and disorder, that is the purpose of other legislation, where there are a number of measures available to local authorities.

Q23. 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?

Q24. If not, please explain why and outline any alternatives

We don't have a major objection to the amended guidance as it continues to state that licensing hours should reflect the opening hours of stores. We do not agree with the change in the emphasis of the wording on when it would be reasonable to deny a retailer the same licensing hours as its normal trading hours. In the current guidance it says licensing authorities should generally permit this unless there are very good reasons why it isn't appropriate, whereas in the draft guidance it uses good reasons. As thousands of retail outlets now operate longer licensing hours to accord with their trading hours with no adverse results we don't understand why the wording has been changed.

Q25. 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?

Q26. If you do not agree, please explain why

We agree with the proposed removal

Q27. Do you agree that chapters 12 (Sale and Supply of alcohol to children) and 14 (Other Offences) should be deleted from the guidance?

Q28. If you do not agree, please explain why

The majority of our members agree with the removal of these chapters

Q29. Are you happy with the overall format of the revised guidance?

Q30. If not, please explain why and what format you would prefer instead

We are happy with the overall format of the revised guidance

Other matters

We feel paragraph 9.20 of the guidance should be amended to allow for the situation where representations are withdrawn orally at the commencement of the hearing. In this case the licensing authority should be compelled to grant the application in the terms sought and as agreed between the applicant and the party making the representation. Our members have experienced the case where all representations were withdrawn orally at the commencement of the hearing but the authority proceeded with the hearing and imposed its own conditions.

We feel paragraph 8.27 should be revisited to emphasise that where applicants have taken care in drafting an operating schedule, these should be directly translated into conditions on the licence. One of our members has told us of inconsistencies in the way their standard national policies are accepted or amended by different licensing authorities.

We believe paragraph 1.30 may be inaccurate as it refers to the LACORS/TSI Code of Best Practice on Test Purchasing rather than LACORS practical guide to test purchasing which was published in 2006.

We trust these comments are useful and look forward to the final publication of the new guidance

Yours sincerely

Andrew Opie
Director of Food Policy