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

Business In Sport and Leisure is an umbrella organisation that represents well over one hundred private sector companies in the sport and leisure industry. Its members include most of the major operators of commercial sport and leisure in the UK, a large majority of whom operate a licensed bar or other licensed activity. The value of BISL members listed on the London Stock Exchange or owned through private equity is in excess of £40 billion.

BISL works through five working groups which cover sport; liquor licensing; gambling; employment; and planning and property and the licensing working group submitted comments to DCMS on the original Guidance and commented to the DCMS Advisory Panel in September 2006.

Introduction

Business In Sport and Leisure has welcomed the decision by Government to undertake both the initial review last year of the Guidance dealing with the clarification of uncontentious issues and subsequently the full review dealing with the more substantive issues as well as the format and style of the Guidance.

Q 1 Definition of “in the vicinity” BISL agrees with the Advisory Group that there was no case for any definition of “in the vicinity”. **BISL members preferred to leave** latitude for interpretation by all parties concerned.

Q3 Incidental music BISL agrees with the expanded Guidance that indicates some of the relevant factors that are or are not to be considered when determining whether music is incidental.

Q5 Cumulative Impact Policies BISL notes and would want to see more strongly reaffirmed that Cumulative Impact is not mentioned in the Act and yet a large number of local authorities have established reserved powers in their policies. Members agree that the current Guidance should remain unchanged and certainly not be added to.

Q 7 Conditions BISL believes that conditions should only be placed on licenses if they are necessary and yet across the country licensing authorities continue to produce longer and more complex licenses. BISL hopes that the removal of the pools of conditions in Annexes D-H will encourage licensing authorities to think more about any conditions that are necessary and also reduce the duplication with other statutory conditions.

Q 11 Role of councillors in the licensing process BISL welcomes the revision of paragraphs 8.8 to 8.10 which now reflect the normal declarations of interest in public life. A strong element of trust is now invested in the proprietary of ward Councillors who have received copies of any application. BISL sees this as a reasonable position as all such councillors are members of the Licensing Authority. The local authority alone however should bear any cost for providing copies of appropriate documents beyond the designated responsible authorities.

Q 13 Role of the Designated Premises Supervisor and the Authorisation of Sales BISL has given considerable thought to the Government’s proposal to recommend that written authorisation is provided, as evidence of due diligence, to the specified individual authorised to have the day-to-day responsibility for the running of the site and every sale of alcohol.

BISL believes that the proposal, alongside the clarification that it is not a legal requirement for the DPS to be on the premises at all times is attractive in those authorities where the local Police regularly seek inspection of such evidence. BISL is aware that in the vast majority of areas all concerned managed very well without any requirement of a confirmation of delegation in writing. BISL believes therefore that the option of verbal authorisation must be retained even if many of the larger operators, managed houses and tenanted properties, do provide written authorisation as a legal back up. Otherwise the industry is faced with a vast paper trail which is hugely bureaucratic and costly in both terms of time and cost. Industry would also be faced with criminal charges if they failed to provide written authorisation which must be seen as over regulation.

BISL would not wish to see the requirement for written authorisation to become mandatory at any stage.

Q15 and Q16 Variations BISL is well aware that the Act only makes provision for a simplified **variation application** process, requiring only the submission of part A of the premises license, in relation to a change of name or address or the specification of a DPS. Consequently, in all other circumstances an application for a full variation must be taken, with all the administrative and advertising costs and the risk of the imposition of new conditions which that entails. However already it has become custom and practice for some local authorities to accept other minor changes such as an internal change to the plans and

just substitute them on file. BISL would not wish anything to deter such an inexpensive, practical and speedy process. Whilst it is possible that the acceptance of such informal changes over time might lead to a change between the operation on the ground and that described in the licence, at that point the consequence would be a requirement of an application for a new licence or the operator might be liable to closure.

Although the Government's proposal provides some clarity, BISL are disappointed that the issue of the "minor" variation had not been tackled and an option found to regularise the way very small changes to a site or schedule are formally dealt with. If you are only moving a fire extinguisher for example, does this really need a formal variation and the cost to operators this would impose.

Q17 Nature of Evidence to support representations BISL agrees that there was no need for a change to the Guidance. However BISL seeks to ensure that any support that is forthcoming for a licence application is recognised by local Government as a "positive representation", accorded appropriate time and the opportunity to be heard as independent representations and not bundled together with the applicant's application.

BISL would like to see more explicit guidance around the absence of any discretion for the local authority to consider refusal of an application if there are no representations or representations have been withdrawn. In such circumstances the licensing authority has no discretion and must grant the licence as sought. A recent example was an application for a licence to cover two buildings where no representations were made and so the grant of a licence should have followed. However the licensing authority said that the application was declined as the two buildings could not be covered by the same licence. Elsewhere representations were withdrawn (albeit just before the hearing) yet the licensing sub committee (with much help from a legal advisor) went on to consider the application and, in particular, the fact that the licence would go beyond the planning permission. On this basis the license was refused.

Q19 Disclosure of names and addresses BISL wishes to state very strongly that transparency and natural justice require the disclosure of the names and addresses of parties making representations prior to a hearing and further that this can and should encourage dialogue and mediation. It was also felt this should also apply to petitions where all and every signatory should have a local interest relevant to the specific application for their views to have validity.

Q21 Control of crime and disorder outside licensed premises Members were reluctant to see any extension through licensing conditions of the control of nuisance and crime and disorder. Local Authorities are already empowered to designate DPPOs and BISL suggests Government is mindful of the pending implications of the ban on smoking in public places and the potential designation of Alcohol Disorder Zones under the Violent Crime Reduction Act 2006.

Q23 and 24

BISL is also concerned at the apparent absence of the very explicit advice in the previous paragraphs **6.5 and 6.6** advocating the principle of flexible trading as a means to reduce the potential for concentrations and achieve easier dispersal of people from licensed premises.

Qs 28, 29 and 30 Format

BISL agrees that the removal of chapters 11, 12 and 14 and the revision of the layout has made the Guidance a more concise and much more user friendly document. However it is disappointing that the responsible behaviour of the vast majority of licensees is somewhat undermined in the Foreword by the phrase “licensees are beginning to take their responsibilities more seriously...” particularly when progress on partnerships is made to appear to be all down to local government!

In addition guidance should provide that licenses be issued within a period of ten working days at the end of the period for representations (if no representations are made) or within ten days of a successful hearing.

Overall the layout and format of the Revised Guidance is an improvement, but I hope that you will find these detailed comments positive and informative.

For further information, please contact.

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