



# E-Mail

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To : Simon Richardson – Licensing Guidance Review Team - DCMS  
From : John Wilkinson  
Date : 3 April 2007  
Re : **LICENSING CONSULTATION**  
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Thank you for providing the Association with the opportunity to comment on the draft guidance issued under Section 182 of the Licensing Act 2003. We hope that the following is helpful.

We believe the draft guidance will be much easier to use by its target audience than the one issued in July 2004, though we continue to have the same overriding concern that we had about the earlier document. Whilst it is understandable that, with government's grave concerns over the misuse of alcohol, the guidance rightly has much to say about the procedures that licensing authorities may consider and must impose when granting or renewing/reviewing premises licences, where the main business activity of the licensed premises is the retail of alcohol, the premises licence also has within its catchment those businesses and premises which conduct other activities (namely Regulated Entertainment (Schedule 1), provision late night refreshments (Schedule 2) or where the retail of alcohol is only a minor part of the business).

In these latter categories there continues to be a danger for those businesses of being caught by the overspill or misapplication of the guidance and rules drafted for the control of the retail of alcohol being applied to them by over zealous interested parties and responsible authorities. This potential threat can be contained by the careful review of the licensing conditions when sought or issued by the licensing authority, but this does increase costs for the operator. The statements made in paras 1.3, 1.6, 1.8 and particularly 1.15 are of paramount importance.

We hope that when the Secretary of State reviews her forward that she will consider acknowledging the input of businesses into the successful implementation of the Licensing Act 2003. If businesses and their representative bodies had not worked as hard as many officers and councillors in the period up to 24 November 2005, when the Act became operative, the benefits to local people in having a bigger voice in the licensing process would not have come about as quickly as they did.

While the sixth paragraph in her forward, when read as a whole, is clearly applicable to premises that retail alcohol, it is illustrative of our earlier comment above that, unless the guidance is read with care, there can be overspill or misapplication of the rules. We would also make the point that the introduction of the LA 2003 did

not, as far as cinemas are concerned, act as a catalyst for the enforcement of the rules about the sale of alcohol to under-18s; these were being strictly applied as were the classification rules for admission to age classified films.

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## **DRAFT SECTION 1- INTRODUCTION**

The section reads well and is informative though there are subparagraphs where we think the message could be strengthened. The only major amendment that we think would add to the guidance greatly is that the section on Licensable Activities (para 1.11) should follow the section on Licensing Objectives (1.2) in order that the reader clearly understands that the following sections are not just concerned with the retail of alcohol.

**1.17 Hours of Opening** – we believe that it would be helpful in this section to insert a new sentence at the end of para 1.18 “Premises where the retail of alcohol is not the major activity may seek greater flexibility in their permitted hours to enable them to achieve the four licensing objectives and to accommodate their offer to the public.”

## **DRAFT SECTION 2 - THE LICENSING OBJECTIVES**

Section 1 states that each application must be treated upon its merits and all premises must comply with the four licensing objectives. Much of the guidance contained within Section 2 in practical terms only applies to those premises where the retail of alcohol is the major business activity. It would be helpful, for example, if the word ‘appropriate’ were to be inserted in para 2.9 or the statement made in Section 1 that each premises be treated on its merits were to be repeated.

Para 2.28. The Cinematograph (Safety) Regulations did not just apply to cinemas but to all premises that exhibited films. Some premises which are not cinemas are now applying to exhibit film under Schedule 1 and it would appear that steps are not always being taken by new licencees, licensing authorities and responsible authorities to assure public safety in a similar manner as for cinemas. The need for this is mentioned in this paragraph but we believe that it would be helpful if more emphasis were given to the need to assure public safety, especially in non-cinema premises.

Many cinemas during the transition applied for variations to their conditions of licence and used the Cinematograph (Safety) Regulations as the basis for their new conditions to avoid ‘rewriting’ conditions. They sought and obtained, as part of their conditions of licence and as no representations were made, agreement to include the adjusted Cinematograph (Safety) Regulations as part of their conditions of licence. These cinemas are in a different situation to those that just carried forward the Regulations under the grandfather rights provisions and it might be worthwhile making mention of this in this paragraph.

## **HOURS OF TRADING 10.18 – 10.21**

These paragraphs are mostly concerned with providing guidance and advice for premises where the main business activity is the retail sale of alcohol (for consumption on the premises) though in para 10.20 it is acknowledged that where businesses sell alcohol for consumption off the premises the normal permitted hours should be those when the shop is open. Should not a new paragraph be inserted to cover the possible hours of trading that premises which have been brought within the scope of LA 2003 through Schedule 1 – Regulated Entertainment. Cinemas may seek 24 hour licences so that they have the flexibility to start programmes early and finish them late, especially when special programmes of a series of films on a theme or genre are part of a planned programme, or festival, to avoid seeking TENS. It will be most unlikely that films would be shown for the whole of the permitted hours.

#### **AUTHORISATION BY PERSONAL LICENCE HOLDERS 10.46**

It is feared that the guidance given in 10.50 - that written authorisation may be preferable - will become the norm and will lead to the 'checking' that such written authority is in existence. Could not the written authorisation be contained in a person's contract of employment if government consider this is best practice?

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#### **EXHIBITION OF FILMS 10.51**

Advertisements shown in cinemas are required to be approved to be shown to the public by two bodies. All advertisements have to conform to the Committee of Advertising Practice Code under the auspices of the Advertising Standards Authority and the BBFC. There are sometimes differences in the standards which means that advertisements in cinemas are the only ones in the UK that have to comply with two sets of rules, which puts cinemas at a commercial disadvantage to other media where only the CAP code applies. This disadvantage is likely to be exacerbated when digital delivery of 'films' becomes widespread as advertisers who wish, at the last moment (which will then technically be possible) to mount an advertising run will have to comply with two sets of rules which would make the use of cinema at short notice unacceptable to them. This will have financial implications to the viability of cinemas for the income generated from advertising is most important to them.

It is acknowledged that advertisements have been classified by BBFC though Section 5 of the Cinemas Act 1985 does cast some doubt as to whether it is necessary. The LA 2003 Sch 1, Part 2 5 repeats this exemption. In the guidance at para 10.52 it is categorically stated that this exemption "only" excludes the exempted actions from the regulated entertainment provisions and that advertisements as film attract the mandatory condition contained in the LA 2003 20. We do not believe that para 10.52 should be written in such firm terms for if a film or advertisement is exempt from regulated entertainment, it might be that the mandatory condition might not apply. May we suggest that 10.52 is deleted and replaced with : "10.52 It should be noted that the effect of paragraph 5 of Schedule I of the Act is to exempt adverts from the definition of regulated entertainment but for practical reasons advertisements are normally classified in a similar manner as all films".

#### **APPENDICES**

We continue to think that the addition of appendices is helpful.

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