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**Department of Environmental Services**

Philip Everett, BSc, CEng, MICE  
Director of Environmental Services

Mr Simon Richardson  
Licensing Guidance Review Team  
Tourism Division  
6th Floor  
Department for Culture, Media and Sport  
2-4 Cockspur Street,  
London SW1Y 5DH



**CITY  
OF  
LONDON**



Our ref APW/JL

Date 14 March 2007

Dear Mr. Richardson

**Consultation on Revised Guidance Made Under  
Section 182 of the Licensing Act 2003**

I am pleased to attach comments on behalf of the City of London Corporation in response to the above document.

You will note that the comments are in a format which provides a résumé of the point under consideration, the DCMS question and the City of London's response. This derives from any circulation of the proposed response to other senior officers and elected Members. I hope this makes the responses clear but if you wish to discuss the matter at any stage please do not hesitate to contact me.

Yours sincerely

**Andrew Whittington**  
Assistant Chief Trading Standards Officer  
**Trading Standards (Licensing)**

c.c. LACORS  
10 Albert Embankment  
London SE1 7SP





## **LICENSING ACT 2003**

### **Draft Revision of Guidance Issued Under Section 182 of the Licensing Act 2003.**

Response to the City of London Corporation to the Secretary of State for Culture Media & Sport in respect of the Revised Guidance Made Under Section 182 of the Licensing Act 2003.

#### **A. Definition of “in the vicinity”**

This is not defined in the Act or Regulations. Current guidance suggests some factors which should be considered. This has caused some legal argument in various instances.

The review however proposes leaving the position unchanged to maintain flexibility.

#### ***City of London Response***

#### **Q1 Do you agree that the current Guidance on vicinity should remain unchanged?**

Although the wording of the Act cannot be changed it would be helpful if the guidance could point to a more useful definition of “persons likely to be affected”, which would enable cross-river concerns to be valid without doubt and also to include people living along the only route away from the premises.

#### **Q2 If not, what factors do you think should be considered and why?**

N/A

## **B Incidental Music**

Again this is not defined in the Act and has caused some controversy.

The review proposes new wording in paragraph 3.21 of the draft guidance principally related to whether the addition of music will potentially undermine the licensing objections.

### ***City of London Response***

#### **Q3 Do you agree that the proposed amendment?**

This is helpful to a degree and I support it.

#### **Q4 If not, please explain why and outline any alternative.**

N/A

## **C Cumulative Impact Policies**

Cumulative Impact is not mentioned in the Act but current guidance (para 3.13) gives it a definition. Whilst some people involved would like greater scope for setting these policies others believe them to be ultra vires.

The review proposes no change.

### ***City of London Response***

#### **Q5 Do you agree that the current Guidance on cumulative impact policies should remain unchanged?**

Without a change in the legislation to specifically cover the point there is little the guidance can do. I agree with no change.

#### **Q6 If not, what amendments do you think should be made, and why?**

N/A

## **D Conditions**

Chapter 7 of the current guidance gives general advice on conditions with Annexes providing pools of condition which could be applied for promotion of the four licensing objectives. There are differing views whether these are appropriate with some believing they stifle other innovative conditions. Others believe them

worthwhile.

The City Corporation has very largely drafted its own conditions for the particular circumstances at hearings.

The Review proposes two options:-

- i) Remove the Annexes
- ii) Retain the Annexes updating and expanding as necessary with regular supplements.

**Q7 Which Option do you agree with?**

*City of London Response* is option i) the removal.

**Q8 Do you think there are any other options to be considered?**

*City of London Response* is that there are few other options

**Q9 If retained is there a risk that they may be considered exhaustive?**

*City of London Response* is that I believe so far they have not been considered exhaustive in any reported case and unique conditions have not been challenged on that basis. If the annexes are reproduced in expanded form they must include a caveat that they are not exhaustive.

**Q10 Do you think the pools of conditions help promote consistency?**

*City of London Response* is there is little evidence of this.

## **E Role of Councillors**

Presently councillors may represent interested parties, or make representations as an interested party themselves if they reside in the vicinity. However, this may conflict with the code of conduct for local authority members. Various stakeholders would like clarification on the role and assurance as to the permissibility of notifying members.

The review proposes such clarification and advice re notification in paragraphs 8.8 to 8.10 of the draft guidance.

**Q11 Do you agree that current guidance should be clarified?**

*City of London Response* is yes it should in the manner proposed.

**Q12** If not, please explain why and provide brief details of any alternative proposal.

N/A

**F** **Role of Designated Premises Supervisor (DPS) and Personal Licence Holder (PLH)**

The roles of these individuals are not entirely clear in the Act. Para 4.18 of the current guidance outlines the purposes. Some authorities and police services have interpreted the Act in ways that require PLH or even the DPS to be present at the premises at all times they are open.

The review recommends that guidance be amended to:-

- advise that written authorisation of alcohol sales is recommended but not statutory requirement
- clarify that there is not a legal requirement for attendance

See paras 10.45 to 10.50 of the draft guidance.

**Q13** Do you agree with the proposed amendments?

*City of London Response* is yes they accord with the City of London's current interpretation

**Q14** If not, please explain why

N/A

**G** **Variations**

The current guidance uses the term "major variation" in paragraph 5.65. In many instances this is unhelpful in that the Act carries no such phrase.

The review proposes to remove the phrase and provide some explanation of when a new application is required as opposed to a variation.

**Q15** Do you agree that the Guidance on variations should be amended as proposed?

*City of London Response* is that the legislation itself is seriously flawed in the matter of variation. There is no provision for minor variations such as amendments to plans necessary if fire equipment is relocated. The issue of whether a new application or a variation is appropriate is not very compelling in my opinion as the fee and application process including opportunity for

representations is the same.

I support the change so far as it goes but would press for urgent review of the legislation itself on such matters.

**Q16 If not, please explain why**

N/A

## **H Nature of Evidence Required to Support Representations**

Some stakeholders have agreed that representations should be evidence based rather than speculation.

The review says that new applications will inevitably involve a degree of reasonable speculation. It recommends no change.

**Q17 Do you agree that the Guidance on evidence to support representations should remain unchanged?**

*City of London Response* is that I agree.

**Q18 If not, please explain why**

N/A

## **I Representations : Disclosure of Names and Addresses**

The Act requires interested parties making representations to provide names and addresses. There have been reports in isolated cases of fear of intimidation.

The review recommends new wording, in paragraphs 9.13 to 9.17 of the draft which offers avenues which the licensing authority may follow to not provide full addresses to the applicant.

*City of London Response*

**Q19 Do you agree that the Guidance on representations should be amended?**

This seems a sensible process in such cases

**Q20** If you would prefer the alternative outlined in paragraph 4.40, please explain why.

N/A

**J** **Control of Nuisance/Crime and Disorder Outside Licensed Premises.**

Paragraph 3.11 of the current guidance makes it clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals who have left licensed premises yet also talks of licensing law being part of the 'holistic approach' to managing the night time economy.

Some stakeholders have pressed for licensees to be responsible for taking measures to control drinking outside their premises. Certainly outside drinking continues to be an issue for the City.

The review proposes new wording within paragraph 1.23 of the draft and emphasising the scope for very carefully considered questions.

***City of London Response***

**Q21** Do you agree that the Guidance should be amended as proposed?

This is a serious issue with much of the problem originating from the Act making only the sale of alcohol the licensable activity. Consumption therefore is not. The use of removal of the off licence part of the licence seems to offer a useful route regarding drinking outside the premises. The change in guidance is supported but really does not address the main issue.

**Q22** If not, please explain why.

N/A

**K** **Paragraphs on Longer Hours**

Some feel that the current evidence has a presumption in favour of longer hours which the review says is not justified. However the comments of the Secretary of State and Ministers during the passage of the Act did rather imply this fact. Further the current guidance at Paragraph 3.29 states that licensing policies "should recognise that longer licensing hours with regard to the sale of alcohol are important....."

The review recommends re-drafting of the paragraphs with the statement that “we are no longer in the process of moving from fixed to longer hours.” The new text is contained in paragraphs 1.17 to 1.19, 10.18 to 10.20 and 13.34 to 13.36 of the draft guidance but still uses phrases such as “longer licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided”.

***City of London Response***

**Q23 Do you agree that the Guidance on longer hours should be amended as outlined above?**

The revised wording does indicate a lessening in the presumption of larger hours and may be useful if adopted

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

N/A

**L Chapter 11: Police Powers to Close Premises**

It is noted the current guidance to licensing authorities is statutory while chapter 11 relating to police powers is merely advisory.

The review proposes the separation of the parts into two separate documents.

***City of London Response***

**Q25 Do you agree that Chapter 11 of the Guidance should be removed?**

This seems a sensible split aiding clarification

**Q26 If you do not agree, please explain why**

N/A

**M Chapter 12: Sale and Supply of Alcohol to Children  
Chapter 14: Other Offences**

These chapters of the current guidance relate to offences within the Act itself and the review considers this repetitions proposing their deletion.

*City of London Response*

**Q27 Do you agree that Chapters 12 and 14 should be deleted from the Guidance?**

These two chapters cannot be truly described as guidance since they essentially repeat the provisions in the Act. They do however have some merit in highlighting the criminal aspects of the legislation to parties reading the guidance. In this regard I believe they should be retained.

**Q28 If you do not agree explain why.**

See above

**N Format**

The review paper outlines the new format of the draft guidance and asks for comments.

*City of London Response*

**Q29 Are you happy with the overall format of the revised Guidance?**

The completely new format makes comparison with the previous document more difficult, however it seems logically presented.

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

N/A

**O Other Issues**

The review paper asks for any other comments but emphasises that the guidance cannot change legislation.

*City of London Response*

**Q31 Are there any other issues that you would like to see addressed in the revised Guidance? Please specify.**

This question highlights the many inadequacies in the legislation but in respect of guidance alone I have no further comment.