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# Mitchells & Butlers

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By Registered Post

4 April 2007

Dear Sir

I am writing to submit my comments on the revised draft Guidance issued under section 182 of the Licensing Act 2003. As you may know, Mitchells & Butlers plc is a major public company and owns and operates approximately 2,000 managed pubs, bars and pub-restaurants across the UK, employing around 44,000 retail staff.

We welcome the opportunity to comment on the contents of the draft Guidance and trust our detailed comments will be seriously considered in finalising the Guidance. It should be noted that these comments are in addition to the British Beer & Pub Association response, which we substantially endorse.

## GENERAL

We welcome the generally positive tone of the revised Foreword by the Secretary of State, but we feel that there is a suggestion that licensed premises are being brought into line by the Licensing Act 2003, rather than being part of the overall process. Mitchells & Butlers takes its responsibilities under the Licensing Act extremely seriously, and works very hard alongside licensing authorities, local residents and the police in ensuring that the Licensing Act is achieving its aims and objectives. We would therefore request the following minor amendment (in bold type italics and underlined) to the Foreword to reflect this:

*"We now have a clearer picture of how the Act is working in practice and I am greatly encouraged by the very positive feedback we are receiving from licensing authorities, local residents, and the police, and the licensed trade itself."*

*~~There is good evidence that It is apparent that Licensees are are beginning to take taking~~ their responsibilities more seriously and are actively working with the police and each other to eliminate sales of alcohol to underage drinkers and to combat alcohol related crime and disorder."*

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## SUBSTANTIVE ISSUES

### Definition of 'in the vicinity'

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

We agree that the existing guidance on vicinity should remain unchanged.

### Incidental Music

**Question 3: Do you agree with the proposed amendment?**

We agree with the amendment as proposed.

### Cumulative Impact Policies

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

We agree that the existing guidance on cumulative impact policies should not be amended for the reasons stated in the consultation document.

### Conditions

**Option 1: Remove Annexes D-H from the Guidance, but consider establishing an alternative central source of advice for good practice purposes.**

**Option 2: Retain Annexes D-H in the Guidance, updating/expanding as necessary with regular supplements to the Guidance.**

**Question 7: Which of the above options do you agree with?**

Since all licence applications should be treated on their own merits, we do not believe that conditions should be listed as they have been in the existing Annexes to the Guidance. We have always been concerned that including lists of conditions in the Guidance in this way could render them justifiable and default additions to a licence. The Annexes themselves are very lengthy, and in the case of Annex E in particular, many of the conditions duplicate existing law which is against the spirit of the Licensing Act and the Guidance.

Although we do not believe it is strictly necessary, of the two options, we would prefer Option 1. However, we do not believe it is necessary to maintain a central source of advice in respect of licensing conditions, and suggest that it is for licensing authorities themselves to make decisions regarding appropriate licensing conditions. We do not support Option 2, not least because of the duplication issues. We comment further below on the use of conditions in the context of Chapter 2 on the Licensing Objectives.

**Question 8: Do you think that there are any other options that should be considered?**

No. In the interests of a shorter, more user friendly guidance document, we believe that the Annexes should be deleted.

**Question 9: Do you think that, if retained, there is a risk that the pools of conditions will 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?**

The pools of conditions currently contained in Annexes D-H have their origins in the previous licensing regime for public entertainment. Many of the conditions highlighted in the annexes are already legal requirements, and as such should not be attached to licences in the first place. We do not see that innovation is an issue. If there is a particular solution to an issue that risks undermining

a particular licensing objective, then the solution in the form of a condition should be easily identified. Conditions should only be attached to licences where necessary to achieve the licensing objectives and in our view they should be self-evident. The real risk of a pool of conditions is that they get applied in a blanket fashion, irrespective of suitability.

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

We consider that the pool of conditions provided in the Annexes is largely responsible for the imposition of unnecessary conditions, in particular with regard to Annex E, which has misled various licensing authorities to impose conditions on health and safety matters already covered by law. We remain concerned that the Annexes as currently presented in the Guidance encourage a blanket approach on certain issues, which is misleading and contradicts the advice elsewhere in the Guidance on how conditions should be applied. The Guidance itself promotes a consistent approach to the law.

**Role of councillors in the licensing process**

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

We agree that the Guidance should be amended along the lines proposed in order to provide further clarification of the role of ward councillors in the licensing process.

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

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

The revised draft Guidance goes some way to provide further explanation on the issue of whether the DPS or any other personal licence holder needs to be on the premises at all times, which is helpful. However, we remain concerned that the Guidance is imposing a further layer of bureaucracy on licensed premises in respect of authorisation of sale, and that the requirement for authorisation of sale is unnecessary.

**Question 14: If not, please explain why?**

Authorisation of a sale is implicit in the contracts of employment for all those who work in licensed premises and serve alcohol to customers. Therefore, a contract of employment should be considered sufficient authorisation for the sale of alcohol. This subject was debated on 13 Jan 2003 when Lord McIntosh of Haringey told the House of Lords, *'In what circumstances does an employer actively have to seek the signed consent of his employer to do his or her job? In real life, the contract of employment represents an explicit permission on the part of an employer for an individual to work at a particular premises'*. All staff that work in licensed premises and serve drinks are employed expressly to serve alcohol to customers.

The requirement for written authorisation is both unnecessary and overly bureaucratic. High levels of staff turnover in the licensed trade mean such record keeping would be very difficult to manage effectively. Nor will this will be a one-off requirement since re-authorisation would be necessary with every change of DPS. [By way of example, we anticipate circa 2,000 DPS changes per year across our business.

We are further concerned that written authorisation will be used by the police and others as the basis for additional enforcement activity, and where it is not forthcoming, as the basis of a review of the premises licence. We are aware that this approach is used by the police in some areas, and we are concerned that despite any emphasis in the revised Guidance about there not being any legal basis for written authorisation, it will, nevertheless, become a requirement.

Such a requirement is an unnecessary burden on operators and was resisted by Ministers when the Licensing Bill was being debated. It would only serve to create a paper chase for no identifiable

benefit. We would also query is the nature of the harm that authorisation is supposed to address, and where is the evidence that unauthorised sales are taking place? There is simply no legal basis for requiring written authorisation and creating an unnecessary layer of bureaucracy for licensees. Ideally, we would like to see a clear statement to this effect in the revised Guidance and citing the role of contracts of employment.

In the event that this is not possible, then we believe it should be more strongly stated that written authorisation is not a legal requirement and that it cannot be imposed on premises, and that in common law, a verbal authorisation is also valid. We would also request the inclusion of contracts of employment as an acceptable form of authorisation in the list of bullet points contained in paragraph 10.49. This would be most helpful in order to ensure a nationally consistent approach to this issue, and avoid an unnecessary debate over what constitutes written authorisation with different approaches and requirements across different local authority and/or police areas. Paragraph 10.50 should be deleted.

We propose the following amendments (in bold type italics and underlined) to the draft Guidance:

10.49 *Nevertheless, the Secretary of State considers that where an issue comes before a court, the court could be expected to require the authorisation to have been meaningfully and properly carried out and not to have involved any abdication of responsibility. The Secretary of State considers the following factors should be relevant in considering whether there was real authorisation that there should be an overt act of authorisation, for example, a specific oral or written statement (such as a contract of employment) which is given to the individual(s) being authorised. It should be noted that it is not a requirement of the Act to provide specific written authorisation to individuals and the absence of such authorisation does not, in itself, give rise to any enforcement action.*

- *the person(s) authorised to sell alcohol should be clearly identified;*
- *the authorisation should have specified the acts which may be carried out by the person being authorised;*
- *there should be an overt act of authorisation, for example, a specific oral or written statement given to the individual(s) being authorised; and*
- *there should be in place sensible arrangements for monitoring by the personal licence holder of the activity authorised by him or her on a reasonably regular basis.*

*10.50 The Government considers that, whilst not a requirement of the Act, it may be preferable for personal licence holders to consider giving specific written authorisations to individuals, as in doing so they are more likely to be able to clearly demonstrate due diligence to the enforcement authorities. However, it must be remembered that whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises.*

## Variations

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

We agree with the proposed amendments to the Guidance. However, we strongly suggest that it may also be helpful to include a reference to the intention to amend the Licensing Act 2003 to introduce a more straightforward process for 'minor' variations (examples could be given), which do not impact on the licensing objectives. This would ensure that the Guidance remains current and useful for the foreseeable future. It is not in the interests of either licensing authorities or licensees to have to incur the time and the cost of dealing with minor variations in the way in which the legislation and Guidance requires.

## **Nature of evidence required to support representations**

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

We strongly agree that the requirements on evidence to support representations should remain unchanged.

## ***Representations: Disclosure of names and addresses***

**Question 19: Do you agree that the Guidance on representations should be amended?**

We support the amendment as proposed and agree that names and addresses should only be withheld in isolated and exceptional circumstances. As an additional protection, in order to ensure any misuse of the provision, we suggest that paragraph 9.17 could be amended as follows (in bold type italics and underlined) to state that the reasons for withholding details in such circumstances should be disclosed at the hearing.

*"The licensing authority may also decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details (such as street name or general location within a street) which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. However, withholding such detail should only be considered where the circumstances justify such action, **and the reasons for the information being withheld should be disclosed.**"*

## ***Control of nuisance/crime and disorder outside licensed premises***

**Question 21: Do you agree that the Guidance should be amended as proposed?**

We agree with the proposed amendment, however we feel it is important to stress that licensees are able only to manage the behaviour of their own customers in the immediate vicinity of their premises and no further. It is not the purpose of the Licensing Act to regulate customer behaviour, and police and licensing authorities have sufficiently wide powers outside of those in the Licensing Act.

## ***Paragraphs on longer hours***

**Question 23: Do you agree that the Guidance on longer hours should be amended as outlined above?**

We welcome the clear statement in the Introduction to the Guidance at paragraphs 1.17-1.19 that the Government still believes that the fixed and artificially early closing times which were established under the Licensing Act 1964 were "one of the key causes of rapid binge drinking prior to closing times; and one of the causes of disorder and disturbances when large numbers of customers were required to leave the premises simultaneously." We also agree that the guidance should continue to recognise the role of longer licensing hours in reducing the impact of nuisance and disorder in town and city centre areas by allowing a more gradual dispersal of customers from premises (paragraphs 1.18 and 10.18).

Importantly, the Guidance continues to uphold one of the key underlying principles of the Licensing Act with regard to hours, which is that each application must be treated on its own merits (paragraph 1.19). Where no objections are received about an application in connection to the four licensing objectives, the licensing authority must grant the licence. This principle also applies to shops, stores and supermarkets, and we would therefore question the need for paragraphs 10.20 and 13.36, since the same considerations must be given to all premises licences applications in respect of hours.

We would suggest the following amendment to paragraph 10.19, since the law does not provide that there are any norms pertaining to licensing hours.

10.19 However, there is no general presumption on licensing hours in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times....

### **Chapter 11: Police powers to close premises**

**Question 25: Do you agree that Chapter 11 of the Guidance should be removed?**

In the interests of a shorter and more focused document, we agree with the recommendation that Chapter 11 of the Guidance should be removed and form part of specific Home Office advice to the police on licensed premises.

### **Chapter 12: Sale and supply of alcohol to children**

### **Chapter 14: Other offences**

**Question 27: Do you agree that Chapters 12 and 14 should be deleted from the Guidance?**

We agree with the Government recommendation to delete Chapters 12 and 14 from the Guidance document for the purposes of ensuring a relevant, user-friendly Guidance document.

### **FORMAT**

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

We strongly support the new format of the revised Guidance, which provides for a more logical approach and will make the document easier to use.

### **OTHER ISSUES**

**Question 31: Are there any other issues that you would like to see addressed in the revised Guidance? Please specify**

### ***Foreword by the Secretary of State***

We refer you to our previous comments above.

### ***Chapter 1: Introduction***

Paragraph 1.15: We would suggest the following clarification (in bold italics and underlined) with regard to the "necessary" nature of conditions:

*"Each application must be considered on its own merit and any conditions attached to licences and certificates, **where they are deemed necessary for the promotion of the licensing objectives**, must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided*

*and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case."*

Paragraph 1.20: It would be helpful to include a reference to the option of local business improvement districts, which may be appropriate in some areas where a holistic approach to the management of a particular area or zone would be beneficial.

## **Chapter 2: The Licensing Objectives**

### Crime and Disorder

Paragraph 2.2 – We suggest that the various drugs issues could be summarised into one bullet point as follows:

- ***advising, where necessary, on the development of a venue drug policy, which would include working with the police to resolve drug-related problems, agreeing protocols for any action necessary in relation to illegal drugs, search procedures and storage procedures for illegal drugs, intelligence on drug dealing and use;***

We would also suggest a slight amendment to the following bullet point (shown in bold italics and underlined):

- advising on the installation and monitoring of security devices such as CCTV **as necessary;**

Paragraph 2.3 – We do not agree that the purpose of a licence is to regulate customer behaviour, as appears to be the suggestion here. A licence gives permission to carry out a particular activity within the parameters of the law. We do not see any real need for this paragraph in the context of the licensing objectives and suggest it is deleted. In the event that it is retained, it should be part of Chapter 1.

Paragraph 2.5 – We believe there should be more emphasis on the "necessary" nature of conditions in this paragraph, and suggest the following clarifying amendment (in bold italics and underlined):

**Where they are deemed necessary to promote the licensing objectives, conditions are best targeted on deterrence and prevent crime and disorder.....**

Paragraph 2.6 – The example given is couched in very broad terms. We suggest that it is qualified as follows with reference to "where there is an identified risk":

*"Similarly, the provision of requirements for door supervision may be necessary **where there is an identified risk** to ensure that people who are drunk or drug dealers or those carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed*

Paragraph 2.7 – We suggest this paragraph be deleted. The Secretary of State's recommendation amounts to a blanket condition on city and town centre licensed premises and conflicts with the earlier advice in paragraph 1.15 on standardised conditions.

Paragraph 2.8 – We do not see the relevance of the examples given in this paragraph and suggest that they be deleted. In the event that the paragraph is retained, then we would request the inclusion of the phrase "where there is an identified risk" as per our suggestion under paragraph 2.6 above.

Paragraph 2.10 – Again, the example given is couched in very broad terms. We suggest that it is qualified as follows with reference to “where there is an identified risk”:

*“Similarly, although most commonly made a condition of a licence on public safety grounds, **where there is an identified risk** licensing authorities should also consider conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, the licensing authority should consider where door supervisors are needed to control numbers.*”

Paragraph 2.11 – We suggest the deletion of this paragraph since conditions cannot and should not be applied to licences on the basis of competency of the management of the premises. This is recognised in the following paragraph 2.12. Where there are valid concerns of this nature, there would surely be grounds for review of the licence.

Paragraph 2.15 – We suggest the following amendment (in bold italics and underlined):

*“...Police views, **supported by evidence**, on such matters should be **given considerable weight considered** and licensing authorities must remember that only necessary conditions, which are within the control of the licence holder or club, may be imposed.”*

#### Public Safety

Paragraph 2.18 – We suggest the deletion of this paragraph as it will become obsolete on 1<sup>st</sup> July when smoking is banned in all public places.

Paragraphs 2.20 – 2.23 – We suggest that these paragraphs could be summarised further and include signposts to further information being available if necessary.

Paragraph 2.25 – Equipment checks are generally covered by health and safety legislation.

Paragraph 2.26 – This is helpful clarification. We would welcome the inclusion of a reference to representations for capacity limits on the basis of overcrowding and disorder needing to be evidence based.

#### Public Nuisance

Paragraph 2.34 – We suggest the following clarifying amendment (in bold italics and underlined):

*“...**In certain circumstances Where there is an identified risk**, conditions relating to noise may also prove necessary to address any disturbance **anticipated** as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.*”

Paragraph 2.38 – Again such conditions will only be necessary where there is evidence that customers are behaving in this way.

#### Protection of Children

Paragraph 2.45 – We suggest the following clarifying amendment to the first bullet point (in bold italics and underlined):

- *where alcohol is sold, requirements for the production of proof of age cards or other age identification **before sales are made to individuals under 18 years to ensure sales are made to individuals over 18 years...***

Paragraph 2.46 – This paragraph should be deleted as the advice given is inconsistent with the principle of equal weight for all the licensing objectives (paragraph 1.3).

### **Chapter 3: Licensable Activities**

#### Regulated Entertainment

Paragraph 3.8 – Further to previous discussions in the Guidance Sub-Group, if Schedule 1 is retained as an Annex to the Guidance, there is no need to reproduce it in the body of the text. We would make a similar comment in relation to paragraph 3.31 on late night refreshment.

### **Chapter 4: Personal Licences**

#### Central Licensing Register

Paragraph 4.17 – If it is still the Government's intention to develop a central register, then this paragraph could be retained, but if not it should be deleted.

#### Specification of new Designated Premises Supervisor

Paragraph 4.21 – It would be helpful if the Guidance could advise that certified copies of licences are acceptable as part of the process to change the DPS. We are aware that some licensing authorities are insisting on the original premises licences being submitted, and this causes problems where these are held centrally, elsewhere, by the operating companies, especially when the application is made immediately prior to the weekend.

### **Chapter 7: Temporary Event Notices**

A general comment about the overall objectives of TENs would be helpful for example with regard to licensed premises, the necessary flexibilities should be permitted in the premises licence in order to avoid unnecessary overuse of TENs.

### **Annex K – AWP Machines**

As the new Gambling Act 2005 is due to come into effect on 1<sup>st</sup> September 2007, there will be no need for Annex K after that date. In order to avoid any future confusion between the two regimes, we suggest that Annex K be removed from the final Guidance.

As one of the leading managed pub operators in the United Kingdom, we have always fully supported the principles which underpin the Licensing Act 2003, and we work closely with local police and licensing authorities to support the licensing objectives. We sincerely hope that our comments and proposed amendments will be viewed as reflective of our continued commitment to operate responsibly and within the law, and will be fully considered.

Yours sincerely

**MIKE BRAMLEY**  
Mitchells & Butlers plc

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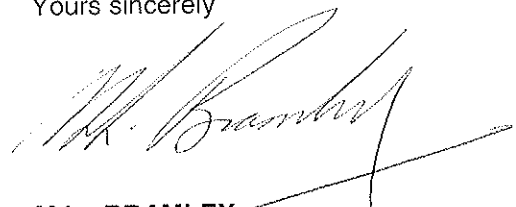
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**M.L. BRAMLEY**  
**Managing Director, Pubs & Bars.**