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YOUR REFERENCE

DATE  
22 January 2007

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NM/NJT/PROP/MISC

Dear Sirs

**Consultation on revised Guidance under Section 182 Licensing Act 2003**

In response to the Consultation and, in particular, to the 31 questions posed, I comment as follows:-

1. Question 1: Yes.
2. Question 3: Yes, but I consider that the substantive legislation should clearly define precisely what 'incidental music' is, as operators should not have to be subject to uncertainty given the risk that they could be prosecuted for providing regulating entertainment without a licence. It is an abrogation of Parliament's duty simply to suggest that interpretation should be left to the Courts.
3. Question 5: Yes. I prefer Option 1, provided that the central source of good practice is established. The Annexes are very useful to both Licensing Authorities and operators.
4. Question 8: No.
5. Question 9: No, I have seen no evidence that either Licensing Authorities or the police of other responsible authorities, or indeed anyone else. I see the clause of conditions as exhaustive.
6. Question 10: Yes.

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7. Question 11: Yes.
8. Question 13: No, the statement '...the designated premises supervisor....remain responsible for the premises at all times including compliance with the terms of the Licensing Act and conditions attached to the premises licence for 'licensing objectives' is wrong in law. Only the Premises Licence Holder is responsible ultimately either by prosecution for breach of conditions or by application for a Review of the Premises Licence. The designated Premises Supervisor has no duties or responsibilities set out in the Act. Sanctions against the designated Premises Supervisor can only be by way of prosecution if they commit an offence or 'knowingly allow' the commission of an offence under the various sections, notably S. 136, S. 140, S. 141, S. 145, S. 147 and S. 153 of the Act.

Furthermore, the comment in paragraph in 10.47 that '...the responsible personal licence-holder would not be able to escape responsibility for the actions of anyone authorised to make sales'. This, again, is wrong in law. A personal licence-holder can only be responsible, like a designated Premises Supervisor, if they directly commit an offence or 'knowingly allow' an offence under the sections I have mentioned above. There is no other responsibility. Consequently, not only the original text, but the proposed amendment is wrong in law and misleading. It is not surprising that given these woolly and inaccurate statements, certain police forces have completely misunderstood the status of the designated Premises Supervisor. Again, this is a failing of the Act to define any duties or responsibilities.

Again, the original text and proposed amendments to paragraph 10.49 are misleading. The words 'and not to have involved any abdication of responsibility' are inappropriate, superfluous and, indeed, wrong in law. Under the Act, it is simply a question of whether alcohol has been sold under the authority of the holder of personal licence-holder. There is no qualification to the right of the personal licence-holder to delegate that power. Consequently, the Guidance should merely limit itself to the question of proof of delegation and it is clearly good practice to expand on the method of delegation. However, I would point out that the original text 'the authorisation should have specified the acts which may be carried out by the person being authorised' is, again, misleading. There is only one act that is being referred to in the authorisation and that is the act of selling alcohol under the authority of the particular holder of a personal licence. To suggest otherwise is introducing another element of confusion.

With reference to paragraph 10.50, the statement '...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' is wrong in law. As with anyone else, they would be responsible





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and subject to criminal sanction if they directly commit an offence or 'knowingly allow' an offence but, clearly, if they are absent from the premises they would not be responsible and subject to the criminal law unless there is evidence that they have specifically authorised someone else to commit an offence.

Again, it is the fault of the Act in failing to identify roles and responsibilities of designated Premises Supervisor. It is simply not acceptable for the Guidance to try to introduce such duties and responsibilities, effectively, by the back door. As I have said above, the confusion has led many police forces to suggest that either the premises supervisor or a personal licence-holder should be on the premises at all times, which is not what the Act provides. The revised Guidance of summer 2006 went some way towards correcting the police interpretation, but the overall effect is still to introduce an element which is simply beyond the provisions of the Act. For example, by reference to paragraph 2.12 of the proposed Guidance, there is nothing in the Act which requires a premises supervisor to have 'day-to-day management of the premises'. Furthermore, the words used in paragraph 4.23 by the revised Guidance of summer 2006 are, in fact, meaningless given the failure of the Act to deal with the issue. As the Act merely states that there has to be a designated Premises Supervisor for premises selling alcohol without defining any duties or responsibilities, how can the Guidance introduce an additional element recognising that they may supervise more than one premises, but stating that they may do so 'as long as they are able to ensure that the four licensing objectives are properly promoted and the premises complies with licensing law and licence conditions'. As I have said above, no such duties or responsibilities are imposed by the Act on the premises supervisor.

In summary, the premises supervisor is simply an individual identified for the particular premises who holds a personal licence, and therefore a point of contact for the police and other responsible authorities. There was no other reason for the introduction of such a person to the legislation. It is simply not acceptable for the Guidance to seek to impose on to the premises supervisor duties and responsibilities which do not derive from the Act.

Again, the Guidance should not seek to impose duties and responsibilities on a personal licence-holder beyond those set out in the Act. It should simply confirm the Act's provisions that sale of alcohol and the authority of personal licence-holder may be delegated, and to suggest ways in which that can be done.

9. Question 15: Yes, but I would voice the opinion of many that amending legislation should be introduced as a matter of urgency to allow minor variations to be dealt with by a simplified procedure to avoid the substantial costs involved of a full variation application. Some Licensing Authorities are adopting an enlightened approach by allowing amendments on submission of plans provided that other responsible





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authorities have no objection where, for example, minor structural changes to the premises are proposed. This will avoid the scenario where Licensing Authorities insist on a full-blown variation application for something so trifling as the extension of a bar structure.

10. Question 17: Yes.

11. Question 19: Yes.

12. Question 21: Yes.

13. Question 23: Yes.

14. Question 25: Yes.

15. Question 27: Yes.

16. Question 29: Yes, provided that the Guidance does not itself seek to legislate in areas where the Act is silent. My comments above under question 13 refer.

17. Question 31: No.

I hope that the above is of assistance to you in the consultation process and I note that the closing date for responses is 9 April 2007 and that a summary of responses will be made available on the DVD CMS website by 11 July.

Yours faithfully

**Nigel Musgrove**  
Partner

