



Licensing Act 2003 - Government Guidance revised

The DCMS issued revised guidance for the Licensing Act 2003 on 28 June 2007. This followed 12 weeks of public consultation leading to 162 responses including just 62 from local authorities. The guidance is reduced in size from 140 to 104 pages exclusive of annexes and it is said rationalised with the removal of inconsistencies and much repetition.

Key amendments include:

- When an application to vary a licence is required;
- The introduction of slip rules;
- Clarification on the responsibilities of licensees to take reasonable steps to prevent crime and disorder and public nuisance immediately outside their premises;
- Revised text on licensing hours and cumulative impact;
- Recommendation that personal licence holders provide written authorisation for the sale of alcohol;
- Expanded section on incidental music and determining whether licensable; and
- Temporary Event Notice (TEN) notice periods.

Variations:

Both applicants and authorities have grappled with the question of what amounted to a variation as the terminology suggested that something minor did not require a formal application e.g. certain alterations, because the old Guidance referred to “major” variations. The word “major” has now been removed from the guidance so that anything other than a change of name, address or designated premises supervisor (DPS) requires a formal variation, with examples given of changes to hours/activities/conditions triggering variation: and of note, ‘altering any aspect of the layout of the premises which is shown on the plan.’

However, it is also suggested that licensing authorities consider whether there is any likely impact on the promotion of the licensing objectives in deciding whether a formal application is required in relation to features “not required to be shown on the plan” by the regulations.

The door to seeking approval to a plan, without a formal application to vary the premises licence, is therefore not completely closed although we anticipate Local Authorities taking a narrower view going forward.

On any new application made therefore, it is absolutely essential that the plan only include detail required by the regulations to reduce the need to have such argument for any future changes to the premises layout.

Slip Rule

A consistent problem with licensing applications has been their rejection by licensing authorities for minor defects. The revised guidance recommends that applications are not returned, if they contain obvious and minor factual errors that can easily be amended. This is a very positive step for applicants.

For example, applications have been rejected where plan labelling is defective so it is hoped this will end. Similarly, applications have been rejected where the incorrect fee was submitted, or an incomplete description of the premises. Why stop the whole process when all that is required is more money or a simple change to the premises description?

Customers' behaviour outside the premises

The guidance on the licensing objectives and conditions has been further clarified, if it needed it. Licence conditions cannot seek to manage behaviour of customers once beyond the direct management control of the licence holder. However, they can be tailored to impact on customers in the immediate vicinity of premises as they seek to enter or leave them.

With more customers likely to be immediately outside the premises following the smoke free legislation this is of particular importance.

Conditions such as those relating to toughened drinking glassware may both prevent crime and disorder and promote public safety. Other examples of crossover given relate to capacity limits where it may also be appropriate to impose door supervision conditions to monitor numbers. On the question of public nuisance, it may be necessary to look at what happens in the immediate vicinity of the premises with examples given of music noise affecting residents' attempting to sleep in adjacent properties.

Matters beyond the direct control of the licensee are of course not relevant to the promotion of the licensing objectives. Public safety is now focused on the physical safety of people using the premises. This may assist where representations relate to the safety of persons other than those using the premises i.e. ordinary people in the street and surrounding area.

Licensing hours and cumulative impact

The new guidance on licensing hours is less positive for applicants following the completion of the transitional period. It is still said that flexible licensing hours may lead to a reduction in conflict disorder and anti-social behaviour in some circumstances by allowing more gradual dispersal. However, there is no longer a general presumption in favour of lengthening licensing hours with the four licensing objectives being paramount at all times where there are objections to any application.

It was previously stated that special policies on cumulative impact created a rebuttable presumption of refusal following the receipt of relevant representations against new licences or material variations where they would add to the cumulative impact. This led to much debate on whether an increase in hours for existing premises was "material" as the only example in the old guidance mentioned an increase in the occupancy. This uncertainty has been removed in part with the departure of the word 'material' from the guidance. Though, it has to be said, the example of an increase in the capacity of a premises is still included as engaging such a policy!

Written authorisation to sell alcohol

Neither the DPS nor a personal licence holder always needs to be present to directly authorise every sale of alcohol. It was previously stated that the authorisation could either be oral or written. However, it is now strongly recommended that specific written authorisation is given to individuals that they are authorising to make retail alcohol sales. This is of course not a requirement of the Act though may go towards assisting in establishing a due diligence defence on any prosecution.

You should ensure each personal licence holder at the premises gives written authorisation to all members of staff involved in the sale of alcohol and that this is regularly updated as staff come and go.

Incidental music

Incidental music does not amount to regulated entertainment though it has been far from clear to date what this has meant. A shopping basket of factors are provided to help make the decision. Is the music the main or one of the main reasons for people attending the premises? Is the music advertised as the main attraction? Does the volume of the music predominate over other activities? Conversely, factors to normally ignore include: the number of musicians, and whether they are paid; whether the performance is pre-arranged; whether an admission charge to the premises is made. All of this is still rather grey however, so

that advice may be needed regarding enforcement policies. Stand-up comedy is not regulated entertainment so that incidental musical accompaniment would not usually make it a licensable activity.

Notice period to give for a TEN

A TEN must be given 10 working days prior to the event day. Until now, authorities have generally excluded only the day of the event from counting the 10 working days but included the day the notice is given. The guidance now effectively removes any argument by stating that both days are to be excluded from counting the 10 working day period. Once again, it is recommended that applications are not returned if they contain obvious and minor factual errors.

“Light touch” for new and variations

Review powers were originally heralded as being a key protection, which enabled licensing authorities to deal with, new and variation applications, by using a “*light touch bureaucracy*.” It was also formerly suggested that authorities should pay regard to the history of events at a premises where no problems had been caused during their operation. However, this useful help to applicants has now been removed from the new guidance. The guidance closes the door to debate on licensing authorities notifying residents living in the vicinity of premises of applications in stating that while not a statutory requirement it is something that is open to them.

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