



Coventry City Council

9.4.2

Public report

Report to

Licensing & Regulatory Committee
Scrutiny Board 3
Cabinet
Council

6th March 2007

7th March 2007

20th March 2007

20th March 2007

Report of

Director of City Services

Title

Licensing Act 2003 – Consultation on Revised Guidance

1 Purpose of the Report

- 1.1 The purpose of this report is to advise members of the contents of the consultation document (attached as Appendix A) and a proposed response to the Department of Culture, Media & Sport (DCMS) (attached as Appendix B).

2 Recommendations

- 2.1 Licensing & Regulatory Committee is asked to consider the DCMS document and draft response appended to this report and to forward its views to Cabinet for consideration.
- 2.2 Scrutiny Board 3 is asked to consider the DCMS document and draft response appended to this report and to forward its views to the Cabinet for consideration.
- 2.3 The Cabinet is asked to consider the DCMS document and the draft response, together with any comments from Licensing & Regulatory Committee and Scrutiny Board 3 and recommend to Council that it adopts the draft response, subject to any amendments that Cabinet may wish to make.
- 2.4 Council is asked to take account of the recommendations from Cabinet and approve the draft response appended to the report, amended as necessary in light of those recommendations.

3 Information/Background

- 3.1 The Licensing Act 2003 requires the Secretary of State to issue licensing guidance to licensing authorities on the discharge of their functions under the Act. Licensing authorities are required to have regard to this Guidance in carrying out their licensing functions, but may depart from it when they have reason to do so. It is

also important to note that the Guidance cannot override the requirements of primary or secondary legislation.

- 3.2 The Secretary of State first issued guidance in July 2004. The Department for Culture Media and Sport (DCMS) began a two stage review of the Guidance, with an initial review focusing on providing clarification or additions to the Guidance on relatively uncontentious issues raised during the transitional period. The initial review resulted in supplementary guidance that was published in June 2006.
- 3.3 This consultation forms part of the second stage of the Guidance review and seeks views on the revisions that DCMS propose to make.
- 3.4 Consultation has taken place with Responsible Authorities and members of the Licensing Forum. Their views and comments have been included in the attached Appendix B.

4 Proposal and Other Option(s) to be Considered

- 4.1 The DCMS Consultation document was released on 16th January 2007, giving local authorities 12 weeks to discuss and respond. Consequently the timescale is tight to review comments and seek approval through Council.
- 4.2 Any revised guidance issued by the Secretary of State following this consultation would not come into force until it is laid before parliament.

5 Other specific implications

	Implications (See below)	No Implications
Best Value		✓
Children and Young People	✓	
Comparable Benchmark Data		✓
Corporate Parenting		✓
Coventry Community Plan	✓	
Crime and Disorder	✓	
Equal Opportunities	✓	
Finance	✓	
Health and Safety		✓
Human Resources	✓	
Human Rights Act	✓	
Impact on Partner Organisations	✓	
Information and Communications Technology		✓
Legal Implications	✓	
Neighbourhood Management		✓

	Implications (See below)	No Implications
Property Implications		✓
Race Equality Scheme	✓	
Risk Management		✓
Sustainable Development		✓
Trade Union Consultation		✓
Voluntary Sector – The Coventry Compact		✓

6 Children & Young People

- 6.1 One of the licensing objectives is 'Protection of Children from Harm'. Applicants are required to show how they will address this objective in their operational schedule when making applications. The Coventry Safeguarding Children Board is the Responsible Authority consulted when applications are made. They have been made aware of the guidance review and have been consulted.

7 Coventry Community Plan and Crime and Disorder

- 7.1 Another of the four licensing objectives is 'prevention of crime and disorder'. The licensing policy acknowledges the Crime and Disorder Reduction Strategy and also gives information about proposed enforcement protocols with the police and other enforcement authorities. As a Responsible Authority the Police have been consulted.

8. Equal Opportunities & Human Rights

- 8.1 The decision making process of a Public authority must ensure that regard is had to the right of an individual to a fair hearing. The scheme of delegation reflects the Act's requirements for providing hearings and the Secretary of State's guidance; both of which have been certified by the government as complying with the Human Rights Act.

9. Financial Implications

- 9.1 Prior to the implementation of legislation Central Government made a Commitment to Local Authorities that fees would cover the costs of undertaking the Implementation of the Act..
- 9.2 An independent fee review (Elton Review) has recently been completed and has provided various recommendations to the Secretary of State. The Review identified that there has been an excess of cost over income during the implementation of the Act. They concluded that the total which should be refunded by Central Government to Local Government is £43m for the three year implementation period, 2004/05 to 2006/07.
- 9.3 The Review also recommends an increase in fees by 7% for a three year period up to 2009/10. Fees will continue to be set nationally and applied locally with the fee levels continuing to be based on the non-domestic rateable value.

9.4 Through the Council's PPR process £125k was allocated to cover the costs of setting up the new licensing functions. After the first year of premises licences being in force it is expected that income from the licences will match the costs of administration and enforcement.

9.5 The Government has not yet responded to the report and we await any decisions as to how Local Authorities may receive any monies due. The Review recommends allocating this as a specific grant.

10. Human Resources

10.1 Licensing duties are carried out by the Licensing Team located in Environmental Health. At present there is an additional officer in the team to meet the demands of new licensing functions. The long term size of the team will depend upon workload and set fee levels for the various licensing functions.

11. Impact on Partner Organisations

11.1 All Responsible Authorities and members of the Licensing Forum have been given the opportunity to comment on the guidance review.

12. Legal Implications

12.1 The Council will be required to have regard to any revised DCMS guidance when carrying out any licensing functions under the 2003 Act.

13. Race Equality Scheme

13.1 The Licensing Policy refers to the Council's Race Equality Scheme.

14. Monitoring

14.1 The licensing policy mentions a number of mechanisms for the licensing function to receive and give reports to other committees and authorities.

14.2 We will monitor the outcome of the consultation and incorporate into working practices once guidance has been updated.

15. Timescale and Expected Outcomes

15.1 The response must be with DCMS by 11th April 2007. It is proposed to obtain full Council approval on 20th March 2007.

	Yes	No
Key Decision		✓
Scrutiny Consideration (if yes, which Scrutiny meeting and date)	✓ Scrutiny Board 3 7th March 2007	
Council Consideration (if yes, date of Council meeting)	✓ 20th March 2007	

List of background papers

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Papers open to Public Inspection

Description of paper	Location
Licensing Act 2003	Environmental Health, Broadgate House
Licensing Act 2003 Guidance	

APPENDIX B

Licensing Act 2003 – Consultation on Revised Guidance

DCMS Question	Response from:	Summary of Responses	Appraisal of Issue	Response to DCMS
1. Do you agree that the current guidance on vicinity should remain unchanged	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Prefer that vicinity to premises remains unchanged as defining more may be restrictive.	Need to retain some flexibility in defining vicinity as affected areas may differ depending on local circumstances.	Agree
2. If not, what factors do you think should be considered and why	N/A			N/A
3. Do you agree that the current guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Incidental music is difficult to determine and further guidelines would always be useful. Volume would always be taken into consideration.	Guidance needs to be expanded to show factors that may apply, as shown at Section 3.21, but it would not be practicable to give too narrow a definition.	Agree
4. If not, please explain why and outline any alternatives	N/A			N/A
5. Do you agree that the current guidance on cumulative impact policies should remain unchanged	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	No areas at present where there was a need for adopting special policy. Aware if the situation was to change that this could be an option.	There are other options available to local authorities before applying special policies, these include initiatives such as Best Bar None and taxi marshals. Guidance as it stands makes it clear there must be an evidential basis for adopting a special policy.	Agree
6. If not, what amendments do you think should be made, and why	N/A			N/A
7. Do you agree that the pools of conditions in Annexes D-H should be: removed from the current guidance, but consider establishing an alternative source of good practice advice?	Police Environmental Health - Health & Safety and Environmental Protection	No		No

DCMS Question	Response from:	Summary of Responses	Appraisal of Issue	Response to DCMS
Or – Retain and updated/expanded as necessary	Police Environmental Health - Health & Safety and Environmental Protection	Prefer where possible for information relating to licences & conditions to be kept together with other guidance.	Guidance is always a useful tool for considering other options and it would be more useful to keep information at one point of reference	Agree - Retain pools of Conditions and update as necessary
8. Do you think that there are any other options that should be considered	N/A			No
9. Do you think that, if retained, there is a risk that the pools of conditions may increasingly 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	Police Environmental Health - Health & Safety and Environmental Protection	No	Emerging problems will always need to be addressed, whether by conditions tried and tested or by providing innovative ideas	No
10. Do you think that the pools of conditions have value in promoting consistency and/or best practice.	Police Environmental Health - Health & Safety and Environmental Protection	Yes	Help in promoting best practice and consistency with other local authorities.	
11. Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Guidance will help but the issue of prejudicial interest is the factor that will always need to be taken into consideration. It was not considered to be soliciting for representations to notify Councillors of licensing applications.	Revised Guidance at Section 8.8-8.10 expands on Councillors decisions to make representations in their own right or for interested parties. A Councillors decision on prejudicial interest would be subject to the provisions of the code of conduct for members. The guidance emphasis the need for councillors to act in the interest of all their constituents. Councillors are made aware of applications through the members bulletin.	Agree
12. If not, please explain why and provide brief details of any alternative proposals.	N/A			

DCMS Question	Respondent	Summary of Comments	Appraisal of Comments	Response to DCMS
13. Do you agree with the proposed amendments to the guidance on authorisation of sale.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Clearer definitions are required to inform licence holders of their responsibilities. Would prefer that it was a legal requirement to put it in writing when responsibility is passed to other persons for authorising the sale of alcohol	Personal licence holders do not need to be on the premises at all times. Best practice would be that written authorisation should be given by a personal licence holder for the sale of alcohol	Agree with proposed amendments
14. If not, please explain why	N/A			
15. Do you agree that the guidance on variations should be amended as proposed.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Different types of variation applications. Variation of Designated Premises Supervisor and transfer of a licence are classed as minor variations and are easier to process. Any change to the premise licence regards hours or licensable activities is classed as a major variation.	Section 8.31 – 8.35 clarifies the difference between the types of applications and will delete the 'Major' from variation as this is misleading.	Agree with proposed amendments
16. If not, please explain why.	N/A			N/A
17. Do you agree that the guidance on evidence to support representations should remain unchanged.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Relevant representations are about the "likely effect of the grant of a premises licence on the licensing objectives." If making representations Responsible Authorities would provide evidence. Interested parties advised of evidence required.	Guidance does not restrict the licensing authority's discretion to give reasonable and appropriate weight to representations. As part of good practice we have produced an advice sheet for interested parties, which provides guidance on representations and evidence.	Agree
18. If not, please explain why.	N/A			N/A
19. Do you agree that it would be useful to add guidance on how licensing authorities might manage concerns about potential intimidation of interested parties.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Instances where Interested parties have raised concerns over intimidation in providing their name & address on representations. Interested parties can ask councillor or responsible authorities to speak on their behalf.	When parties make a representation the licensing authority would be able to make the decision about disclosing personal details. This would enable the licensing authority, as would be preferred, to provide applicants with street names only of persons making representations to satisfy they are in the vicinity.	Agree
20, If not please explain why.	N/A			

DCMS Question	Respondent	Summary of Comments	Appraisal of Comments	Response to DCMS
21. Do you agree that guidance on the control of nuisance/crime and disorder outside licensed premises should be clarified/expanded as proposed	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Licensing Act is to regulate licensable activities and is not for the general control of nuisance once individuals are away from the premises. Licensees should take reasonable measures to control drinking outside their premises. May be more problems when smoke free comes into force.	Unable to impose new conditions on licences already issued. Responsible Authorities are able to call a review and ask for conditions to be added. DPPO's in place to control consumption of alcohol in public places.	Agree
22. If not, please explain why.	N/A			N/A
23. Do you agree that the guidance on longer hours should be amended to reflect the Secretary of State's letter of 30 September 2005 and the current situation.	Licensing Authority Police Environmental Health - Health & Safety and Public Protection	Applications for longer hours should each be judged on their own merit. The guidance is not read as a presumption in favour of longer hours.	Revised Guidance provides clearer guidelines on hours of opening. The four licensing objectives are still the paramount consideration at all times.	Agree with proposed amendments
24. If not, please explain why and outline any alternatives.	N/A			N/A
25. Do you agree that chapter 11, explaining police powers to close premises, should be removed from the guidance and incorporated in specific and separate advice for police officers.	Licensing Authority Police Environmental Health - Health & Safety and Public Protection	The powers the police have is not a process that other responsible authorities would become involved. The Licensing Authority is made aware of closures through the magistrates court. The Local Authority must call a Review if a premise has been issued with a closure order.	As a non-statutory guidance it is not aimed at the local authority and would be better placed elsewhere.	Agree
26. If you do not agree, please explain why.	N/A			N/A
27. Do you agree that chapters 12 (sale & supply of alcohol to children) and chapter 14 (other offences) should be deleted from guidance.	Licensing Authority Police Environmental Health - Health & Safety and Public Protection	Offences relating to licensing are provided in the Act itself.	Repetition of information provided elsewhere.	Agree
28. If you do not agree, please explain why.	N/A			N/A
29. Are you happy with the overall format of the revised guidance.	Licensing Authority Police Environmental Health - Health & Safety and Environmental Protection	Yes		Yes

DCMS Question	Respondent	Summary of Comments	Appraisal of Comments	Response to DCMS
30. If not, please explain why and what format you would prefer.	N/A			
31. Are there any other issues that you would like to see addressed in the revised guidance? If yes please specify.	N/A	N/A	<p>The current guidance is unclear and contradictory on the issue of the proper relationship between the Planning and Licensing regimes. On the one hand it suggests that the two are completely separate and on the other it suggests that applicants should have planning permission before applying for a premises licence.</p> <p>Guidance on the proper role of Responsible Authorities in the licensing process would be welcome. Whilst the role of some Responsible Authorities is obvious (e.g. the Police in relation to preventing crime and disorder), it is less so for others e.g. Planning and the Fire Authority following changes made by the Regulatory Reform (Fire Safety) Order 2005, which abolished the previous fire brigade inspection/fire certificate regime.</p>	<p>Further clarification is sought on para.3.51 on whether it is appropriate for a licensing authority to process a Premises Licence application where either a) the premises do not have planning permission for their proposed use or b) the proposed use would be outside time limits imposed by an existing planning permission?</p> <p>Clarification is sought, preferably with brief examples, on when it would be appropriate (or inappropriate) for each Responsible Authority to object to an application or call for a Review?</p> <p>Particular clarification is sought on the impact of the RRFSO on the Licensing process.</p>

Department for Culture, Media and Sport
TOURISM DIVISION

**CONSULTATION ON REVISED GUIDANCE MADE
UNDER SECTION 182 OF THE LICENSING ACT 2003**

Date: January 2007

How to respond to this consultation

This consultation document is available on the DCMS website at:

www.culture.gov.uk

Responses should be made by 11 April either by post to:

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

or by email to:

licensingconsultation@culture.gov.uk

If you have any queries about the consultation on revised Guidance you can contact the Licensing Guidance Review Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380

However, if you have any questions or complaints about the process of consultation on this paper, please contact Liz Sweet, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.
liz.sweet@culture.gsi.gov.uk

Freedom of information

A summary of the consultation responses, as well as copies of all responses, will be made available on the DCMS website within three months after the consultation has closed. It is assumed, therefore, that your reply can be made publicly available. In addition, all information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

QUESTIONS

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

Question 2: If not, what factors do you think should be considered and why?

Question 3: Do you agree that the current Guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental?

Question 4: If not, please explain why and outline any alternative.

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

Question 6: If not, what amendments do you think should be made, and why?

Question 7: Do you agree that the pools of conditions in Annexes D-H should be:

Option 1: Removed from the current Guidance, but consider establishing an alternative central source of good practice advice? Or

Option 2: Retained and updated/expanded as necessary.

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

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

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

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

Question 12: If not, please explain why and provide brief details of any alternative proposal.

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

Question 14: If not, please explain why.

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

Question 16: If not, please explain why.

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

Question 18: If not, please explain why.

Question 19: Do you agree that it would be useful to add guidance on how licensing authorities might manage concerns about potential intimidation of interested parties?

Question 20: If not, please explain why.

Question 21: Do you agree that guidance on the control of nuisance/crime and disorder outside licensed premises should be clarified/expanded as proposed?

Question 22: If not, please explain why.

Question 23: Do you agree that the Guidance on longer hours should be amended to reflect the Secretary of State's letter of 30 September 2005 and the current situation?

Question 24: If not, please explain why and outline any alternatives.

Question 25: Do you agree that Chapter 11, explaining police powers to close premises, should be removed from the Guidance and incorporated in specific and separate advice for police officers?

Question 26: If you do not agree, please explain why.

Question 27: Do you agree that Chapters 12 (Sale and Supply of alcohol to children) and 14 (Other Offences) should be deleted from the Guidance?

Question 28: If you do not agree, please explain why.

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

Question 30: If not, please explain why and what format you would prefer instead.

Question 31: Are there any other issues that you would like to see addressed in the revised Guidance? If yes, please specify.

1. Introduction and overview

- 1.1 The Licensing Act 2003 ('the Act') received Royal Assent on 10 July 2003 and came into force on 24 November 2005. It replaced six existing licensing regimes concerning the sale and supply of alcohol, public entertainment, theatres, cinemas, night cafes and late night refreshment with a unified system of regulation.
- 1.2 Section 182(1) of the Licensing Act 2003 ("the Act") provides that the Secretary of State must issue Guidance to licensing authorities on the discharge of their functions under the Act. Section 182(3) of the Act gives the Secretary of State power to revise the licensing guidance from time to time.
- 1.3 The Guidance is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice, ensuring consistent application of licensing powers by licensing authorities and promoting fairness, equal treatment and proportionality. Section 4(3)(b) of the Act provides that, in carrying out its licensing functions, a licensing authority must have regard to Guidance issued by the Secretary of State under section 182 of the Act.
- 1.4 The Guidance was first issued and disseminated to licensing authorities in July 2004. On 1 December 2005, the Secretary of State for Culture, Media and Sport publicly announced the Government's intention to conduct a two phase review of the Guidance: an initial phase limited to clarifying uncontentious issues that had been raised with the Government during the Act's transitional period; and a full review culminating in the publication of full, revised Guidance.
- 1.5 The Government seeks views on the draft revised Guidance. In considering any revision of the current Guidance, it is important to understand that the Guidance cannot be used to attempt to amend the primary legislation or regulations made under the 2003 Act. Consultees should therefore recognise that the Government will be unable to take account of responses which deal with matters that can only be addressed through primary or secondary legislation.

2. Initial review of Guidance

- 2.1 The scope of the initial review was limited to:
 - providing clarification of, and additions to, the existing guidance in areas where there was broad consensus amongst stakeholders;
 - consolidating advice given in official correspondence, 'Countdown' newsletter, etc. during the transitional period; and
 - correcting simple factual errors and updating references.
- 2.2 Because of the broad consensus that had emerged during the transitional period around these issues, the Department decided that it was unnecessary to conduct a formal public consultation on the limited revisions. However, a dialogue was maintained throughout the review with key stakeholders, all of

whom were given an opportunity to submit their views on how the current Guidance should be amended.

2.3 The initial review culminated in the production of Supplementary Guidance which came into force on 22 June 2006, when it was laid in Parliament, and was published on the DCMS website¹.

3. Full review of Guidance

3.1 The full review of Guidance, which began in May this year, addressed two areas: substantive policy issues and the format and style of the Guidance document.

Policy issues

3.2 During the initial review of the Guidance, stakeholders raised a number of substantive issues with us, such as the definition of 'vicinity', which were too contentious and/or complex to be addressed without full consultation. These issues were carried forward into the full review and are considered in detail in section 4 below, together with the Government's recommendations in each case.

Format

3.3 Stakeholders told us that they found the Guidance over long and, in some places, repetitive and difficult to navigate. One of the main aims of the full Review was to revisit the format of the Guidance to produce a more user-friendly, concise and navigable document.

Role of the Licensing Advisory Group and sub group on the Guidance Review

3.4 The Licensing Advisory Group was originally established to assist DCMS officials in advising Ministers about the content of the Licensing Bill, the original Guidance and the associated regulations. It includes nearly thirty licensing stakeholders representing a wide range of interests including local government, the trade and professional bodies.

3.5 In May 2006, DCMS formed a sub group of the Advisory Group to assist with the review of the Guidance. The sub group comprises representatives of the following organisations:

Association of Chief Police Officers
Association of Convenience Stores
Association of London Government
Bar Entertainment and Dance Association
British Beer and Pub Association
Committee of Registered Clubs Associations
Local Authorities Co-ordinators of Regulatory Services

1

http://www.culture.gov.uk/Reference_library/Publications/archive_2006/reviseguide_section182.htm

We also co-opted onto the sub group:

- the Civic Trust, Action with Communities in Rural England and the Federation of Small Businesses to ensure that key stakeholder interests, such as residents groups and village halls, were represented; and
- a licensing officer from one of the Licensing 'Scrutiny Councils'² to provide a licensing practitioner perspective

3.6 The sub group considered in detail the substantive issues discussed below and the format of the Guidance and submitted recommendations to the full Advisory Group on 7 July. The proposals set out below are informed by these recommendations.

4. Substantive issues

Definition of 'in the vicinity'

- 4.1 An interested party as defined in sections 13 and 69 of the 2003 Act must either live or be a person involved in business "in the vicinity" of the premises seeking a premises licence or club premises certificate or be a body representing a person living or involved in business "in the vicinity". This restricts those who can make representations in respect of an application for the grant or variation of a premises licence or club premises certificate; and entitles a person to apply for a review of such a licence or certificate.
- 4.2 'Vicinity' is not defined in the Act or regulations. Paragraph 5.33 of the current Guidance suggests some factors which Local Authorities should consider in deciding vicinity, but does not define it. The Department's aim is to give licensing authorities as much latitude as possible in determining vicinity according to local factors, leaving the courts as the ultimate arbiter in the case of a dispute.
- 4.3 In the initial review, there was some support for expanding on the factors that Local Authorities might consider when deciding vicinity and actively discouraging them from defining it too rigidly. A further suggestion was that vicinity should encompass routes home from licensed premises. However, most stakeholders would prefer that the Guidance remains unchanged as any further attempt to define it would undermine local flexibility in this area.

Proposal

² In November 2005, DCMS invited a small representative group of 10 licensing authorities to help monitor and evaluate the new licensing regime as licensing 'Scrutiny Councils'. The final report from the initiative can be found on the DCMS website at:
http://www.culture.gov.uk/what_we_do/Alcohol_entertainment/monitoring_and_evaluation/scrutiny_councils.htm

- 4.4 On balance, the Government recommends that the existing Guidance should remain unchanged.

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

Question 2: If not, what factors do you think should be considered and why?

Incidental music

- 4.5 Under paragraph 7 of Schedule 1 to the 2003 Act, the provision of entertainment consisting of a performance of live music or the playing of recorded music is not regarded as the provision of regulated entertainment (and therefore licensable) to the extent that it is "incidental" to some other activity which is not itself entertainment or entertainment facilities requiring a licence.
- 4.6 The word 'incidental' is not defined in the Act or Regulations, but paragraph 5.18 of the current Guidance gives some indication of the factors that should be considered in determining whether music is incidental or not, such as volume, and gives a few examples. Although the question of what is or is not 'incidental' music remains a contentious issue, during the initial review most stakeholders agreed that it would not be useful to give a narrow definition or to provide examples, as there will always be an exception to the rule. However, some stakeholders suggested that it would be helpful to expand the guidance on factors that could be taken (or not taken) into consideration in determining whether music is incidental or not.

Proposal

- 4.7 The Government recommends that the current guidance on incidental music should be amended to expand on the factors that licensing authorities might wish to consider in determining what is incidental or not. The proposed text is set out in paragraph 3.21 of the revised Guidance.

Question 3: Do you agree with the proposed amendment?

Question 4: If not, please explain why and outline any alternative

Cumulative impact policies

- 4.8 Cumulative impact is not mentioned in the Act or Regulations, but paragraph 3.13 of the current Guidance defines it as 'the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area'. Paragraphs 3.14-3.27 provide further guidance on the creation and limitations of special policies.
- 4.9 Some stakeholders said that they would like to see special policies applied where necessary to areas other than town and city centres such as suburbs or district shopping centres. There was also some support for widening the

scope to include off sales premises such as corner shops, etc. as it was felt that they might also contribute to cumulative impact.

- 4.10 There was also a view that the Guidance could encourage licensing authorities to take other steps, in partnership with the trade and other stakeholders, to address cumulative impact before they consider applying a special policy. These might include dispersal policies for clubs, litter and taxi marshals and police initiatives such as 'Best Bar None'.
- 4.11 At a more fundamental level, some stakeholders believe that cumulative impact as a policy goes beyond the Act and is therefore ultra vires.

Proposal

- 4.12 On balance, the Government recommends that the current Guidance should not be changed.
- 4.13 There is nothing in the Guidance to prevent special policies being established for areas other than town and city centres and, although the Guidance states that it would not 'normally' be justifiable to adopt a special policy for off-sales, it is implicit that this may be justified in exceptional circumstances.
- 4.14 Paragraph 3.17 of the current Guidance makes it clear that there must be an evidential basis for a special policy to be adopted. Paragraph 3.28 recognises that there are other approaches to controlling cumulative impact.
- 4.15 Removing the concept of cumulative impact from the Guidance would be highly problematic and disruptive for the many licensing authorities that have already adopted a special policy and those that are thinking of doing so. There is no evidence that a wide range of stakeholders is fundamentally opposed to the concept of cumulative impact.

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

Question 6: If not, what amendments do you think should be made, and why?

Conditions

- 4.16 Chapter 7 of the Guidance provides general advice on conditions which may be attached to licences. Annexes D-H provide pools of conditions which could be applied for the promotion of each of the four licensing objectives and in theatres, cinemas, concert halls and similar places (Annex F) where they are appropriate and necessary. The four statutory licensing objectives are:
- The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm.

4.17 Some stakeholders told us that the inclusion of a pool of conditions in the Guidance discouraged licensing authorities and responsible authorities such as the police from developing other, innovative conditions and encouraged duplication of other statutory requirements (particularly those on health and safety). There also appears to be a potential risk of licensing committees and magistrates' courts increasingly treating the list as exclusive and the pool failing to respond to new developments and trends within the night-time economy. On this basis, they suggested that these Annexes should be removed from the Guidance.

4.18 An alternative view is that licensing authorities and responsible authorities need a central source of advice and guidance on the application of and terms of conditions (particularly those conditions which are regarded as good or best practice) and this encourages a consistent approach across authorities. The Annexes should therefore be retained but would need to be updated and expanded as necessary by further and possibly regular supplements to the Guidance.

4.19 The Government therefore seeks views on the following options:

Proposal

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?

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

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?

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

Role of councillors in the licensing process

4.20 Currently, paragraph 5.32 of the Guidance states that councillors may represent an interested party or make representations as an interested party themselves if they reside in the vicinity of a licensed premises (as long as they do not participate in the decision making process).

4.21 However, this provision is subject to the operation of the code of conduct for local authority members. This provides that where a councillor has a

prejudicial interest in a matter, they are required by the code of conduct to withdraw from the meeting at which the matter is considered. The Department for Communities and Local Government will be consulting on a revised code of conduct, including possible changes to the rules relating to prejudicial interest later this year.

- 4.22 Furthermore, councillors have a duty to act in the interests of all of their constituents. This role as a community advocate must therefore be balanced with the above guidance that a councillor can act as an interested party for licensed premises.
- 4.23 Stakeholders would like to see further guidance to:
- a) clarify the role of ward councillors in the licensing process, taking account of issues around prejudicial interest, as discussed above;
 - b) assure councils that notifying councillors of applications, reviews, etc. in their wards is permissible under the current legislation.
- 4.24 A number of councils automatically notify councillors of licensing applications in their wards, although this is not a legal requirement. However, some licensing authorities have been given legal advice suggesting that this practice could arguably be seen as 'soliciting' representations and may be unlawful.

Proposal

- 4.25 The Government recommends that the Guidance should be amended to:
- further clarify the role of councillors in the licensing process and to indicate that where a member has a prejudicial interest in a matter which a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest, the member should, under the code of conduct for members, withdraw from a meeting at which that matter is discussed;
 - advise that there is nothing to prevent licensing authorities notifying ward councillors of licensing applications as long as the information they provide is strictly neutral. All ward councillors are members of the licensing authority which in most cases is the full council and as such, there can be no legal objection to providing them with relevant information. The Guidance should also make it clear that this is not a legal requirement of the 2003 Act and authorities would have to bear any costs themselves. The proposed changes are set out in paragraphs 8.8-8.10 of the revised Guidance.

Question 11: Do you agree that the current guidance on the role of ward councillors should be further clarified and expanded as proposed?
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Question 12: If not, please explain why and provide brief details of any alternative proposal.

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

- 4.26 Under the 2003 Act, it is a mandatory condition of all premises licences authorising sales or supplies of alcohol that:
- every sale of alcohol must be authorised by the holder of a personal licence; and
 - a personal licence holder must be specified on the premises licence as the designated premises supervisor
- 4.27 Paragraph 4.18 of the current Guidance explains that the main purpose of the DPS is to ensure that there is always 'one specified individual' amongst (potentially) several personal licence holders, who can be readily identified by the police and authorised persons at the premises and who will normally have been given 'day to day' responsibility for running the premises. The supplementary Guidance consolidates advice given during transition that neither the DPS nor any other PLH needs to be on the premises all the time, but may authorise others to sell alcohol in writing or verbally.
- 4.28 Many stakeholders feel that only written authorisation should be allowed, as the existence of verbal authorisation will usually be a matter of one person's word against another's and so will be difficult to prove in court. A number of trade associations are already advising their members to use written authorisation as a matter of best practice.

Recommendation

- 4.29 The Government recommends that the Guidance on authorisation of sale should be amended further to:
- advise that written authorisation is recommended as it clearly demonstrates due diligence in the event of any review or prosecution; and
 - clarify that this is not a legal requirement and that the DPS does not have to be on the premises at all times.
- 4.30 The proposed changes are set out in paragraphs 10.45-10.50 of the revised Guidance.

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

Question 14: If not, please explain why.

Variations

- 4.31 Section 34 of the Act allows the holder of a premises licence to apply for a variation of the licence. Paragraph 5.65 of the original Guidance used the expression 'major' variation as a means of describing all variations except those which relate to a change of name or address of someone named in the licence or specification of a designated premises supervisor. These two exceptions involve a simplified application process and a reduced fee.
- 4.32 During the initial review, some stakeholders told us that the use of the expression "major variation" was confusing as it implied the existence of a specific statutory procedure for 'minor' variations in addition to the two exceptions described above. The supplementary Guidance explains why the word 'major' is used in the Guidance, but the general view is that this term is not helpful. Stakeholders also wanted more guidance on when it was appropriate to apply for a new licence as opposed to a variation.

Proposal

- 4.33 The Government recommends that the Guidance on variations should be amended and expanded to:
- remove the term 'major variation';
 - explain that the two exceptions outlined above are subject to a simplified application process;
 - clarify when a new licence is required as opposed to a variation;

The proposed changes are set out in paragraphs 8.31-8.35 of the revised Guidance.

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

Question 16: If not, please explain why.

Nature of evidence required to support representations

- 4.34 Currently interested parties are not required by law to provide supporting evidence for representations and, of course, in the case of new premises, this may not be possible. However, some stakeholders are concerned that conditions, on noise for example, may be imposed when there is no history of disturbance at existing premises. Others are of the view that representations must always be evidence-based to meet the test of validity and relevance to the licensing objectives. There has also been a suggestion that the Guidance should contain guidelines to licensing committee members on deciding the weight to be given to representations of various kinds.

Proposal

- 4.35 The Government considers that new applications will inevitably involve a degree of reasonable speculation about the likely impact of the licensable activities at the premises on the four licensing objectives. The Guidance already allows for the likely impact of a new premises where there is no history of noise and disturbance. It does not restrict the licensing authorities' discretion to give reasonable and appropriate weight to representations and evidence depending on the nature of the application. This is consistent with section 18(6)(a) of the Act which states that relevant representations are about the 'likely effect of the grant of the premises licence on the promotion of the licensing objectives'. Paragraph 5.68C of the current Guidance states that 'In determining the application.....the licensing authority must give appropriate weight to ...the representations (including supporting information) presented by all parties'. The Government considers that any further advice/good practice on supporting representations with good evidence should be included in guidance for interested parties, rather than the statutory Guidance for licensing authorities.
- 4.36 The Government therefore recommends that the current Guidance on evidence to support representations should remain unchanged

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

Question 18: If not, please explain why.

Representations: Disclosure of names and addresses

- 4.37 The Act requires any interested party making a representation to provide their name and address. Some licensing authorities have reported that in isolated cases, residents may be reluctant to make representations for fear of intimidation.
- 4.38 Licensing authorities have taken different approaches to address this issue. For instance, some encourage the interested party to approach the relevant responsible authority (for example, environmental health officers) and ask them to make representations. This means that their name and address are not disclosed at any point in the process. In such cases, the responsible authority has to satisfy itself that representations are necessary and justified. Other authorities encourage residents to make their representations, but withhold their name and address from the applicant, giving only details (such as street name) which are relevant to determination of the vicinity.

Proposal

- 4.39 The Government is minded to amend the Guidance to include advice on how isolated fears of intimidation may be managed, giving as examples the strategies outlined above. The possible changes are set out in paragraphs 9.13-9.17 of the revised Guidance.

- 4.40 The alternative would be not to amend the Guidance and to recognise that this is not an area in which the Government should not be seeking to promote particular approaches for the sake of consistency; and to allow licensing authorities the widest possible discretion to operate in a common sense way and as it sees fit in the best interests of the community.

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

Question 20: If you would prefer the alternative outlined in paragraph 4.40, please explain why.

Control of nuisance/crime and disorder outside licensed premises

- 4.41 Paragraph 3.11 of the current Guidance makes it clear that licensing is about regulating licensable activities and that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and therefore beyond the direct control of the individual licensees or certificate holders. However, the Guidance also states that 'licensing law will always be part of a holistic approach to the management of the evening and night time economy in town and city centres'.
- 4.42 Some stakeholders have suggested that licensees should be responsible for taking reasonable measures to control drinking outside their premises, for example, on the pavement outside a pub or in a beer garden and for the orderly dispersal of customers when the premises closes (perhaps through a dispersal policy). It has also been suggested that plans should show areas for consumption and that LAs should be able to impose conditions on these areas on the grounds that this is necessary for the promotion of the licensing objectives.
- 4.43 However, there is no mechanism in the 2003 Act for imposing new forms of conditions universally on premises licences that are already in existence and such conditions, where they do not currently apply, could only be imposed following a review of the licence or in respect of a new premises licence where representations had been made. Accordingly, it will always be likely that some premises licences will be subject to such conditions and some will not.
- 4.44 The content of plans that must accompany applications for the grant or variation of a premises licence or club premises certificate are a matter for regulation made under the enabling powers in the Act and are not a matter that can be changed by Guidance.

Proposal

- 4.45 The Government is minded to provide further Guidance on what can be done within the Act to control crime and disorder outside licensed premises.

- 4.46 The Guidance already allows for conditions to be imposed on licensees to promote the prevention of crime and disorder immediately outside the premises where this relates to licensable activities. In addition, there is nothing to prevent the police, licensing authorities and the hospitality industry reaching voluntary agreements about best practice in areas where problems are likely to arise. Also, local authorities are already empowered by section 13 of the Criminal Justice and Police Act 2001 to make "designated public place orders" (DPPOs) to control the consumption of alcohol in a public place outside of licensed premises.
- 4.47 However, it may be useful to explain better in the Guidance the legal responsibility on licensees to control areas in the immediate vicinity of their premises and state more explicitly that problems in the immediate vicinity can be improved through conditions. The possible changes are set out in paragraph 1.23 of the revised Guidance.

(NOTE: The wording of such conditions would need very careful consideration. Conditions cannot be aspirational and must be within the capability of the premises licence holder to avoid the commission of a criminal offence. For example, although a condition may require premises to adopt a particular dispersal policy, a licensee cannot force customers to abide by it)

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

Question 22: If not, please explain why.

Paragraphs on longer hours.

- 4.48 Currently the Guidance states at several points that fixed and early closing times are likely to promote rapid binge drinking before closing time and that longer hours are likely to lead to a more gradual dispersal of customers from licensed premises. However, the Guidance also emphasises that each application must be considered on its own merits. It may be that in some cases, longer hours will not help to promote the licensing objectives.
- 4.49 Some stakeholders feel that the current Guidance has a presumption in favour of longer hours, which is unjustified. However, a recent judgment in the case of R (on the application of J D Wetherspoon plc) v Guildford Borough Council [2006] EWHC 815 (Admin) appeared to support the view that the balance between longer hours and the promotion of the licensing objectives as explained in the current Guidance is about right.
- 4.50 On 30 September 2005, the Secretary of State wrote to all licensing authorities emphasising that the Act contains no presumption in favour of longer hours and that the four licensing objectives should be paramount in any consideration of a licensing application. The Government is minded to reflect the terms of this letter in the Guidance.

Proposal

- 4.51 The Government recommends that the paragraphs on longer hours should be re-drafted to reflect the Secretary of State's letter of 30 September 2005 and be more focused. A few short paragraphs on this topic should be placed prominently at the front of the Guidance. Paragraphs should also reflect the current situation (i.e. we are no longer in the process of moving from 'fixed' to 'longer' hours). The proposed text is at paragraphs 1.17-1.19, 10.18-10.20 and 13.34-13.36 of the revised Guidance.

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

Question 24: If not, please explain why and outline any alternatives

Chapter 11: Police Powers to close premises

- 4.52 The Act limits the purpose of the statutory Guidance to guidance to licensing authorities (and not the police) about the carrying out of their licensing functions under the Act. Chapter 11 was included in the Guidance – as a non-statutory element - to provide advice to police officers on the operation of new closure powers in part 8 of the Licensing Act 2003 which has extended the powers of the police in certain areas. The mixing of statutory and non-statutory Guidance by the inclusion of Chapter 11 was questioned by the House of Commons Joint Committee on Statutory Instruments when they scrutinised the original Guidance and the review provides a useful opportunity to consider whether it should be retained.
- 4.53 Some stakeholders have suggested that the current Chapter 11 does not sit well with the rest of the Guidance which is aimed at licensing authorities. It has been suggested that this advice might form part of broader guidance for police officers on policing of the night-time economy, of which licensing forms only a part.

Proposal

- 4.54 The Government recommends that Chapter 11 of the Guidance should be removed from the main Guidance and incorporated in specific advice for police officers on dealing with problems at licensed premises which will be developed with the Home Office and ACPO and disseminated to all police forces.

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

Question 26: If you do not agree, please explain why.

Chapter 12: Sale and Supply of alcohol to children
Chapter 14: Other Offences

- 4.55 Chapter 12 of the current Guidance describes offences relating to the sale and supply of alcohol to children, whilst Chapter 14 describes other offences under the Act.
- 4.56 The information in these chapters is somewhat repetitious of the contents of the Act itself. It would also be inappropriate for the Government to give Guidance on the issue of prosecutions. The DPP, licensing authorities and weights and measures authorities must all exercise their discretions relating to prosecutions independently of the Executive. There is therefore a good case for removing this text completely from the statutory Guidance.

Proposal

- 4.57 The Government recommends that Chapters 12 and 14 should be deleted from the Guidance.

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

Question 28: If you do not agree, please explain why

5. Format

- 5.1 The format of the Guidance has been substantially revised with the aim of making this a more user-friendly, concise and easily navigated document. Apart from the proposed deletion of Chapters 11, 12 and 14 described above, key changes are:
- a new foreword by the Secretary of State;
 - a new introductory chapter setting out the aims and principles of the legislation;
 - a new chapter on the four licensing objectives incorporating much of the information from the original Chapter 7 on Conditions;
 - the original Chapter 5 (Premises Licences) split into five new chapters for ease of reference;
 - the original Chapter 3 on Statements of Licensing Policy moved to the back of the document to reflect the fact that councils need to read the previous chapters before determining their licensing policy.

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

Question 30: If not, please explain why and what format you would prefer instead.

6. Other issues

- 6.1 This consultative document covers the key issues that have been raised with the Government in connection with the Guidance, but there may be other issues that you would like to see addressed in the revised version. Respondents should

note that, as stated earlier, the Guidance cannot be used to amend the primary legislation or regulations made under the 2003 Act.

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