

17 July 2006

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Simon Richardson  
Licensing Guidance Review Team  
DCMS  
2-4 Cockspur Street  
London  
SW1Y 5DH

27<sup>th</sup> January 2006

Dear Simon

**Initial Review of the statutory Guidance issued under section 182 of the Licensing Act 2003**

Thank you for inviting LACORS (Local Authority Co-ordinators of Regulatory Services) to make a submission to the above review.

As the national co-ordinator of licensing authorities, LACORS has been involved with development and implementation of the Act from the early stages. We work closely and in partnership with the Department, and we have an agreed working practice with DCMS officials for referral of queries that cannot be resolved locally, and we have disseminated (and collated information) nationally to licensing authorities on behalf of the DCMS. In September 2005, ourselves and colleagues from our 'parent' body the LGA met with DCMS Ministers to voice our concerns about the Guidance and flag matters local authorities have referred to us as creating concern and confusion locally. These points are included within this response.

Although we have given references to the wording in the Guidance where applicable, we are aware that the points raised within this submission can only be addressed via amendment of the primary or secondary legislation. This is because we do not believe that amendments to the areas of concern within the Guidance can be meaningful without amendments to the legislative framework.

In order to form LACORS response to this initial review, we invited the views of all licensing authorities. We also met with industry representatives from the British Retail Consortium, the BII and the WSTA with a view to finding areas of mutual agreement and consensus (the importance of which is stressed in the accompanying notes to this Review published on your website). Although local government and the trade share many similar concerns and considerations about the delivery of the Licensing Act, the one technical matter that unanimous agreement can be reached with all trade colleagues is the necessity for local authorities to have discretion to amend minor errors on

the application forms, and to have discretion to vary statutory timeframes (with the agreement of all parties). Please see appendix 1, a letter written to the Department from LACORS, LGA, ALG, ACPO, BISL, BII, BEDA, Poppleston Allen, ALMR and BBPA stressing areas of mutual agreement including local authority discretion. I would also like to draw your attention to the recent submission of evidence to the ODPM select committee work on the Act. Submissions from different stakeholders all highlighted the benefit and need for local authority discretion in order to ensure the aims of the Act are successfully achieved.

In order that we can understand (and explain to licensing authorities) how the issues raised in the Review were considered and weighted by the DCMS, and any amendments made to the Guidance, LACORS would like to take this opportunity to request that the Department publish the submissions to this Review, and the Departments conclusions and comments on the points raised.

The comments made within this submission are made on behalf of both **local authorities** and **licensing authorities**. Although the Act is specific on the separation of functions within an authority, representations made to LACORS show authorities feel that the wording of the legislation is not reflective of the joined up way in which authorities work.

The points raised within this submission are an amalgamation of responses from local authorities nationwide, but it is anticipated that some authorities will also contribute separately to this Review; LACORS suggested areas for the initial review of the Guidance are as follows:

### **Use of language**

As a general point, LACORS is concerned about the use and tone of the language used within the Guidance. It is felt that on certain points, actions advocated in the Guidance go further than the statutory requirements of the legislation. This leads to confusion and misunderstanding between applicants and licensing authorities. Specific examples are given below:

1. The Secretary of States has emphasised that the legislation is about "flexibility" in relation to opening hours, rather than longer opening hours, or 24 hour opening. The Secretary of State has also emphasised the rights conferred by the legislation on local residents and other interested parties, and the advantage of "local" decision-making. We find these comments to be at odds with many statements in the formal Guidance issued by the Secretary of State under s.182 of the Act, and it is of course the Guidance to which we are obliged as a matter of law to have regard, rather than statements made to the press. The Guidance does not in fact emphasise that the legislation is about flexible opening hours. The Guidance repeatedly emphasises longer opening hours (see for example paragraph 3.15, 3.29, and 6.10). To highlight this point, please see the following correspondence from a licensing authority to LACORS: *'It has been the experience of this Council that in representations made to licensing sub-committees, the applicant's representative will regularly submit that it is the Government's view that longer hours should be granted so as to reduce the impact on the licensing objectives by allowing people to disburse more gradually'*

**We urge the Secretary of State to issue revised Guidance as a matter of urgency to remove the repeated references to the benefits flowing from longer hours.**

2. Licensing public land- s3.59 of the Guidance clearly encourages local authorities to licence their own public land to ensure that cultural diversity thrives. This goes above and beyond the requirements of the Act, and although LACORS encourages local authorities to licence their own land wherever possible, it is not a statutory requirement that they do so. In addition, LACORS have been contacted by a number of authorities struggling to understand how they use the Act to license their public land in harmony with the Police Criminal Justice Act 2001 and drinking controls issued under this legislation. LACORS has previously raised this issue with officials on the 11<sup>th</sup> November 2005 via our agreed working practice, and we are still awaiting a considered response.
3. Live Music monitoring- s3.47 of the Guidance stipulates that local authorities should monitor the impact of licensing on the provision of regulated entertainment, and in particular live music. Whilst authorities may consider to do this as part of their local cultural policy, LACORS considers that this is not a statutory requirement of the Licensing Act 2003, and the current fees structure does not provide additional resources to authorities to enable them to do so, and that the Guidance goes further than the legislation in asking local authorities to commit to monitoring of regulated entertainment (and we now understand this will be a requirement in the national statistical bulletin).
4. The Guidance to licensing authorities on review is largely negative, and focuses on circumstances where a review would not be appropriate. We would suggest that paragraphs 5.99 to 5.117 of the Guidance be re-written in a much more positive manner. It is noteworthy, for instance, that the Government is considering the introduction of Alcohol Disorder Zones in the Violent Crime Reduction Bill currently before Parliament. But the notion that it might be appropriate to review a premises licence because of alcohol related crime and disorder associated with the premises is wholly absent from the Guidance. Indeed, that sort of criminal activity is not even mentioned in paragraph 5.115 as a type of activity which the Secretary of State considers should be treated seriously. No doubt the Guidance would have been written in a very different way if it had been produced after the concept of Alcohol Disorder Zones had been formulated.

### **Advertising applications and consulting on applications**

5. Feedback from licensing authorities shows that overall, licensing authorities are experiencing that the advertising regulations contained within the Act are inadequate and inefficient in ensuring that local residents are notified of the application. One authority informs LACORS *'It was clear that many people were failing to obtain information about the application until late in the process, where members were not as proactive and many people felt they had been disenfranchised as a result.'*
6. Many authorities are being asked by Members and residents to circulate details of applications in addition to the statutory measures contained within the Act. This incurs costs to the licensing authority that is not covered by the licence fee, but LACORS considers that it would be in everyone's best interests if the applicant was required to inform immediate neighbours on their application. Local authorities' officers are concerned that the licensing authority would be fettering its discretion to involve itself in informing measures such as leaflet dropping, as interpretation differs as to whether authorities can engage themselves in

additional informing measures to those contained within the Act. However, LACORS has been informed by licensing authorities that *'the most successful applications are where businesses have taken the time to talk to their neighbours and explain what they were doing.'*

7. It seems to be a shortcoming of the legislation that there is no requirement to prove compliance with the notice/advert requirements, and no sanctions if they are not complied with. Where complaints have been received about notices during the representation period, officers have endeavoured to check the premises, or have sent warning letters. However, it is difficult if complaints are not received until the hearing, when interested parties may suggest that there would have been more representations if the notice had been displayed, and there is no way of proving whether or not it has been.
8. A general complaint to authorities from residents is that people who do not frequent licensed premises assume that a notice in the window relates to a forthcoming event and not to a licence application. Other complaints from interested parties to local authorities include that notices are displayed too high or in places that cannot be easily accessed for viewing by interested parties.
9. Para 5.52 on advertising and the accompanying regulations should be reviewed because it is clear from experience to date that they are insufficient means to draw the attention of potentially interested parties to the application.
10. LACORS has received a number of alternative suggestions to the existing statutory advertisement measures contained within the Act. These included; A3 notices, discretion of the authority to amend background colour and font of the notice (with all party agreement), and leaflet dropping within a 'set' area in line with existing planning protocol. Authorities also felt that the statutory content of the notice should give detail of what hours the business was actually applying for in the interests of transparency.

#### **Role of ward Councillors and MPs**

11. All responses from local authorities regarding the review of the Guidance stated that they felt that the role of ward Councillors should be addressed and clarified via the Guidance. Currently, LACORS interpretation of this part of the legislation is that ward Councillors can make representations when requested to do so as an interested party. Most authorities felt that it was a contradiction of their role as locally elected representatives and insufficient that Members should be reliant on 'interested parties' to express their views in relation to licensed premises in their locality that they represent.
12. Although the majority of authorities undertake the good practice of ensuring Members have comprehensive training as a standard measure before allowing them to sit on committees with quasi-judicial functions, it was recommended that the wording of the Guidance should impress the importance of Members having a thorough induction to the Act prior to sitting on the licensing committee.

13. LACORS advisors also suggested that the Guidance should contain guidelines to Members deciding evidential weight to representations. LACORS has produced Guidance to Members concerning the Act, and is happy to expand on a suggested form of wording for this point.

**Inability of licensing authorities to use discretion to vary statutory timetables**

14. Authorities have received correspondence from the licensing Minister advocating that they apply a ‘pragmatic’ approach to the application of the Act. Whilst local authorities are generally applying pragmatism to the legislation, the Act does not actually give them any discretion to do so. LACORS has anecdotal evidence from licensing authorities that the majority are being pragmatic on certain points within the legislation such as accepting representations outside of the statutory timeframes with all party agreement. However, local authorities need protection within the legislation to ensure that they are not going to be penalised for their flexibility.
15. Further, local authorities require some sort of ‘slip rule’ to allow them to amend small typographical errors (forms completed in blue ink!) without the whole application form having to be returned to the applicant. Discretion is also required to amend impractical hearings timings within the Act.
16. The inability of the licensing authority to vary the statutory timetable in terms of deferring meeting dates, consultation dates and determination deadlines has caused applicants problems as they were unable to meet the deadlines required. LACORS is aware this was particularly the case with hearings where the 10 day notice period proved inadequate in many cases for licensing solicitors representing applicants and feedback shows it would have been mutually beneficial to be able to defer consideration with all party agreement.
17. LACORS offers a suggestion for how discretion could be applied to applications where the statutory obligations have not been met by the applicant in advertising their application/serving notice:

<b>18. No public notice</b>	<b>19. Not served on RA's</b>	<b>20. No statutory advert</b>
<b>21. Place advert for 28 days and accept reps during that period</b>	<b>22. Re-serve on all RA's and accept reps from RA's for 28 days from time of service</b>	<b>23. Place advert and accept reps during subsequent 28 days</b>

18. Further to this point, LACORS/LGA has previously made representations to the DCMS about the problems created on ‘capping’ the numbers of members that can sit on sub-committees at 15. It is not clear to LGA/LACORS why this restriction is part of the legislation, and we have previously requested a policy rationale of this decision. This unnecessary ‘limit’ on the number of Members creates problems for authorities in managing their hearings at busy times, as it means that only a pool of 15 can be ‘picked’ from for sub committee hearings.

We request that this restriction is removed and that the local authority be able to set their own limit of Members on a sub committee, in line with local requirements.

### **Interested parties and vicinity**

19. LACORS has received many representations from authorities about what constitutes 'vicinity'. Although LACORS feels that this cannot be clarified centrally, authorities felt the Guidance could offer points of consideration for authorities when defining this area. Similar points of consideration could also be offered to local authorities looking to define an 'interested party' under the Act.

The restrictions which are contained in the legislation limit objectors to those living "in the vicinity" of the application premises, for example, and which require representations to deal only with the likely effect of the grant of the application on the licensing objectives are causing numerous problems in practice. This undermines the objective of giving greater weight to the views of local residents, and is a major contributor to the popular conception that the legislation is heavily weighted in favour of the industry. Many of those problems could be overcome by more helpful Guidance. We would suggest that paragraphs 5.32, 5.33 and 5.73 to 5.77 of the Guidance be re-written with these points in mind.

### **Areas used for consumption of alcohol**

20. Responses from licensing authorities felt that authorities should be able to attach conditions to areas for consumption, where it is felt there was a need to do so.
21. Paras. 3.22, 3.31 and 5.71 need to be reviewed because there is growing recognition from the police and others that late night 'off' sales of alcohol can add significantly to problems of disorder in a given area.

### **Use of TENS**

22. Experience of licensing authorities to date shows that applicants are regularly using TENS to 'top-up' the hours that they have been granted on the premises licence. Although this is not proving problematic in itself, there is a widespread concern about the consequences of the premises licence conditions (and therefore the views of responsible authorities) not applying to additional hours supplied by the TEN. LACORS believes this is a fault of the legislation and requests that the department rectify this as soon as is practicable.
23. LACORS has received a number of representations from local authorities concerned that the timescales for TENS are not practical for the Police to raise a relevant representation, and should be increased, and also concern that only the Police can make representations on grounds of Crime and Disorder and authorities believe that a number of interested parties would also wish to make representations in relation to the Public nuisance objective. Authorities have also suggested to LACORS that the definition of 'associate' in the legislation is too wide and needs clarifying via Guidance.

### **Repetition of legislation through conditions**

24. LACORS believes that the department should review the necessity for the pools of model conditions contained within the appendices to the Act. LACORS is of the opinion that these model conditions duplicate existing statutory requirements, which the Guidance is at pains to stress licensing authorities should not do! This is contradictory and confusing!

## **Other areas Guidance should clarify (suggestions from local authorities)**

### Amalgamation of existing DCMS guidance

25. Any DCMS letters that are intended to have the same status as Guidance (and are not merely suggesting an approach to transition which is of course over) should of course be amalgamated into future editions of the guidance. The status of the content of future letters should be made clear (as were the old Circulars issued by the Home Office).

### Review of licences

26. While it is not disputed that the Police, as a “responsible authority” under the Act, are able to trigger a review, the Council’s own powers to trigger seem to be restricted to its role as a local planning authority or its responsibility towards minimising or preventing the risk of pollution of the environment or of harm to human health. The Licensing Authority itself cannot initiate a Review. The letter seems to ignore the influence of local people as “interested parties” in requesting a review and places too much emphasis on business.

### Relationship between licensing and planning

27. The relationship between planning and licensing needs to be clarified. At the moment there are numerous premises permitted to operate during the early hours on a temporary and occasional basis by the licence they have been granted. However, they are prevented from doing this by the existence of planning restrictions imposed on the hours of operation imposed to protect residential amenity. Authorities have asked LACORS what legislation takes priority.

### Mail order and moveable sales

28. Authorities have suggested that further advice in this area is needed within the Guidance. There is a lack of guidance in the Guidance as to how Notices are to be displayed (ignoring the issue of describing the premises / location). Licensing authorities have interpreted the legislation and are advising locally, but central Guidance in this area needs to be given to licensing authorities and applicants so consistency can be promoted.

### Mediated agreements

29. The guidance would benefit from addressing how a mediated agreement can be dealt with by a licensing authority. If conditions are agreed between the parties there is no straight forward way for the Licensing Authority to impose those on the licence. Clearly the parties could attend a hearing but this seems superfluous when agreement has been reached.

### Personal Licences/ DPS

30. There is still confusion regarding the requirements of the personal licence holder and designated premises supervisor. The situation is very unclear at present and clarification would be welcomed, for the benefit of Licensing Authorities, enforcement agencies and licence holders. We are advising of LACORS view but the law is unclear and will remain so until case law is created. ‘Best practice’ or ‘job descriptions’ regarding authorisation by a DPS / personal licence holder might be helpful.



### Appeals

31. Further clarity and guidance is needed on appeals. Suggestions of Issues that need to be addressed include:
- What is the role of the licensing authority on an appeal? Is it neutral or should it present as witnesses those who made a representation on the application?
  - The expectations of local residents and how their rights are to be respected when they are not parties to the appeal
  - The question of parties to the appeal process needs much more clarity – perhaps (the Minister's letter to LACORS on the subject should be incorporated into the guidance?)

### Provisional Statements

32. Guidance for how existing licences interrelate with provisional statements and new applications would be helpful

### Responsible authorities

33. Additional Guidance concerning the role and expectations should be issued to responsible authorities.

### Guests in Clubs

34. Authorities have requested more clarification and definition of the term 'Guest' in the legislation E.g. would someone at a golf club would paying a 'green fee' for a round of golf qualify as a 'Guest'.

### Email representations

35. Regulation 21 of the Premises licences and club premises certificates Regulations 2005 allows representations to be made by email with the permission of the licensing authority. But some officers are also interpreting subsection (c) to mean that after an email is sent the person must also then send a letter in writing to confirm the representation otherwise it is not valid. This would seem excessive and overly bureaucratic. LACORS first requested a considered opinion of the Department on the 6<sup>th</sup> October 2005, and we are still awaiting a response. LACORS requests that this area is clarified in the re-issued Guidance.

I look forward to hearing from you.

Yours sincerely

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**LACORS**