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**Subject:** Licensing Policy reviews

## REVIEWS OF LICENSING POLICY STATEMENTS

Dear all,

We realise some licensing policy review consultation deadlines may have already come and gone but this is just to confirm that we ( British Beer & Pub Association ) are not replying formally to all authorities this year unless we have specific issues.

However you may be interested in seeing a letter which includes a number of general points which we would appreciate you taking on board when reviewing licensing policies.

Many thanks,  
Richard Matthews  
(BBPA Midlands Region Secretary)

## RE: LICENSING ACT 2003 - REVIEW OF LICENSING POLICY

The British Beer & Pub Association (BBPA) represents brewing companies and their pub interests, and pub owning companies, accounting for 96% of beer production and around two thirds of the 52,000 pubs in the UK. Many of our members own and run pubs in your licensing authority area. The Association promotes the responsible sale of alcohol and management of licensed premises. It has a range of good practice information and guidance for member companies, and the Association actively supports organisations such as National Pubwatch and Best Bar None. Britain's pubs are an important and integral part of the UK's tourism industry. The Prime Minister

recently acknowledged that tourism should be regarded as one of the foremost industries in this country, as an important economic driver and job creator which is vital to the well-being of the UK. Pubs are a vital part of the local tourism infrastructure, enhancing other local businesses such as B&Bs, historic sites, caravan and holiday parks

With regard to the three year review of policies, the BBPA believes that the current system of triennial review is not conducive to encouraging participation in the licensing process. It is expensive and time consuming to both the licensing authority and to other interested parties such as licensees, pub operators and trade associations. If policies were amended as and when necessary, rather than during an arbitrary review imposed by central Government, this may encourage increased participation across the local community.

The Association responds to the nationwide licensing policy consultation in the light of the current Home Office proposals on licensing, which have far-reaching effects on how the regime currently operates. The BBPA has major concerns surrounding the proposals, in terms of both how the balance of the Licensing Act would be distorted away from business and the licensing authority towards the police, and the practical problems the new proposals will introduce. However, the BBPA has argued that the Government should introduce an amendment to the Licensing Act nominating licensing officers as responsible authorities. This would enable councils to speed up the licensing process without prejudicing the licensing authority in its decision making role. The Association would give support for rescinding licences where fees are not paid, providing due notice and re-instatement can be instituted if payment is subsequently made in time. Furthermore, we would support a surcharge on such late payments. The BBPA recognises the concerns both the LGA and LACORS have with the Home Office proposals as they stand, and would urge Councils not to pre-empt the results of the consultation process in their licensing policy consultations.

We also have some concerns that the Council may receive representations for change to which we will be unable to respond until after the policy is approved by the Council.

We will take this opportunity therefore to highlight certain issues which we would not support being included in, or arising from, the final policy document as they are beyond the provisions of the Licensing Act.

BBPA would recommend that Licensing Policies should take into account points such as:

### **Blanket Conditions**

Blanket or standard conditions cannot be imposed under the Licensing Act, except where there are valid objections to a licence on the grounds of one of the licensing objectives, ie. crime and disorder, public safety, public nuisance

and the protection of children. The licensing authority can only attach a condition where an objection is upheld following a hearing.

### **Pubwatch**

As a major supporter and funder of National Pubwatch, the BBPA is very keen that public houses participate in their local Pubwatches, but we are opposed to such participation being a condition of the licence. Pubwatches are voluntary organisations and membership must remain voluntary if they are to be effective. They are also co-operative bodies that must be able to determine their own membership, which would become almost impossible if leaving a Pubwatch would result in a breach of condition. We trust that the policy merely seeks to encourage Pubwatch membership rather than make it a condition of licences.

### **Glassware**

It would be helpful if the policy could include a reference to the following approach outlined in the National Alcohol Strategy on alternatives to glass, namely a risk based, per premises approach.

“The Government believes that a risk-based, rather than blanket, approach to requiring licensed premises to use safer alternatives is the best way to tackle the problem of glass-related injuries.”

The BBPA has consolidated good practice on combating violence in licensed premises into a guide to risk assessment available on our website at [www.beerandpub.com](http://www.beerandpub.com) .

### **Minimum Pricing**

The licensing authority should not seek to encourage licensees to breach competition law by advocating a minimum price for alcoholic drinks. Any agreement of a minimum price would be a clear breach of competition law which would leave operators open to prosecution and a financial penalty of 10% of turnover. Any condition of this nature would clearly be unlawful.

There have been examples of local authorities/police attempting to use ‘voluntary’ agreements and the Mandatory Code on Alcohol sales to justify a minimum price in a specific area. This is illegal as stated above.

### **Mandatory Code on Alcohol Sales**

The conditions relating to promotions, direct dispense into the mouth and tap water were introduced in April 2010. Conditions relating to age verification policies and smaller measures of alcohol came into force on 1<sup>st</sup> October 2010. If Mandatory Conditions are referenced in the policy, it should also make reference to the Home Office guidance available to download at [www.beerandpub.com](http://www.beerandpub.com)

## **Smoking**

Where customers are outside the premises because they are smoking, there should not be an automatic assumption that this will lead to unacceptable noise nuisance. If it does, then interested parties and responsible authorities are legitimately entitled to raise the issue as they would for any other cause of noise nuisance. In the event that customers outside a licensed premises give rise to noise nuisance and representations are made to the licensing authority on these grounds, then the matter can be dealt with via the processes contained in the Licensing Act 2003. Therefore, any conditions on a licence should be evidence based and relate to noise nuisance and not smoking. Smoking itself is not, of course, a licensable activity.

## **Risk Assessments**

The Association is very much in favour of the use of risk assessments, but the provision of a risk assessment to support an application is not a requirement under the Licensing Act 2003, therefore the licensing authority has no powers to demand to be shown risk assessments. We believe that this reference should either be removed or amended to as to be a recommended practice rather than a requirement. During the recent World Cup, some Local Authorities and police issued inappropriate risk assessments for pubs to sign, and assessments such as these should not be required by the licensing policy.

## **Cumulative Impact Policies**

The policy should make it clear that applications within the cumulative impact policy area will be considered on their own merits, and determined by the Licensing Committee in the event of relevant representations being received. Where there are no relevant representations, the application must still be granted.

## **Designated Premises Supervisors**

If the policy contains the expectation that the DPS will spend a significant amount of time on the premises, or should be on the premises at all times, this should be deleted. There is no legal obligation for the DPS to be on the premises at all times, but they do, of course, remain responsible for the premises in their absence.

There is no mechanism in the Licensing Act for licensing authorities to:

- insist that the DPS be on the premises at all times
- to make a fit and proper judgement on individuals nominated as the DPS
- insist on experience, training or qualifications in addition to the personal licence qualification
- insist on more than one personal licence holder for the premises.

The law simply requires a DPS to be nominated for licensed premises where the sale of alcohol is to take place. The DPS must hold a personal licence. We welcome the clarification in the revised Government Guidance to the Licensing Act on this issue.

The DCMS guidance also outlines good practice for the authorisation of the sale of alcohol. Written authorisation may be appropriate for some premises, but not all, and is not a legal requirement. Ultimately, it is for the DPS to decide how to manage this issue. There is also no legal requirement for daily authorisation of the sale of alcohol, which would, in our view, be unenforceable and impose an unnecessary burden on operators.

We trust that you will find these comments helpful and look forward to any response you may have. We would also appreciate being listed as a consultee in any further licensing related consultations.

**Richard Matthews,  
Regional Secretary,  
British Beer and Pub Association Midland Counties**

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