

Dear Alcohol Strategy Team,

This is the response of the British Hospitality Association to the alcohol strategy consultation issued by the Home Office on 28 November 2012.

The British Hospitality Association (BHA) is the national association representing hotels, restaurants and catering businesses. Our members operate some 40,000 establishments across the United Kingdom, employing over 500,000 people. The overwhelming majority of these hotels and restaurants will have alcohol licences.

We are not responding to the sections of the consultation dealing with minimum pricing, which our members do not believe will impact on their businesses, or on multi-buy promotions in the off-trade, which will not affect our members.

We turn now to the other elements of the consultation:

MANDATORY LICENSING CONDITIONS (QUESTIONS 9 TO 12):

Taking each of the mandatory conditions in turn:

Irresponsible Promotions: When the mandatory conditions were originally under discussion, we expressed concern at the implications for such activities as dinner dances where, in the words of the resulting regulations, there would be “provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic” and were therefore pleased that the request for an exemption for table meals was agreed, applying to “any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act.”

Since the introduction of this condition, we have not been made aware by any member of difficulties being encountered. We would not therefore suggest that any change to this mandatory condition is necessary. Others may have a view on whether it has had any impact in other sectors in relation to any of the licensing objectives.

Dispensing Alcohol Directly into the Mouth of Another: Our understanding was that this was a very limited promotional practice and its inclusion as an apparently serious condition on all licences does nothing more than bring the law into disrepute.

Tap Water on Request: It was inevitable that this would be commercially controversial, given that sales of bottled water are a source of revenue to many operators. Hospitality operators should by now be aware of the obligation to serve tap water on request, but some may not be. However, we have not had any queries from members since the condition came into force.

Age Verification Policy: We would suggest that licensees and premises owners are now well aware of the rules on serving under 18s. It is arguable that the drafters of the mandatory condition were not because, as we pointed out at the time, the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 fails to take account of section 150(4) of the 2003 Act which disapplies the prohibition on individuals under 18s consuming alcohol or servers supplying them with alcohol where “the individual is aged 16 or 17, the alcohol is beer, wine and cider, its consumption is at a table meal on relevant premises, and the individual is accompanied at the meal by an individual aged 18 or over.”

The 2010 Order states: “The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.” We would propose that the Order be amended so that, in relation to consumption covered by section 150(4), the applicable age is under 16, rather than under 18.

Small Measures: We expressed concern at the time that very few customers wanted 125 ml servings of wine. In practice, in order to comply, premises have bought glasses which are rarely used, but the cost has been carried. A more fundamental point is the requirement that customers be made aware of the availability of these small measures. This has meant (and continues to mean, as new wines are introduced onto the menu) having to provide additional pricing information. We would propose removing the ‘aware of the availability’ requirement.

Overall, the mandatory conditions do not seem to have made much impact in promoting the licensing objectives and it was always felt by the industry that they were more about government being seen to act than about making any significant advance. We have, above, suggested two amendments: on age verification, to reword the condition to take proper note of section 150(4) of the 2003 Act, and, on small measures, to remove the ‘aware of the availability’ requirement.

HEALTH AS A LICENSING OBJECTIVE (QUESTIONS 13 TO 15):

Our concern about Cumulative Impact Policies (CIP) in relation to health is that an alcohol-related health problem in an area which relates to the local residents will, by definition, be unaffected by the number of local hotels serving guests, since hotel guests generally come from outside the area. The same will largely apply to restaurants, where customers will often be from outside the area. There will also be towns and cities, such as Central London, where a substantial proportion, even a significant majority, of those drinking in pubs, bars and other licensed premises will not be residents. Therefore, we do not agree with the proposal that licensing authorities should be able to take evidence of alcohol-related health harm in their area into account in deciding whether to introduce a CIP and the extent of that CIP.

ANCILLARY SALES (QUESTIONS 16 TO 21):

We were pleased to see that this element of the Elton Report has at last seen the light of day. One of the less reported implications of the implementation of the 2003 Act was the decision by a number of small hotels/ B&Bs not to apply for Premises Licences because the costs of the initial application and of annual renewals made it uneconomic to be licensed. These premises might have been selling a few bottles of wine or bottles of beer a week to resident guests under the 1964 Part IV legislation.

Question 16: We think on balance that any new provisions on “ancillary sellers” should be limited to specified sectors. In the case of hotels/ guest houses, this might be done by repeating the wording used for Part IV residential licences, i.e.:

“premises bona fide used, or intended to be used, for the purpose of habitually providing for reward board and lodging, including breakfast and one other at least of the customary main meals; and ... subject to the condition that intoxicating liquor shall not be sold or supplied on the premises otherwise than to persons residing there or their private friends bona fide entertained by them at their own expense, and for consumption by such a person or his private friend so entertained by him either on the premises or with a meal supplied at but to be consumed off the premises.”

Question 17: 'Yes' to accommodation providers, as proposed above. We do not have a view on the other types of business listed in the question.

Question 18: No.

Question 19: We do not favour the second option based on proportions of sales or the total amount of alcohol supplied, essentially because of the verification problems which would arise.

Question 20: On balance, we would remove the need for a Personal Licence Holder, rather than the need for a Premises Licence, but there would need to be a simplified Premises Licence and application procedure. It would be pointless if there was still a requirement for a Designated Premises Supervisor who was also a Personal Licence Holder.

Question 21: No, removing the need for a Personal Licence Holder for ancillary sales would not adversely affect the licensing objectives.

COMMUNITY EVENTS AND TENS:

No comment.

LATE NIGHT REFRESHMENT- LOCAL DISCRETION (QUESTION 27):

We agree that local authorities should have discretion to decide that Late Night Refreshment Houses in part or all of their area should be exempt from authorisation. We would also support exemption on the basis of types of premises, though we are not clear what differentiation might apply, given that hotels and clubs are already exempt.

LATE NIGHT REFRESHMENT- MOTORWAY SERVICE AREAS (QUESTION 28):

We agree that Motorway Service Areas should receive a nationally prescribed exemption from the Late Night Refreshment regulations: they are in any event required to provide such refreshments under their operating agreements with government.

LATE NIGHT REFRESHMENT- OTHER TYPES OF PREMISES (QUESTION 29):

We have no suggestions to make.

REDUCING BURDENS (QUESTIONS 30 TO 32):

Removal of the requirement to advertise licensing applications in newspapers: We are pleased to support this proposal. It was one of the recommendations of the Tourism Regulation Taskforce, which reported to DCMS and which published its report in January 2012. We understand from information provided to the Home Office Working Groups that few, if any, representations to applications for premises licences come as a direct result of advertisements in newspapers, which would support the request to remove this burden (which at times can cost in excess of £2,000 per notice).

Remove the centrally imposed prohibition on the sale of alcohol at MSAs for the on and off-trade (option 2 in the Impact Assessment): We are pleased to support this proposal, which we made originally some years ago.

Remove or simplify requirements to renew personal licences under the 2003 Act: As the Impact Assessment notes, a significant proportion of the estimated 500,000 Personal Licences in force will come up for renewal in 2015-16. This will impose a considerable cost and bureaucratic burden without appreciably promoting the licensing objectives. One implication of removing the ten year rule would be that holders of pre-2005 Justices' Licences will still not have obtained an accredited qualification related to knowledge of the 2003 Act. However, they will have had ten years' experience of the Act and we think that this fact (and the number of Personal Licences held by those who have accredited qualifications obtained post 2005) should provide sufficient reassurance about knowledge of the legislation. We would therefore support removal of the ten year rule.

OTHER CHANGES TO THE 2003 ACT (QUESTION 33):

There is a case for a common annual date for payment of licensing renewal fees. This would be of particular help to multi-site businesses, where the payment dates could currently be spread across the year. This would require new licensing approvals to be subject to pro-rata fees up to the next common national renewal date.

IMPACT ASSESSMENTS (QUESTIONS 34 AND 35):

No comments.

I confirm that we should be pleased to have further discussions with the Home Office on any of these proposals and that we have no objection to this response being made publicly available.

Yours faithfully,