REBALANCING THE LICENSING ACT

RESPONSE BY THE NATIONAL OUTDOOR EVENT ASSOCIATION (NOEA)

Introduction

The National Outdoor Event Association has some 400 members who are either:-

1. Organisers of Outdoor Events (including Local Authorities)
2. Landowners who allow the use of their land for outdoor events or
3. Suppliers of all the goods and services which are necessary for outdoor events to happen.

In the broadest terms, outdoor events can be categorised as those that are music events (e.g. Glastonbury) and those that are mainly concerned with other non-licensable activities, such as County or Game Shows, Air and Balloon Festivals, Regattas, Food Fairs, Street Markets and the like. Some such events are commercially run and are "for profit," others are "community events." However, in the majority of such cases the only licensable activity is the sale of alcohol, either in a "Beer tent" or from a stall selling British wine, cider or even beer!

Some events "cross the boundary" in that they may have a significant music ingredient but are nonetheless nowhere close to falling into the category of an event such as Glastonbury. A typical example of such an event would be a small town carnival.

The principal concern of NOEA is that the entire tenor of the consultation paper appears to be targeted at the impact that pubs and clubs have on town centres. It completely overlooks and indeed ignores the effect that implementation of the proposals would have on the Outdoor Event Industry.

NOEA's responses to the specific issues raised are as follows but those that are of the greatest concern relate to Temporary Event Notices (questions 19 and 20).

Question 1: What do you think the impact would be of making relevant licensing authorities responsible authorities?

This proposal would not have any special impact on NOEA members but we comment that the under the present system, licensing officers employed by local authorities are usually also responsible (with others) for ensuring compliance with licence conditions and the like. Licensing authorities can and do instigate prosecutions for breaches but these are adjudicated on independently by the Courts. Allowing licensing authorities to become responsible authorities would mean that they could also instigate reviews and thereby become both prosecutor and judge in their own cause. This would be invidious and would be contrary to the right to a fair trial by an impartial tribunal.

Question 2: What impact do you think reducing the burden of proof on licensing authorities will have?

The Licensing Act was intended to be de-regulatory but increasingly, responsible authorities are demanding more and more conditions and restrictions on licences. There is a tendency not to treat each case on its own merits but to impose a series of standard conditions on licences, not because there is any evidential basis that establishes there is a genuine need for such conditions in individual cases but because there is a growing culture of attempting to cater for every eventuality – "health and safety gone mad."

Adopting this proposal would undoubtedly lead to vastly more conditions attaching to licences, increased regulation and cost to all concerned. Given that if anything does

go wrong, there is a power to call in a licence for review, reducing the burden of proof is in our view unnecessary.

Specifically with regard to outdoor events, organisers regularly face opposition from those who adopt a "not in my back yard" approach. Adopting the proposal would make it far easier for such people to successfully prevent outdoor events from taking place in their neighbourhood, to the detriment of the wider society.

Question 3: Do you have any suggestions about how the licence application process could be amended to ensure that applicants consider the impact of their licence application on the local area?

The vast majority of applicants for licences for outdoor events already do consider the impact of their application on the local area and if they fail to do so, it is inevitable that one or more of the responsible authorities will make representations. In addition, quite apart from the licensing process, outdoor events are subject to scrutiny by joint agency groups. How precisely this happens varies from one district to another and the group may be known by a variety of titles for example Safety Advisory Group, Event Planning Group, Joint Agency Group etc. However, these groupings invariably involve bodies who are not responsible authorities but have an interest in the event such as the ambulance service and highway authority. Many licences for outdoor events contain a condition that the recommendations of the advisory group are implemented.

The proposal is in our view unnecessary and would simply lead to duplication, additional (unnecessary) regulation and expense.

Question 4: What would the effect be of requiring Licensing authorities to accept all representations, notices and recommendations from the Police unless there is clear evidence that these are not relevant?

In a recent case, a local authority as landowner refused permission for a beer tent at a craft and food festival unless an application was made for a premises licence, this despite the fact that every year since the Licensing Act had been in force, the tent had operated successfully under the auspices of a Temporary Event Notice.

An application was made for a premises licence to which the police objected. They sought to argue that a 6 foot high Herras fence should be erected to surround the area of the tent "in case the tent was stormed by a gang of youths" and "to prevent those inside the area passing alcohol to children who might be outside" this despite the fact that children were to be permitted within the area.

This is not untypical of the excessive lengths to which some responsible authorities go to try and regulate and legislate against all eventualities. In this case, the Licensing Authority sensibly concluded that such a condition was not necessary and granted a licence without the condition.

Had the proposal been enacted, it could not have been said that what the police were proposing was "clearly not relevant" and the Licensing Authority would have been compelled to impose the condition.

It is also the case that the attitude that individual police officers have towards outdoor events varies enormously, particularly when it comes to charging for police time. Even within the same force, the approach adopted by the police varies widely.

Some community and charity events have been threatened with review of or objection to the grant of their licences unless they agree to pay what might be regarded as excessive police charges. The present system affords an opportunity for Licensing authorities to consider what is necessary, reasonable and proportionate. Adopting this proposal would be tantamount to handing the licensing function to the police. We have no doubt that some officers and/or forces would take the opportunity to use the Licensing system as a revenue generator threatening or forcing to an end small scale, harmless community events in particular.

Question 5: How can licensing authorities encourage greater community and local resident involvement?

This question pre-supposes that the involvement of the community and local residents is in some way lacking at present. In our view, it is not. Many venues used for outdoor events have permanent licences granted in 2005 or 2006. Increasingly, local residents are becoming aware of their right to seek a review of such licences if they have cause for concern and there is evidence to suggest that more and more exercise that right every year.

Many Local Authorities take it upon themselves to go further than is required in the Licensing Act in terms of advising residents of forthcoming licensing applications – the recent case involving the Albert Hall does however illustrate the potential pitfalls of such an approach. Other Local Authorities routinely notify Parish, Town and Community Councils of licensing applications in the same way as they consult on planning applications.

It is our view that the present system of site and newspaper notices suffices to more than adequately involve local people in the decision process.

Question 6: What would be the effect of removing the requirement for interested parties to show vicinity when making relevant representations?

Licensing Authorities have a wide discretion to determine whether someone making a representation is truly an "interested party" and this is particularly the case when it comes to outdoor events, some of which might affect people over a wide area as it is.

We do not understand why it is either necessary or desirable to extend the scope of those who might wish to object to the grant of a licence or seek a review of an existing licence. If those living on the doorstep don't have an issue, why might the Licensing Authority and the Applicant/holder of a licence be forced to the expense of a hearing at the behest of someone whose actual interests are unaffected but who may in reality be seeking to object on moral or religious grounds?

Question 7: Are there any unintended consequences of designating health bodies as a responsible authority? and

Question 8: What are the implications in including the prevention of health harm as a licensing objective?

Others have already observed that these two questions are related.

We know of one example where the police took it upon themselves to effectively object to a licence application on behalf of the local NHS Trust. The event lasted three or so days and involved extreme sports which carried a higher than normal risk of physical injury – usually broken bones. The licensable activities were to all intents and purposes incidental – beer tents and music entertainment in the evening when the sporting action had finished but the event would not have been sustainable without these facilities and a licence.

The organisers had arranged their own (private) medical cover but nevertheless, an attempt was made (by the police) to effectively force the organisers to pay for NHS managers in particular to serve within the event command structure.

It appears that the intention is to give health authorities some input into the licensing process but on the basis of looking at the potential harm to health from excessive drinking. The unintended consequence would be to risk imposing on the event industry a requirement to pay for NHS managers, staff and ambulances when there is in reality no need for the same. This is because the highly specialised private medical providers, as well as the St John's Ambulance Service and other volunteer organisations, have vast experience in handling outdoor events and have proven themselves over the years to be well up to the task of dealing with all manner of health issues that arise at events, be they large or small.

Question 9: What would be the effect of making community groups interested parties under the Licensing Act, and which groups should be included?

Please refer to our response to question 5. The reality is that where it is appropriate, community groups are already consulted, particularly with regard to events and to include them as "interested parties" would further complicate the licensing process, usually at the expense of the applicants for licences and the Licensing Authority.

Question 10: What would be the effect of making the default position for the magistrates' court to remit the appeal back to the licensing authority to hear?

Whilst there is unlikely to be any special effect on the outdoor event industry, our view is that in practical terms, this would remove any effective right of appeal and lead to a circular process of a determination by the Council, an appeal, remittance back to the Council, a further appeal etc. The original provision was there in effect to

allow Licensing Authorities to deal with applications for conversion/variation out of time, when the Act first came into force. To erode the right of appeal would again conflict with Human Rights legislation.

Question 11: What would be the effect of amending the legislation so that the decision of the licensing authority applies as soon as the premise licence holder receives the determination?

NOEA has no specific response to this other than to observe (as have others) that it erodes the right to a hearing before a fair and impartial tribunal. However, the question itself demonstrates again that the focus of the consultation is on the late night economy of inner cities and ignores other stakeholders such as those involved with outdoor events.

Question 12: What is the likely impact of extending the flexibility of Early Morning Restriction Orders to reflect the needs of the local areas?

None as far as the outdoor event industry is concerned.

Question 13: Do you have any concerns about repealing Alcohol Disorder Zones again?

Given that none exist and that none are likely to affect outdoor events, No!

Question 14: What are the consequences of removing the evidential requirement of Cumulative Impact Policies?

Members of NOEA are unlikely to be affected by Cumulative Impact Policies and does not therefore express a view.

Question 15: Do you agree that the late night levy should be limited to recovery of these additional costs? Do you think that local authorities should be given some discretion as to how much they can charge under the levy?

and

Question 16: Do you think it would be advantageous to offer such reductions for the late night levy?

and

Question 17: Do you agree that the additional costs of these services should be funded from the late night levy?

Question 18: Do you believe that giving more autonomy to local authorities regarding closing times would be advantageous to cutting alcohol related crime?

None of these questions have any direct bearing on the outdoor event industry but perhaps again demonstrate the consultation's predilection towards the late night economy of town centres.

Whether a significant number of outdoor events might be affected by these proposals rather depends on the hour at which late night levies might begin to apply. That said, the experience of the outdoor event industry, particularly with regard to police charging, is not an entirely happy one and if the proposal of a late night levy was to be implemented, it would be desirable to specify the basis upon which "additional costs" were calculated.

Question 19: What would be the consequences of amending the legislation relating to TEN's so that:

a. all the Responsible Authorities can object to a TEN on all of the Licensing Objectives?

b. the Police (and other Responsible Authorities) have five working days to object to a TEN?

c. the notification period for a TEN is increased and is longer for those venues already holding a Premises Licence?

d. Licensing Authorities have the discretion to apply existing licensing conditions applied to a TEN?

Question 20: What would be the consequences of:

a. reducing the number of TENs that can be applied for by a Personal Licence Holder to 12 per year?

b. restricting the number of TENs that can be applied for in the same vicinity (eg a field)?

This is what NOEA is most concerned about.

It is our view that this series of proposals and questions have no regard to the event industry and betray a lack of understanding of the way in which the Licensing Act used TEN's to replace a multiplicity of temporary permissions, including the special order of exemption, the occasional permission and the occasional licence.

It may assist if we were to give some examples of the way in which TEN's are used at outdoor events.

For this purpose, one has to disregard large scale music festivals such as Glastonbury, Reading and WOMAD to name but three and to consider other outdoor events.

Many local authorities have followed the Secretary of State's Guidance and granted (themselves) licences covering public spaces including carnival fields, town centres and the like. However and for very cogent reasons, these licences do not normally

include the sale of alcohol. In short, local authorities recognise that the most likely cause of any problem is the sale of alcohol and they seek to ensure that individual purveyors have their own authority to sell and take responsibility if anything goes wrong (see further below).

An almost invariable feature of an outdoor event, be it large or small is the "beer tent." This is normally some form of mobile bar – usually (but not invariably) a trailer unit or a marquee. At many events, there might be more than one such bar. At events such as Farmer's markets, County shows and the like, there will inevitably be stallholders and these will very frequently include cider sellers and individuals selling local wines, be that home made and sold for charity or commercially, to (for example) promote a local vineyard.

Those who have mobile bars or seek to sell locally made produce make a living from travelling from one event to another, be that a balloon festival, a pedal car grand prix, a game show, a carnival, a Farmers' or Christmas market or any other of the myriad of events upon which the tourism industry depends.

At some events that might be regarded as modest in size, (for example a local agricultural show) there might well be a members bar, a beer tent, a hospitality bar and half a dozen or so "retail" outlets selling alcohol. At larger events, particularly those that include campsites, there might be dozens of such outlets and others that require a licence including burger and kebab vans providing late night refreshment, as well as those selling such things as donuts, toast or even just a mug of tea – if it's after 11 p.m.

More often than not, almost to the point of inevitability, these "outlets" are small businesses which operate independently and it is not surprising that in licensing terms, event organisers demand that each takes responsibility for their own operation.

The system of TEN's has worked entirely successfully to allow "beer tents" and the hot food vans to operate at outdoor events of all types and there is in our view absolutely no empirical evidence of abuse – to the contrary, the use of TEN's clearly identifies the operator responsible for the licensable activity and any breach.

It might be argued that if the proposals were implemented in full, there would be nothing to prevent applications for Premises Licences for individual outlets. In one sense that is true. However, the reality is that the cost and "red tape" of such applications would be such that we cannot imagine that an organisation such as The Round Table, operating a beer tent to raise money for local charities at a carnival or a small cider maker wanting a stall at a Farmer's Market or at a county show would contemplate making an application.

Taken in turn, our view on the effect of the proposals is as follows:-

a. all the Responsible Authorities can object to a TEN on all of the Licensing Objectives?

In the context of pubs and bars, one can understand this. In the context of a stall selling British wine at a country fair, this is entirely disproportionate. The solution might be to vest some discretion in the Licensing Authority (or more precisely, the Licensing Officer him/herself) to decide whether it is necessary to consult AT ALL – in much the same way as the minor variation application procedure appears to be successfully working at present?

b. the Police (and other Responsible Authorities) have five working days to object to a TEN? And

c. the notification period for a TEN is increased and is longer for those venues already holding a Premises Licence?

Subject to the observation regarding (a) above, it does not seem unreasonable that the police should have 5 working days to object but we do not understand why, if there is no objection, it cannot be assumed that the Notice is effective – after all, all the Licensing Authority has to do is to acknowledge receipt – there is no paperwork to issue. Equally, if the police in particular indicate that they have no issue with a TEN, why cannot the Licensing Authority agree the Notice with immediate effect?

Over the last 5 years, NOEA has come across countless examples of TEN's being given late – often only by a day or two because lay people have not realised that the reference to 10 days means 10 working days and does not include a Bank Holiday nor (according to the Guidance) the day of the event nor the day of the giving of the notice.

This has led to some ridiculous scenarios. As an example, last year, the founder of a well regarded and large annual outdoor event passed away. His family, realising that there was likely to be a substantial turnout at the funeral, hired a marquee on the (unlicensed) village green but wanted to have a pay bar as they could not afford the cost of providing an estimated 450 people with free drinks and did not want to encourage excessive drinking by the minority of people who would no doubt have taken advantage of the situation. They submitted a TEN but were told (correctly) that it was a day out of time. The police had no issue with a pay bar but the licensing officers had no discretion but to refuse to accept the TEN and threatened prosecution. Postponing the funeral was not an option.

It is NOEA's view that Licensing Authorities should be granted far wider discretion to accept TEN's where common sense dictates that this is appropriate and there is unlikely to be any adverse effect on the licensing objectives.

d. Licensing Authorities have the discretion to apply existing licensing conditions applied to a TEN?

Again one understands why this might apply to a city centre pub or nightclub. In the context of outdoor events, this is inappropriate. As indicated above, many Local Authorities have licensed public areas for licensable activities, but usually not the sale of alcohol. Conditions attached to such licences may well have no relevance whatsoever to (say) a caravan at a rock festival selling tea and toast at 1 a.m..

We take the view that "existing licensing conditions" should only apply to relevant licensable activities so that, for example, the licence does not include the sale of alcohol, then none of the conditions should be "imported" into the TEN.

In any event, we also take the view that Licensing Authorities should only be able to apply conditions where there has been a valid representation

a. reducing the number of TENs that can be applied for by a Personal Licence Holder to 12 per year?

This would "kill off" those who provide the outdoor event industry with mobile bars and makers of British wines and ciders and who ply their wares at different fairs, shows or markets from one week to the next.

The consultation seems to ignore the fact that the current limit of 50 applies to not just individual Personal Licence Holders but associated persons and the like.

As things stand, someone who has a mobile bar or who sells (for example) elderberry wine can attend on average, a show or event a week. This proposal would limit this to once a month.

It is in our view unsustainable.

b. restricting the number of TENs that can be applied for in the same vicinity (e.g. a field)?

This proposal seems to be based on the supposition that TEN's are being abused on the basis that the need for a Premises Licence can be avoided by giving a series of Event Notices for adjoining pitches so as to circumvent the "requirement" that a TEN should be limited to 500 people.

NOEA's position is that there is a world of difference between a music stage and a beer tent.

If an event involves a music stage then giving a whole series of TEN's, each purporting to cover a section of the audience that has less than 500 people present would not in our view be legal – only a Premises Licence will suffice.

Providing a series of beer tents and stalls selling alcohol at an event on the other hand, is another matter entirely

To take an extreme but nevertheless cogent example:

The Bournemouth Air Festival took place recently. Those watching could have viewed the spectacle from anywhere along at least 20 miles of the south coast.

Under this proposal, the "event" would encompass an area of somewhere in the region of 10 square miles and would permit only one TEN – i.e. only one "Beer tent" or only one "Hospitality Marquee".

There is no empirical evidence of abuse of the present system in so far as it relates to the event industry. Implementation of this proposal would serve no useful purpose and would severely restrict the enjoyment of those thousands of people who attend events of this nature.

Question 21: Do you think 168 hours (7 days) is a suitable minimum for the period of voluntary closure that can be flexibly applied by police for persistently selling?

Question 22 – What do you think would be an appropriate upper limit for the period of voluntary closure that can be flexibly applied by police for persistent underage selling?

Question 23: What do you think the impact will be of making licence reviews automatic for those found to be persistently selling alcohol to children?

In practical terms, these questions have no bearing on the outdoor event industry.

Question 24: For the purpose of this Consultation we are interested in expert views on the following:

a. simple and effective ways of justifying the "cost" of alcohol?
b. effective ways to enforce a ban on below cost selling and their costs?
c. the feasibility of using the Mandatory Code of Practice to set a licence condition that no sale can be below cost without defining cost?

Again, this series of questions has no relevance to the interests of NOEA and we make no comment.

Question 25: Would you be in favour of increasing licensed fees based on full cost recovery, and what impact would this have?

The problem here is in defining what "full cost recovery" means in practice. If it were to mean the administrative cost of processing a licence application and actually issuing the relevant pieces of paper, NOEA would have no difficulty with this. However, the implication is that "full cost recovery" might mean whatever cost the Licensing Authority might attach to "enforcement." Some premises operate without any issue arising for years on end. Others give rise to complaints day in, day out. It would be unfair to "punish" responsible operators with the cost of (for example) dealing with reviews of licences held by irresponsible operators. Some licence applications attract no representations – others, rightly or wrongly might attract a hundred or more. Those who object to licences (or seek their review) currently do so without being at risk of having to pay the costs incurred not only by the applicant for or holder of a licence but also the costs of the Licensing Authority which has to arrange hearings if the parties cannot reach agreement – rarely the case if the "objector" is a local resident.

Question 26: Are you in favour of automatically revoking the premise licence if annual fees have not been paid?

In our view, no-one could argue that this was unreasonable but there should be some provision for "late" re-instatement of a licence if the non-payment was as a result of a mistake.

Question 27 - Have the first set of mandatory conditions that came into force in April 2010 had a positive impact on preventing alcohol-related crime?

Once again, the question is directed at the "late night economy" and has no relevance to industries such as those represented by NOEA. For example, the "requirement" to provide free tap water in the context of outdoor events is nonsensical.

Question 28: Would you support the repeal of any or all of the mandatory conditions (this includes those already in force and those remaining two conditions coming into force in October 2010)?

Yes. They serve no useful purpose and impose yet another unnecessary regulatory and financial burden on those involve in the Outdoor Event Industry

Question 29: Would you support measures to deregulate the Licensing Act, and what sections of the Act in your view could be removed or simplified?

The entire problem with the Licensing Act, the Regulations made pursuant to the same, the Guidance and indeed the present consultation is that they are all centred around the issue of effect of the "late night economy" on our town and city centres.

It may well be that a sledgehammer is required to crack that nut but what this consultation ignores is the knock-on effect on the event industry - particularly the outdoor event industry which has a vital role in society, the economy and tourism.

NOEA asks that all those involved in this consultation asks themselves a few simple questions:-

What would this do to the village fete, the town carnival, the farmers' market and air or balloon festivals?

We urge the Government to consider not only town centres blighted by late night revellers but the millions of people every year who take innocent pleasure in attending outdoor events. The industry should be supported and not further threatened by proposals such as some of these.

8th September 2010