

NOISE ACT 1996
Noise from Licensed Premises

- The Government has published draft guidance to local authorities on new powers to tackle noisy premises. The detail of the new regime was originally set out in the Clean Neighbourhoods and Environment Act 2005 and the consultation focuses solely on how the powers will be applied.
- The new regime will take effect from **1 October 2006** and is principally designed to take immediate action against noise outbreaks. It will be in addition to existing powers to tackle statutory noise nuisance set out in the Environment Act as well as the ability to close disorderly premises contained in both the Licensing Act and the Anti-Social Behaviour Act.

The Law

- The new regime can be used to tackle noise emitted from licensed premises, premises operating under a Temporary Event Notice and residential dwellings between 11pm and 7am.
- The procedure is initiated by a complaint from a local resident. It allows an individual officer to issue a warning notice to noisy premises as a means of deterrent and to take legal action against identified individuals should this warning be ignored.
- The local authority is free to determine its own procedures for the investigation of the complaint and it is down to the individual officer concerned to decide whether the noise is excessive and whether the new powers should be deployed to deal with it. The steps to be gone through are as follows:
 - receipt of complaint from individual resident
 - investigation of whether noise is being emitted/excessive – is it likely to be clearly audible to a person with normal hearing from inside a habitable room with the window and doors closed
 - warning notice served on premises – the notice will apply until 7am the following morning
 - if this is ignored, actual noise levels must be measured from within the complainant's home and if they breach a prescribed level legal action may then be taken against the responsible person at the premises – either the premise licence holder or DPS if present or the premises user in the case of a TEN, or other identified individual. The offence can be dealt with by means of a fixed penalty notice and payment of **£500** or criminal proceedings and a maximum penalty of **£5000**.
- These powers can be deployed immediately and at the discretion of the investigating officer. The local authority may retain sums from fixed penalty notices and can also seize noise making equipment.

The Consultation

- The consultation is strictly limited to the noise levels which trigger the use of these new powers. The offence and penalty will only come into play if noise exceeds an objective measured sound level value from within the complainant's home.
- The Government's preferred option is to have an absolute sound level of 35 dB. This level must be maintained continuously and recorded for a period of at least 5 minutes. Whilst the draft guidance reminds local authorities that they must ensure that the noise they are

measuring comes from the offending premises, there is no doubt that background noise will affect the sound levels in inner city areas.

- In contrast, when dealing with noise from dwellings, the underlying level of noise must also be recorded and the noise level from the offending dwelling may therefore be higher than the 35 dB limit applied to pubs.
- The consultation asks whether the Government's preferred option is workable but also proposes applying the same rules to licensed premises as currently apply to dwellings. It also suggests that the decibel limit could be raised to 37dB.

Implications for Licensed Retailers

- The consultation exercise is technical and there is limited scope for us to influence the way in which this new power will be applied. There is little to choose between any of the proposed sound level values. It may be possible to tighten some areas of the guidance – for example to require a sample sound recording to be made before a formal warning is issued.
- It is arguably more important to focus Association activity on information and advice to members' to ensure that they are aware of this new power and its implications.
- Previously to make use of these powers, local authorities have had to maintain a 24/7 noise service. This will now no longer be the case, meaning that suburban and rural outlets are vulnerable to complaints from residents. Inspection and enforcement activity surrounding noise is likely to increase.
- Operators need to ensure that staff are aware of these new powers and respond quickly to any verbal or written warnings about noise. The new power allows action to be taken immediately with on the spot fines being retained by local authorities. It is therefore an attractive option.
- The new regime will have implications for personal and premises licences. The offence is committed by an individual with responsibility for the outlet rather than the company. However, complaints and investigations – even if they do not lead to a formal warning or fine – will be recorded and could be used as evidence in review proceedings.

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Ealing, August 2006