



Home Office

**OCTOBER 2010**

**AMENDED GUIDANCE ISSUED  
UNDER SECTION 182 OF  
THE LICENSING ACT 2003**



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## **OCTOBER 2010**

Presented to Parliament pursuant to Section 182 of the Licensing Act 2003

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# Guidance issued under section 182 of the Licensing Act 2003

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Issued by **The Home Secretary**

These Guidance Amendments come into force immediately upon laying.

This document represents the Guidance and is issued by the Home Secretary. The Guidance has been published on the Home Office website and on UK Online. Any local authority or other organisation is free to publish the Guidance on its own website or provide an appropriate link to either of these websites.

The Guidance has been prepared in consultation with other Government Departments, executive agencies and an Advisory Group comprising stakeholder representatives.

It will be kept under constant review in consultation with key stakeholder groups and will be amended or supplemented as necessary at any time.



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# 1. Introduction

## THE LICENSING ACT 2003

- 1.1 The 2003 Act, the associated explanatory notes and any statutory instruments made under its provisions may be viewed on the OPSI website [www.opsi.gov.uk](http://www.opsi.gov.uk). All statutory instruments may also be viewed on the DCMS website [www.culture.gov.uk](http://www.culture.gov.uk). The main statutory instruments are:
- The Licensing Act 2003 (Transitional provisions) Order 2005
  - The Licensing Act 2003 (Personal licences) Regulations 2005
  - The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005
  - The Licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005
  - The Licensing Act 2003 (Hearings) Regulations 2005
  - The Licensing Act 2003 (Hearings) (Amendment) Regulations 2005
  - The Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005
  - The Licensing Act 2003 (Transitional conversions fees) Order 2005
  - The Licensing Act 2003 (Fees) (Amendment) Regulations 2005

## LICENSING OBJECTIVES AND AIMS

- 1.2 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken:

### The licensing objectives

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

- 1.3 Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.
- 1.4 But the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:
- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment;
  - the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers' expectations;
  - greater choice for consumers, including tourists, about where, when and how they spend their leisure time;
  - the encouragement of more family friendly premises where younger children can be free to go with the family;
  - the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities; and
  - the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.

## THE GUIDANCE.

- 1.5 Section 182 of the Licensing Act 2003 (“the 2003 Act”) provides that the Secretary of State must issue and, from time to time, may revise guidance to licensing authorities on the discharge of their functions under the 2003 Act.

### Purpose

- 1.6 The Guidance is provided for licensing authorities carrying out their functions. It also provides information for magistrates hearing appeals against licensing decisions and has been made widely available for the benefit of operators of licensed premises, their legal advisers and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality.
- 1.7 The police remain key enforcers of licensing law. The Guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. However, the Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

### Legal status

**Section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent.**

**However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons.**

**Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.**

- 1.8 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation.

## LICENSING POLICIES

- 1.9 Section 5 of the Act requires a licensing authority to prepare and publish a statement of its licensing policy every three years. The policy must be published before the authority carries out any licensing function in relation to applications made under the Act.
- 1.10 However, making a statement is a licensing function and as such the authority must have regard to the Secretary of State's Guidance when making and publishing its policy. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. But once again, it is important that they should be able to give full reasons for departing from their published statement of licensing policy. Where revisions to this Guidance are issued by the Secretary of State, there may be a period of time when the local policy statement is inconsistent with the Guidance, for example, during any consultation by the licensing authority. In these circumstances, the licensing authority should have regard, and give appropriate weight, to the Guidance and its own licensing policy statement.

## LICENSABLE ACTIVITIES

- 1.11 For the purposes of the Act, the following are licensable activities:

### Licensable activities

- The sale by retail of alcohol.
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.
- The provision of regulated entertainment.
- The provision of late night refreshment.

- 1.12 Further explanation of these terms is provided in Chapter 3.

## AUTHORISATIONS

- 1.13 The Act provides for four different types of authorisation, as follows:

### Authorisations

- Personal licences – to sell or supply alcohol and/or authorise the sale/supply.
- Premises Licences – to use a premises for licensable activities.
- Club Premises Certificates – to allow a qualifying club to engage in qualifying club activities as set out in Section 1 of the Act.
- Temporary Event Notices – to carry out licensable activities at a temporary event.

## GENERAL PRINCIPLES

- 1.14 If an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or interested parties, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions.

### Each application on its own merits

- 1.15 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions

should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.

### **Avoiding duplication of other legal requirements**

- 1.16 The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.

### **Hours of opening**

- 1.17 The Government strongly believes that, prior to the introduction of the Licensing Act 2003, fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times; and one of the causes of disorder and disturbance when large numbers of customers were required to leave the premises simultaneously.
- 1.18 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided.

- 1.19 The four licensing objectives should be paramount considerations at all times and licensing authorities should always consider the individual merits of a case.

### **Partnership working**

- 1.20 Licensing functions under the Act are only one means of promoting the delivery of the objectives described. They can make a substantial contribution in relation to licensed premises, but are not the panacea for all community problems.
- 1.21 Licensing authorities should work with all partners to deliver the licensing objectives, including responsible authorities, the licensed trade, local people and businesses, town centre managers, Crime and Disorder Reduction Partnerships, performers and local transport authorities and operators. For example, local businesses and a local authority may develop a Business Improvement District (BID), a partnership arrangement to take forward schemes that are of benefit to the community in that area, subject to the agreement of business rate payers.
- 1.22 The private sector, local residents and community groups in particular have an equally vital role to play in promoting the licensing objectives in partnership with public bodies. The Secretary of State strongly recommends that licensing authorities form licensing liaison groups and forums that bring together all the interested parties on a regular basis to monitor developments and propose possible solutions to any problems that may arise. The Secretary of State also recommends that licensing authorities should hold well publicised open meetings where local people and businesses can give their views on how well they feel the licensing objectives are being met.

## RELATED LEGISLATION AND STRATEGIES

- 1.23 The Licensing Act is part of a wider Government strategy to tackle crime, disorder and anti-social behaviour and reduce alcohol harm. Licensing authorities should develop effective strategies with the police, and the other enforcement agencies as appropriate, for the management of the night-time economy. Central to this would be the enforcement of the law relating to the sales of alcohol to drunk and underage people and drunkenness or disorder on, or in the immediate vicinity of licensed premises. Targeted enforcement of this kind, in line with the recommendations in the 'Hampton' report<sup>1</sup> should have a positive impact on the immediate vicinity of the licensed premises concerned.
- 1.24 Local authorities are also empowered under section 13 of the Criminal Justice and Police Act 2001 to make 'designated public place orders' (DPPOs) to control the consumption of alcohol in a public place outside of licensed premises.
- 1.25 In addition there is nothing to prevent the police, licensing authorities and the hospitality industry reaching agreement about best practice in areas where problems are likely to arise.
- 1.26 Licensing law is not the primary mechanism for the general control of individuals once they are away from a licensed premises and therefore beyond the direct control of individual licensees or certificate holders. However, licensees and certificate holders should take reasonable steps to prevent the occurrence of crime and disorder and public nuisance immediately outside their premises,

for example on the pavement, in a beer garden, or (once the smoking ban comes into force) in a smoking shelter, where and to the extent that these matters are within their control.

- 1.27 In addition, when considering a new premises licence or following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate, such as preventing customers from taking open containers outside the premises or installing CCTV. However, any conditions imposed must not be aspirational and must be within the control of the licensee. For example, a condition may require a premises to adopt a particular dispersal policy, but a licensee cannot force customers to abide by it.

### Crime and Disorder Act 1998

- 1.28 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act.
- 1.29 Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire and rescue authorities to do all they reasonably can to prevent crime and disorder in their area.
- 1.30 The Government believes that licensing authorities should, as a matter of good practice, involve Crime and Disorder Reduction Partnerships (CDRPs) in decision-making in order to ensure that statements of licensing policy include effective strategies that take full account of crime and disorder implications.

<sup>1</sup> 'Reducing administrative burdens: effective inspection and enforcement' by Philip Hampton. March 2003

## Alcohol Harm Reduction Strategy

- 1.31 Licensing authorities should familiarise themselves with the relevant government's alcohol harm reduction strategy. In England this is *Safe. Sensible. Social. The next steps in the National Alcohol Strategy* published in June 2007 and in Wales the Welsh Assembly published *Tackling Substance Misuse in Wales: A Partnership Approach* in September 2000, which is currently being further developed. Licensing authorities should ensure that their licensing policies complement the relevant strategy, and subsequent measures, where these may help to promote one or more of the licensing objectives.

## The Anti-Social Behaviour Act 2003

- 1.32 Licensing authorities need to be aware of new powers that will be available to local authorities under sections 40 and 41 of the Anti Social Behaviour Act 2003. The Act provides that if the noise from any licensed premises is causing a public nuisance, an authorised environmental health officer would have the power to issue a closure order effective for up to 24 hours. Under this provision, it is for the Chief Executive of the local authority to delegate their power to environmental health officers within their authority. If after receiving a closure order the premises remain open, the person responsible may upon summary conviction receive a fine of up to £20,000 or imprisonment for a term not exceeding three months, or both. This complements the police powers under Part 8 of the 2003 Act to close licensed premises for temporary periods.

## Violent Crime Reduction Act 2006

- 1.33 The Violent Crime Reduction Act 2006 received Royal Assent on 8 November 2006. The Act introduces new measures to ensure that police and local communities have the powers they need to tackle guns, knives and alcohol-related violence. Relevant measures include:
- (from 3 May 2007) an amendment to the Licensing Act to introduce a new offence of persistently selling alcohol to children. The offence will be committed if, on three or more different occasions in a period of three consecutive months, alcohol is unlawfully sold to a minor on the same premises
  - new powers for local authorities and the police to designate Alcohol Disorder Zones (ADZs) as a last resort to tackle alcohol related crime and disorder. The designation of an area as an ADZ will empower local authorities to charge licensees for additional enforcement activity affecting all licensed premises within the zone. The earliest date for commencement of ADZs is 1 October 2007. On commencement, relevant guidance and regulations will be placed on the Home Office website ([www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)).
  - an amendment to the Licensing Act which will enable licensing authorities, on the application of a senior police officer in cases of serious crime and disorder, to attach interim conditions to licences pending a full review. The earliest date for commencement of these powers is 1 October 2007.

### **LACORS Practical Guide to Test Purchasing**

- 1.34 Licensing authorities should also familiarise themselves with the LACORS Practical Guide to Test Purchasing insofar as it relates to the test purchasing of alcohol by trading standards officers. LACORS continues to fulfil an important co-ordinating role in advising and informing licensing authorities about the requirements of the 2003 Act. LACORS' website may be viewed at [www.lacors.gov.uk](http://www.lacors.gov.uk).
- 1.35 Details of other relevant industry initiatives can be found at Annex E.

### **The Health Act 2006 – workplace smoking ban**

- 1.36 The ban on smoking in all enclosed workplaces and public spaces will come into force on 1 July 2007. The ban will include smoking in pubs, restaurants and members' clubs where bar or other staff are employed. In this context 'enclosed' will mean anywhere with more than 50% of wall and ceiling space infilled.

### **The Clean Neighbourhoods and Environment Act 2005**

- 1.37 This provides local authorities with an additional power to issue a fixed penalty notice to any licensed premises emitting noise that exceeds the permitted level between the hours of 11pm and 7am.

### **The EU Services Directive**

- 1.38 The EU Services Directive is a flagship European Directive intended to develop the single market for services by breaking down barriers to cross border trade within the EU and making it easier for service providers

within scope to set up business or offer their services in other EU countries. The Directive requires that all notices and authorisations in scope are able to be completed electronically and via a 'point of single contact'. The Directive was implemented in the UK on 28 December by the Provision of Services Regulations 2009. The UK point of single contact is the Electronic Application Facility (EAF) which is part of the [www.businesslink.gov](http://www.businesslink.gov) website ('businesslink')

- 1.39 Although only regulated entertainment is a 'service' as defined under the Directive, the Government has extended the electronic application process to all regulated activities under the 2003 Act and to all authorisations and notices with the exception of applications for, and renewals of, personal licences, reviews and representations. Guidance on the new electronic application process is provided in paragraphs 8.27 – 8.35 and in relevant chapters.

### **Policing and Crime Act 2009**

- 1.40 The Policing and Crime Act 2009 clarifies how police forces and local authorities can work together by placing an explicit duty on police authorities to reflect their community's priorities in their work. The 2009 Act introduced a number of measures which are relevant, or made changes, to the 2003 Act, including:
- a mandatory code of practice for alcohol retailers;
  - elected members of licensing authorities included as interested parties;
  - reclassification of lap dancing clubs so they require a sex establishment licence

## 2. The licensing objectives

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### CRIME AND DISORDER

- 2.1 The steps any licence holder or club might take to prevent crime and disorder are as varied as the premises or clubs where licensable activities may be carried on. Licensing authorities should therefore look to the police as the main source of advice on these matters. They should also seek to involve the local CDRP, as recommended in paragraph 1.21 of this Guidance.
- 2.2 The Government's expectation is that the police will have a key role in undertaking the following tasks:
- developing a constructive working relationship with licensing authority licensing officers and bodies such as the local authority social services department, the Area Child Protection Committee or another competent body;
  - developing a constructive working relationship with designated premises supervisors and other managers of premises, including premises providing late night refreshment;
  - advising, where necessary, on the development of a venue drug policy;
  - developing a constructive working relationship with the Security Industry Authority including joint visits and enforcement action where appropriate;
  - agreeing the protocols for actions taken by door supervisors in relation to illegal drugs or violent behaviour, particularly when police officers should be called immediately;
  - advising on and approving search procedures and the storage procedures for confiscated drugs;
  - gathering and sharing intelligence on drug dealing and use with partner organisations and local venues;
  - advising on the installation and monitoring of security devices such as CCTV;
  - advising on the provision of safe and accessible transport home in consultation with community safety colleagues, local transport authorities and transport operators;
  - working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and anti-social behaviour; and
  - advising on the protection of employees on licensed premises who may be targets for attacks and reprisals.
- 2.3 The Security Industry Authority also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity and that door supervisors are properly licensed. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. In the exercise of their functions licensing authorities should seek to co-operate with the SIA as far as possible and consider adding relevant conditions to licences where necessary and appropriate.
- 2.4 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek to enter or leave.

- 2.5 Licence conditions should not replicate licensing offences that are set out in the 2003 Act. For example, a condition that states that a licence holder shall not permit drunkenness and disorderly behaviour on his premises would be superfluous because this is already a criminal offence. A condition that states that a licence holder shall not permit the sale of controlled drugs on the premises would be similarly superfluous.
- 2.6 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.7 Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed.
- 2.8 Text and radio pagers allow premises licence holders, designated premises supervisors and managers of premises and clubs to communicate instantly with the local police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises. The Secretary of State recommends that text or radio pagers should be considered appropriate necessary conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises.
- 2.9 Some conditions primarily focused on the prevention of crime and disorder will also promote other licensing objectives. For example, a condition requiring that all glasses used on the premises for the sale of alcoholic drinks should be made of plastic or toughened glass or not allowing bottles to pass across a bar may be necessary to prevent violence by denying assailants suitable weapons, but may also benefit public safety by minimising the injury done to victims when such assaults take place (for example, facial injuries resulting from broken glass).
- 2.10 A condition must also be capable of being met. For example, while beer glasses may be available in toughened glass, wine glasses may not. Licensing authorities should carefully consider conditions of this kind to ensure that they are not only necessary but both practical and achievable.
- 2.11 Similarly, although most commonly made a condition of a licence on public safety grounds, licensing authorities should also consider conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding likely to lead to disorder and violence. If such a condition is considered necessary, the licensing authority should consider whether door supervisors are needed to control numbers.

- 2.12 In the context of crime and disorder and public safety, the preservation of order on premises may give rise to genuine concerns about the competency of the management team charged with the maintenance of order. This may occur, for example, on premises where there are very large numbers of people and alcohol is supplied for consumption, or in premises where there are public order problems.
- 2.13 The designated premises supervisor is the key person who will usually be charged with day to day management of the premises by the premises licence holder, including the prevention of disorder. However, conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. A condition of this kind could only be justified as necessary in rare circumstances where it could be demonstrated that in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.
- 2.14 It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained and licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act ensure, for example, that the prevention of disorder is in sharp focus for all such managers, licence holders and clubs.
- 2.15 Communications between the managers of the premises and the police can also be crucial in preventing crime and disorder. Involvement by operators and managers in voluntary schemes and initiatives may be particularly valuable. Conditions requiring dedicated text or pager links between management teams and local police stations can provide early warning of disorder and also can be used to inform other licence holders that a problem has arisen in the area generally. For example, where a gang of youths is causing problems in one public house and their eviction will only result in them going on elsewhere to cause problems on other premises, there is advantage in communication links between the police and other licensed premises and clubs.
- 2.16 However, while this may be necessary and effective in certain parts of licensing authority areas, it may be less effective or even unnecessary in others. Police views on such matters should be given considerable weight and licensing authorities must remember that only necessary conditions, which are within the control of the licence holder or club, may be imposed.
- 2.17 The Indecent Displays Act 1981 prohibits the public display of indecent matter, subject to certain exceptions. It should not therefore be necessary for any conditions to be attached to licences or certificates concerning such displays in or outside the premises involved. For example, the display of advertising material on or immediately outside such premises is regulated by this legislation. Similarly, while conditions relating to public safety in respect of dancing may be necessary in certain

circumstances, the laws governing indecency and obscenity are adequate to control adult entertainment involving striptease and lap-dancing which goes beyond what is lawful. Accordingly, conditions relating to the content of such entertainment which have no relevance to crime and disorder, public safety, public nuisance or the protection of children from harm could not be justified. In this context, however, it should be noted that it is in order for conditions relating to the exclusion of minors or the safety of performers to be included in premises licence or club premises certificate conditions where necessary. The Local Government (Miscellaneous Provisions) Act 1982 insofar as its adoptive provisions relate to sex establishments – sex shops, sex cinemas and in London sex encounter establishments – also remains in force.

- 2.18 Guidance to the police on powers to close premises (formerly Chapter 11 of this Guidance) can now be found on the DCMS website at [www.culture.gov.uk](http://www.culture.gov.uk).

## PUBLIC SAFETY

- 2.19 Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will of course be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.
- 2.20 From 1 October 2006 the Regulatory Reform (Fire Safety) Order 2005 ('the Fire Safety Order') replaced previous fire safety legislation. As such any fire certificate issued under the Fire Precautions Act 1971 will have ceased to have effect. Licensing authorities should note that under article 43 of the Fire Safety Order any conditions imposed by the licensing authority that relate to any requirements or prohibitions that are or could be imposed by the Order automatically cease to have effect, without the need to vary the licence. This means that licensing authorities should not seek to impose fire safety conditions where the Order applies.
- 2.21 The exception to this will be in cases where the licensing authority and the enforcing authority for the fire safety order are one and the same body. For example, designated sports-grounds and stands where local authorities enforce the fire safety order. In such circumstances fire safety conditions should not be set in new licences, but conditions in existing licences will remain in force and be enforceable by the licensing authority.
- 2.22 The Fire Safety Order applies in England and Wales. It covers 'general fire precautions' and other fire safety duties which are needed to protect 'relevant persons' in case of fire in and around 'most premises'. The Order requires fire precautions to be put in place 'where necessary' and to the extent that it is reasonable and practicable in the circumstances of the case.
- 2.23 Responsibility for complying with the Order rests with the 'responsible person', which may be the employer, or any other person or people who may have control of the premises. Each responsible person must carry out a fire risk

assessment which must focus on the safety in case of fire for all 'relevant persons'. The fire risk assessment is intended to identify risks that can be removed or reduced and to decide the nature and extent of the general fire precautions that need to be taken including, where necessary, capacity limits.

- 2.24 The local fire and rescue authority will enforce the Order in most premises and have the power to inspect the premises to check the responsible person is complying with their duties under the Order. They will look for evidence that the responsible person has carried out a suitable fire risk assessment and acted upon the significant findings of that assessment. If the enforcing authority is dissatisfied with the outcome of a fire risk assessment or the action taken, they may issue an enforcement notice that requires the responsible person to make certain improvements or, in extreme cases, issue a prohibition notice that restricts the use of all or part of the premises until improvements are made.
- 2.25 Further information and guidance about the Order and fire safety legislation is available from the Communities and Local Government website [www.communities.gov.uk/fire](http://www.communities.gov.uk/fire).
- 2.26 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be unnecessary for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if necessary, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the

premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or interested parties, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make clear their expectations in this respects to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

- 2.27 "Safe capacities" should only be imposed where necessary for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be unnecessary to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it necessary for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be necessary in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.
- 2.28 As noted above, a capacity limit should not be imposed as a condition of the licence on fire safety grounds (unless the licensing authority and the enforcing authority for fire safety purposes are the same) since, under article 43 of the Fire Safety Order, it would have no effect and so would not be enforceable.

2.29 The special provisions made for dancing, amplified and unamplified music in section 177 of the 2003 Act apply only to premises with a "permitted capacity" of not more than 200 persons. In this context, the capacity must be where the fire and rescue authority has made a recommendation on the capacity of the premises under the Fire Safety Order. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority who will consider it and then decide what the "permitted capacity" of those premises should be.

2.30 Whilst the Cinematograph (Safety) Regulations 1955 (S.I 1995/1129) which contained a significant number of regulations in respect of fire safety provision at cinemas, no longer apply, applicants taking advantage of the "grandfather rights" pursuant to Schedule 8 to the 2003 Act will have been subject to conditions which re-state those regulations in their new premises licence or club premises certificate. Any holders of a converted licence seeking to remove these conditions and reduce the regulatory burden on them (to the extent to which that can be done while still promoting the licensing objectives), would need to apply to vary their converted licences or certificates. When considering variation applications or applications for new licences, licensing authorities and responsible authorities should recognise the need for steps to be taken to assure public safety at these premises in the absence of the 1995 Regulations.

2.31 Public safety includes the safety of performers appearing at any premises.

## PUBLIC NUISANCE

2.32 The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.33 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.<sup>2</sup>

2.34 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are

<sup>2</sup> It should also be noted in this context that it remains an offence under the 2003 Act to sell or supply alcohol to a person who is drunk. This is particularly important because of the nuisance and anti-social behaviour which can be provoked after leaving licensed premises.

kept closed after a particular time in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

- 2.35 As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.
- 2.36 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise in the immediate vicinity of the premises may also prove necessary to address any disturbance anticipated as customers enter and leave.
- 2.37 Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.38 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.
- 2.39 Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.
- 2.40 The cumulative effects of litter in the vicinity of premises carrying on licensable activities can cause public nuisance. For example, it may be appropriate and necessary for a condition of

a licence to require premises serving customers from take-aways and fast food outlets from 11.00pm to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter. Such conditions may be necessary and appropriate in circumstances where customers late at night may have been consuming alcohol and be inclined to carelessness and anti-social behaviour.

## PROTECTION OF CHILDREN FROM HARM

- 2.41 The protection of children from harm includes the protection of children from moral, psychological and physical harm, and this would include the protection of children from too early an exposure to strong language and sexual expletives, for example, in the context of film exhibitions or where adult entertainment is provided.
- 2.42 However, in the context of many licensed premises such as pubs, restaurants, café bars and hotels, it should be noted that the Secretary of State recommends that the development of family-friendly environments should not be frustrated by overly restrictive conditions in relation to children.
- 2.43 The Secretary of State intends that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions unless the 2003 Act itself imposes such a restriction or there are good reasons to restrict entry or to exclude children completely. Licensing authorities, the police and other authorised persons should focus on enforcing the law concerning the consumption of alcohol by minors.
- 2.44 Conditions relating to the access of children which are necessary to protect them from harm are self evidently of great importance. As mentioned in connection with statements of licensing policy in Chapter 13 of this Guidance, issues will arise about the access of children in connection with premises:
- where adult entertainment is provided;
  - where a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider in the company of adults during a table meal);
  - where it is known that unaccompanied children have been allowed access;
  - where requirements for proof of age cards or other age identification to combat the purchase of alcohol by minors is not the norm;
  - with a known association with drug taking or dealing;
  - where there is a strong element of gambling on the premises (but not small numbers of cash prize machines);
  - where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.
- 2.45 It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm. Such trading practices should be obvious from the operating schedule or club operating schedule provided with the relevant application allowing the framing of an appropriate, time-limited condition.

- 2.46 Similarly, gambling may take place in part of a leisure centre but not in other parts of those premises. This means that the access of children will need to be carefully considered by applicants, licensing authorities and responsible authorities. In many respects, it should be possible to rely on the discretion and common sense of licence and certificate holders. However, licensing authorities and responsible authorities should still expect applicants when preparing an operating schedule or club operating schedule to state their intention to exercise discretion and where they are necessary, to set out the steps to be taken to protect children from harm when on the premises.
- 2.47 Conditions, where they are necessary, should reflect the licensable activities taking place on the premises and can include:
- where alcohol is sold, requirements for the production of proof of age cards or other age identification before sales are made, to ensure that sales are not made to individuals under 18 years (whether the age limit is 18 or 16 as in the case of the consumption of beer, wine and cider in the company of adults during a table meal);
  - restrictions on the hours when children may be present;
  - restrictions on the presence of children under certain ages when particular specified activities are taking place;
  - restrictions on the parts of the premises to which children may have access;
  - age restrictions (below 18);
  - restrictions or exclusions when certain activities are taking place;
  - requirements for accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place
- 2.48 The Secretary of State considers that representations made by the child protection bodies and the police in respect of individual applications should be given considerable weight when they address necessary issues regarding the admission of children.
- 2.49 The 2003 Act provides that where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (the British Board of Film Classification is currently the only body which has been so designated) or by the licensing authority itself. Further details are given in Chapter 10.
- 2.50 The admission of children to theatres, as with other licensed premises, should not normally be restricted. However, theatres may present a range of diverse activities. The admission of children to the performance of a play should normally be at the discretion of the licence holder and no condition restricting their access to plays should be attached. However, theatres may also present a wide range of entertainment including, for example, variety shows incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be necessary. Entertainments may also be presented at theatres specifically for children. It may be necessary to consider whether a condition

should be attached to a premises licence or club premises certificate which requires the presence of a sufficient number of adult staff on the premises to ensure the well being of the children during any emergency.

## Offences relating to the sale and supply of alcohol to children

2.51 Licensing authorities are expected to maintain close contact with the police, young offenders' teams and trading standards officers (who can carry out test purchases under s.154 of the Act) about the extent of unlawful sales and consumption of alcohol by minors and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. For example, where as a matter of policy, warnings are given to retailers prior to any decision to prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given.

### Table of relevant offences under the 2003 Act

Section	Offence
Section 145	Unaccompanied children prohibited from certain premises
Section 146	Sale of alcohol to children
Section 147	Allowing the sale of alcohol to children
Section 147A	Persistently selling alcohol to children
Section 148	Sale of liqueur confectionery to children under 16
Section 149	Purchase of alcohol by or on behalf of children
Section 150	Consumption of alcohol by children
Section 151	Delivering alcohol to children
Section 152	Sending a child to obtain alcohol
Section 153	Prohibition of unsupervised sales by children

## 3. Licensable activities

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### SUMMARY

3.1 A premises licence authorises the use of any premises (which is defined in the Act as a vehicle, vessel or moveable structure or any place or a part of any premises) for licensable activities described and defined in section 1 (1) of and Schedules 1 and 2 to the 2003 Act.

The licensable activities are:

- the sale by retail of alcohol;
- the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;
- the provision of regulated entertainment; and
- the provision of late night refreshment.

### WHOLESALE OF ALCOHOL

3.2 The wholesale of alcohol to the general public was not licensable prior to the coming into force of the 2003 Act. Licensing authorities will want to have particular regard to the definition of "sale by retail" given in section 192 of the 2003 Act. This section makes clear that to be excluded from the meaning of "sale by retail" a sale must be:

- made from premises owned by the person making the sale, or occupied under a lease with security of tenure, and
- for consumption off the premises.

3.3 In addition, to be excluded, they must be sales which are made to:

- traders for the purpose of their trade (including, for example, another wholesaler);
- holders of club premises certificates, premises licences, or personal licences; or
- premises users who have given temporary event notices in order to make sales.

3.4 However, any other sale made to a member of the public in wholesale quantities is a licensable activity and subject to the provisions of the 2003 Act. This affects many wholesale businesses, cash and carries and bonded warehouses across England and Wales.

3.5 If an employee were buying alcohol as an "agent" for their employer and for the purposes of their employer's trade (i.e. selling alcohol), this could be treated as a sale to a trader. If, however, an employee were buying for their own consumption, this would be a retail sale, and would require a licence.

### INTERNET AND MAIL ORDER SALES

3.6 The place where the sale of alcohol takes place may be different to the place from which it is appropriated to the contract, i.e. specifically and physically selected for the particular purchaser. Section 190 provides that the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract and this will be the premises that needs to be licensed. So, for example, a call centre receiving orders for alcohol would not need a licence, but the warehouse where the alcohol is stored and specifically selected for, and despatched to, the purchaser would need to be licensed.

3.7 In such circumstances a licensing authority will wish to carefully consider the distance selling supply chain in deciding where the alcohol is appropriated to the contract. Any premises where alcohol is supplied under a premises licence must have a designated premises supervisor. This will normally be the person in charge of the day to day running of the premises, and they will need to hold a

'personal licence'. In addition to this, all sales of alcohol must be made or authorised by a personal licence holder (see paragraphs 10.48 – 10.53 of this Guidance).

## REGULATED ENTERTAINMENT

3.8 Schedule 1 to the 2003 Act (Annex A), sets out what activities are regarded as the provision of regulated entertainment (entertainment and entertainment facilities) and those which are not and are therefore exempt from the regulated entertainment aspects of the licensing regime (including incidental music – see 3.20-3.23 below).

## ENTERTAINMENT

3.9 Subject to the conditions, definitions and the exemptions in Schedule 1, the types of entertainment regulated by the 2003 Act are:

- a performance of a play;
- an exhibition of a film;
- an indoor sporting event;
- a boxing or wrestling entertainment; (indoor and outdoor)
- a performance of live music;
- any playing of recorded music;
- a performance of dance;
- entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance.

but only where the entertainment takes place in the presence of an audience and is provided at least partly to entertain that audience.

## ENTERTAINMENT FACILITIES

- 3.10 Subject to the conditions, definitions and the exemptions in Schedule 1, entertainment facilities means facilities for enabling persons to take part in entertainment consisting of:
- making music;
  - dancing;
  - entertainment of a similar description to making music or for dancing.
- 3.11 These facilities must be provided for the use of and to entertain customers. Entertainment facilities include, for example:
- a karaoke machine provided for the use of and entertainment of customers in a public house;
  - a dance floor provided for use by the public in a nightclub;
  - musical instruments made available for use by the public to entertain others at licensed premises.
- 3.12 In carrying out their functions, licensing authorities will need to consider whether an activity constitutes the provision of regulated entertainment. The following activities, for example, are not regulated entertainment:
- education – teaching students to perform music or to dance;
  - activities which involve participation as acts of worship in a religious context;
  - the demonstration of a product – for example, a guitar – in a music shop; or
  - the rehearsal of a play or rehearsal of a performance of music to which the public are not admitted.

- 3.13 Much of this involves the simple application of common sense and this Guidance cannot give examples of every eventuality or possible activity. It is only when a licensing authority is satisfied that activities are entertainment or the provision of entertainment facilities that it should go on to consider the qualifying conditions, definitions and exemptions in Schedule 1 to see if a provision of regulated entertainment is involved and, as a result, if there is a licensable activity to be governed by the provisions of the 2003 Act.
- 3.14 There are a number of other entertainments, which are not themselves licensable activities, for which live or recorded music may be incidental to the main attraction or performance and therefore not licensable (see below). For example, stand-up comedy is not a licensable activity and musical accompaniment incidental to the main performance would not make it a licensable activity.

## PUB GAMES

- 3.15 Games commonly played in pubs and social and youth clubs like pool, darts, table tennis and billiards may fall within the definition of indoor sports in Schedule 1, but normally they would not be played for the entertainment of spectators but for the private enjoyment of the participants. As such, they would not normally constitute the provision of regulated entertainment, and the facilities provided (even if a pub provides them with a view to profit) do not fall within the limited list of entertainment facilities in that Schedule (see paragraph 3.10 above). It is only when games take place in the presence of an audience and are provided to, at least in part, entertain that audience, for example, a darts championship competition, that the activity would become licensable.

## PRIVATE EVENTS

- 3.16 Entertainment at a private event to which the public are not admitted becomes regulated entertainment and therefore licensable, only if it is provided for consideration and with a view to profit. So, for instance, a charge made to people attending a private event to cover the costs of the entertainment, and for no other purpose, would not make the entertainment licensable. The fact that a profit might inadvertently be made would be irrelevant as long as there had not been an intention to make a profit.
- 3.17 Schedule 1 to the 2003 Act also makes it clear that before entertainment or entertainment facilities are regarded as being provided for consideration, a charge has to be made by, or on behalf of, a person concerned with:
- the organisation or management of the entertainment; or
  - the organisation or management of the facilities who is also concerned with the entertainment;
- and paid by or on behalf of some or all of the persons for whom the entertainment/facilities are, provided.
- 3.18 This means that a private event for invited guests held in a hired private room with a live band and dancing and no charge for admission intended to make a profit is not a regulated entertainment unless the person who hires out the room (for example, the owner of the house in which the room is situated) is also involved in the organisation or management of the entertainment. An owner may become so involved by, for example, hiring a dancefloor, sound equipment and/or smoke machine along with the room, or by arranging for a DJ or band to play at the event. In this case, the provision by the owner of the room (and any other

entertainment facilities they provide) for a charge and with a view to profit will itself be a provision of regulated entertainment. By contrast, if the owner simply hires out the room for an event and is not further involved with the entertainment at the event, they will not be providing a regulated entertainment, and the event would need to be looked at separately from the hire of the room in order to determine whether it was itself an instance of regulated entertainment.

- 3.19 Similarly, a party organised in a private house by and for friends, (and not open to the public) with music and dancing, and where a charge or contribution is made solely to cover the costs of the entertainment and not with a view to profit would not be an instance of regulated entertainment. In the same vein, any charge made by musicians or other performers or their agents to the organiser of a private event does not of itself make that entertainment licensable unless the guests attending are themselves charged for the entertainment with a view to achieving a profit.<sup>3</sup>

## INCIDENTAL MUSIC

- 3.20 The incidental performance of live music and incidental playing of recorded music may not be regarded as the provision of regulated entertainment activities under the 2003 Act in certain circumstances. This is where they are incidental to another activity which is not itself entertainment or the provision of entertainment facilities. This exemption does not extend to the provision of other forms of regulated entertainment.
- 3.21 Whether or not music of this kind is “incidental” to other activities is expected to be judged on a case by case basis and there is no definition in the 2003 Act. It will ultimately be for the courts to decide whether music is “incidental” in the individual circumstances of any case.
- 3.22 The operator of the premises concerned must first decide whether or not they need a premises licence. In considering whether or not music is incidental, one factor will be whether or not, against a background of the other activities already taking place, the addition of music will create the potential to undermine the four licensing objectives of the Act. Other factors might include some or all of the following:
- Is the music the main, or one of the main, reasons for people attending the premises?
  - Is the music advertised as the main attraction?
  - Does the volume of the music disrupt or predominate over other activities or could it be described as ‘background’ music?
- Conversely, factors which would not normally be relevant include:
- Number of musicians, e.g. an orchestra may provide incidental music at a large exhibition.
  - Whether musicians are paid.
  - Whether the performance is pre-arranged.
  - Whether a charge is made for admission to a premises.
- 3.23 Stand-up comedy is not regulated entertainment and musical accompaniment incidental to the main performance would not make it a licensable activity. But there are likely to be some circumstances which occupy a greyer area. In cases of doubt, operators should seek the advice of the licensing authority, particularly with regard to their policy on enforcement.

<sup>3</sup> Entertainment facilities falling within paragraph 1(2)(b) of Schedule 1 of the Act (club premises) are not covered by this section of the Guidance.

## SPONTANEOUS MUSIC, SINGING AND DANCING

3.24 The spontaneous performance of music, singing or dancing does not amount to the provision of regulated entertainment and is not a licensable activity. The relevant part of the 2003 Act to consider in this context is paragraph 1(3) of Schedule 1 to the Act. This states that the second condition which must apply before an activity constitutes the provision of regulated entertainment is that the premises (meaning “any place”) at which the entertainment is, or entertainment facilities are, provided are made available for the purpose, or purposes which include the purpose, of enabling the entertainment concerned to take place. In the case of genuinely spontaneous music (including singing) and dancing, the place where the entertainment takes place will not have been made available to those taking part for that purpose.

## SMALL VENUES PROVIDING DANCING AND AMPLIFIED OR UNAMPLIFIED MUSIC

3.25 In addition, section 177 of the 2003 Act applies to suspend most licensing conditions relating to music entertainment in certain small venues when the conditions specified in the licence are met. The section is directed at premises with a capacity of 200 or less and which are licensed for the provision of music entertainment such as, for example, some pubs with entertainment licences. A detailed description of section 177 follows below.

3.26 Subsections (1) and (2) of section 177 of the 2003 Act provide that where,

- a premises licence or club premises certificate authorises the supply of alcohol for consumption on the premises and the provision of “music entertainment” (live

music or dancing or facilities enabling people to take part in those activities),

- the relevant premises are used primarily for the supply of alcohol for consumption on the premises, and
- the premises have a permitted capacity limit of not more than 200 persons (see paragraph 2.29).

any conditions relating to the provision of the music entertainment imposed on the premises licence or club premises certificate by the licensing authority, other than those set out by the licence or certificate which are consistent with the operating schedule, will be suspended except where, under subsection (5), they were imposed as being necessary for public safety or the prevention of crime and disorder or both.

3.27 Examples of premises used “primarily” for the supply of alcohol for consumption on the premises would include some public houses and some qualifying club premises, but would not normally include, for example, a restaurant.

3.28 In addition, subsection (4) of section 177 provides that where

- a premises licence or club premises certificate authorises the provision of music entertainment, and
- the premises have a permitted capacity limit of not more than 200 persons

then, during the hours of 8am and midnight, if the premises are being used for the provision of unamplified live music or facilities enabling people to take part in such entertainment, but no other type of regulated entertainment, any conditions imposed on the licence by the licensing authority, again other than those which are consistent with the operating schedule, which relate to the provision of that music entertainment will be suspended.

- 3.29 The “unamplified” music exemption covers any premises appropriately licensed, including, for example restaurants.
- 3.30 The area to which the 200 “permitted capacity limit” applies concerns the area covered by the terms of the premises licence or club premises certificate. In this context, the capacity must be where the fire and rescue authority has made a recommendation on the capacity of the premises under the Fire Safety Order (see paragraph 2.29). The permitted capacity limit is only applicable to part of the premises where that part has been separately and accordingly licensed.
- 3.31 Section 177 can be disapplied in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate. This means that conditions attached to the existing premises licence relating to the provision of music entertainment can be given effect at the relevant times or that new conditions may also be imposed as an outcome of the review process.

## LATE NIGHT REFRESHMENT

- 3.32 Schedule 2, (Annex B) sets out what activities are regarded as the provision of late night refreshment and those which are not and are therefore exempt from the late night refreshment aspects of the licensing regime.
- 3.33 Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves only the supply of ‘hot food and hot drink’. For example, shops, stores and supermarkets selling cold food and cold drink that is immediately consumable from 11.00pm are not licensable as providing late night refreshment. The legislation impacts on those premises such as night cafés and take away food outlets where people may gather at any time from 11.00pm and until 5.00am with the possibility of disorder and disturbance. In this case, supply takes place when the hot food or hot drink is given to the customer, not when it is paid for. For example, when a table meal is served in a restaurant or when a takeaway is handed to a customer over the counter.
- 3.34 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines established on the premises for that purpose. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act so long as the public have access to and can operate the machine without any involvement of the staff.
- 3.35 However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.
- 3.36 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions. The Secretary of State considers that the key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and public nuisance, and it is expected that both will normally have been adequately covered in the conditions relating to the other licensable activities on such premises.
- 3.37 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is caught by the provisions relating to the sale or supply of alcohol.

- 3.38 The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as “free of charge”. Supplies by a registered charity or anyone authorised by a registered charity are also exempt. Similarly, supplies made on vehicles – other than when they are permanently or temporarily parked – are also exempt.
- 3.39 Supplies of hot food or hot drink from 11.00pm are exempt from the provisions of the 2003 Act if there is no admission to the public to the premises involved and they are supplies to:
- a member of a recognised club supplied by the club;
  - persons staying overnight in a hotel, guest house, lodging house, hostel, a caravan or camping site or any other premises whose main purpose is providing overnight accommodation.
  - an employee supplied by a particular employer (eg. a staff canteen).
  - a person who is engaged in a particular profession or who follows a particular vocation (eg. a tradesman carrying out work at particular premises).
  - a guest of any of the above.

## 4. Personal licences

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- 4.1 This Chapter provides advice about best practice in administering the process for issuing personal licences to sell or supply alcohol. It also contains guidance for decision-making on applications from community premises (church and village halls etc.) to disapply the usual mandatory conditions that relate to personal licences and Designated Premises Supervisors (DPSs).

### REQUIREMENTS FOR A PERSONAL LICENCE

- 4.2 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than the provision of regulated entertainment and late night refreshment. This is why individuals who may be engaged in making and authorising the sale and supply of alcohol require a personal licence. Not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must be at least authorised by such a licence holder (see paragraphs 10.48 -10.53 of this Guidance). The only exception is for community premises in respect of which a successful application has been made to disapply the usual mandatory conditions set out in sections 19(2) and 19(3) of the 2003 Act. (Guidance on such applications is set out in paragraphs 4.32 to 4.47 of this Guidance). Any premises where the personal licence holder requirements do apply at which alcohol is sold or supplied may employ one or more such licence holders. For example, there may be one owner or senior manager and several junior managers holding a personal licence.

### WHO CAN APPLY?

- 4.3 In the case of an application for a personal licence under Part 6 of the 2003 Act, the requirements are that the applicant:
- must be aged 18 or over;
  - possesses a licensing qualification accredited by the Secretary of State (or one which is certified as if it is such a qualification or is considered equivalent) or is a person as prescribed by the Secretary of State by regulations,
  - must not have forfeited a personal licence within five years of their application;
  - has paid the appropriate fee to the licensing authority,
- and that the police:
- have not given an objection notice about the grant of a personal licence following notification of any unspent relevant offence or foreign offence, or
  - have given an objection notice because of a conviction for an unspent relevant offence or a foreign offence, but the licensing authority has not considered it necessary to reject the application on crime prevention grounds.
- 4.4 Any individual may apply for a personal licence whether or not they are currently employed or have business interests associated with the use of the licence. The issues which arise when the holder of a personal licence becomes associated with particular licensed premises and the personal licence holder is specified as the "designated premises supervisor" for those premises are dealt with in paragraphs 4.19 – 4.28 below. Licensing authorities may not therefore take these matters into account when considering an application for a personal licence.

## CRIMINAL RECORD

- 4.5 In the context of applications made under Part 6 of the 2003 Act, the Act itself does not prescribe how any individual should establish whether or not they have unspent convictions for a relevant offence or foreign offence. Regulations require that, in order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, an applicant must produce a criminal conviction certificate or a criminal record certificate or the results of a subject access search of the police national computer by the National Identification Service to the licensing authority. This applies whether or not the individual has been living for a length of time in a foreign jurisdiction.
- 4.6 It does not follow that such individuals will not have recorded offences in this country. All applicants are also required to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or an equivalent foreign offence. This applies both to applicants ordinarily resident in England and Wales and any person from a foreign jurisdiction. Details of relevant offences as set out in the 2003 Act should be appended to application forms for the information of applicants, together with a clear warning that making any false statement is a criminal offence liable to prosecution. Relevant offences are listed in Annex C to this Guidance.
- 4.7 Licensing authorities are required to notify the police when an applicant is found to have an unspent conviction for a relevant offence defined in the 2003 Act or for a foreign offence. The police have no involvement or locus in such applications until notified by the licensing authority.
- 4.8 Where an applicant has an unspent conviction for a relevant or foreign offence, and the police object to the application on crime prevention grounds, the applicant is entitled to a hearing before the licensing authority. If the police do not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant it.
- 4.9 The Secretary of State recommends that, where the police have issued an objection notice, the licensing authority should normally refuse the application unless there are exceptional and compelling circumstances which justify granting it. For example, certain offences can never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that they no longer have any propensity to re-offend, a licensing authority may consider that the individual circumstances of the case are so exceptional and compelling and any risk to the community so diminished that it is right to grant the application.
- 4.10 If an application is refused, the applicant will be entitled to appeal against the decision. Similarly, if the application is granted despite a police objection notice, the chief officer of police is entitled to appeal against the licensing authority's determination. Licensing authorities are therefore expected to record in full the reasons for any decision that they make.

## ISSUING OF PERSONAL LICENCES BY WELSH LICENSING AUTHORITIES

- 4.11 Licensing authorities in Wales should consider issuing personal licences in bilingual format, in line with their own Welsh language schemes.

## LICENSING QUALIFICATIONS

- 4.12 Details of licensing qualifications currently accredited by the Secretary of State will be notified to licensing authorities and the details may be viewed on the DCMS website.
- 4.13 From time to time, licensing authorities may also be concerned that documents and certificates produced as evidence of the possession of a licensing qualification may be forged or improperly amended. Contact points for issuing authorities regarding the possible forgery of qualifications are also given on the DCMS website. It also provides information about the core content of licensing qualification courses.

## RELEVANT LICENSING AUTHORITY

- 4.14 Personal licences are valid for ten years unless surrendered or suspended or revoked or declared forfeit by the courts. Once granted, the licensing authority which issued the licence remains the "relevant licensing authority" for it and its holder, even though the individual may move out of the area or take employment elsewhere. The personal licence itself will give details of the issuing licensing authority.

## CHANGES IN NAME OR ADDRESS

- 4.15 The holder of the licence is required by the 2003 Act to notify the licensing authority of any changes of name or address. These changes should be recorded by the licensing

authority. The holder is also under a duty to notify any convictions for relevant offences to the licensing authority and the courts are similarly required to inform the licensing authority of such convictions, whether or not they have ordered the suspension or forfeiture of the licence. The holder must also notify the licensing authority of any conviction for a foreign offence. These measures ensure that a single record will be held of the holder's history in terms of licensing matters.

- 4.16 Licensing authorities should maintain easily accessible records and a service which can advise the police in any area and other licensing authorities promptly of any details they require about the holder of the personal licence in relation to their licensing functions. The 2003 Act authorises the provision and receipt of such personal information to such agencies for the purposes of the Act.

## CENTRAL LICENSING REGISTER

- 4.17 The Government, supported by licensing authorities, aims to develop a central licensing register which will, among other things, include details of all personal licence holders. Future developments relating to the creation of a central licensing register will be reported on the DCMS website.

## RENEWAL

- 4.18 Renewal of the personal licence every ten years provides an opportunity to ensure that the arrangements ensuring that all convictions for relevant and foreign offences have been properly notified to the relevant licensing authority have been effective, and that all convictions have been properly endorsed upon the licence. It also provides an opportunity to ensure that the photograph of the holder on the personal licence is updated to aid identification.

## SPECIFICATION OF NEW DESIGNATED PREMISES SUPERVISORS

- 4.19 In every premises licensed for the supply of alcohol, a personal licence holder must be specified as the 'designated premises supervisor', as defined in the 2003 Act. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The only exception is for community premises which have successfully made an application to disapply the usual mandatory conditions set out in sections 19(2) and 19(3) of the 2003 Act. Guidance on such applications is set out in paragraphs 4.32 to 4.47 of this Guidance.
- 4.20 The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the designated premises supervisor so that any problems can be dealt with swiftly. For this reason, the name of the designated premises supervisor and contact details must be specified on the premises licence and this must be held at the premises and displayed in summary form.
- 4.21 To specify a new designated premises supervisor, the premises licence holder – perhaps a supermarket chain or a pub operating company – should normally submit an application to the licensing authority (which may include an application for immediate interim effect) with:
- a form of consent by the individual concerned to show that they consent to taking on this responsible role, and
  - the relevant part (Part A) of the licence.
- 4.22 If they are applying in writing, they must also notify the police of the application.
- 4.23 If the application is made electronically via businesslink or the licensing authority's own electronic facility, the licensing authority must notify the police no later than the first working day after the application is given.
- 4.24 The premises licence holder must notify the existing designated premises supervisor (if there is one) of the application on the same day as the application is given to the licensing authority. This requirement applies regardless of whether the application was given by means of an electronic facility, or by some other means.
- 4.25 The general guidance in paragraphs 8.27 – 8.35 on electronic applications applies in respect of new applications.
- 4.26 Only one designated premises supervisor may be specified in a single premises licence, but a designated premises supervisor may supervise more than one premises as long as they are able to ensure that the four licensing objectives are properly promoted and the premises complies with licensing law and licence conditions.
- 4.27 Where there are frequent changes of supervisor, the premises licence holder may submit the form in advance specifying the date when the new individual will be in post and the change will take effect.

## POLICE OBJECTIONS TO NEW SUPERVISORS

- 4.28 The police may object to the designation of a new premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a particular designated premises supervisor is first appointed or transfers into particular premises and their

presence in combination with particular premises gives rise to exceptional concerns. For example, where a personal licence holder has been allowed by the courts to retain their licence despite convictions for selling alcohol to minors (a relevant offence) and then transfers into premises known for underage drinking.

- 4.29 Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put their arguments. The 2003 Act provides that the applicant may apply for the individual to take up post as designated premises supervisor immediately and, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must restrict its consideration to the issue of crime and disorder and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.
- 4.30 The portability of personal licences from one premises to another is an important concept within the 2003 Act. The Secretary of State expects that police objections would arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely objecting to the designation of new premises supervisors on un-exceptional grounds, they should raise the matter with the chief officer of police as a matter of urgency.

## POLICE OBJECTIONS TO EXISTING SUPERVISORS

- 4.31 The 2003 Act also provides for the suspension and forfeiture of personal licences by the courts following convictions for relevant offences, including breaches of licensing law. The police can at any stage after the appointment of a designated premises

supervisor seek a review of a premises licence on any grounds relating to the licensing objectives if anxieties arise about the performance of a supervisor. The portability of personal licences is also important to industry because of the frequency with which some businesses move managers from premises to premises. It is not expected that licensing authorities or the police should seek to use the power of intervention as a routine mechanism for hindering the portability of a licence or use hearings of this kind as a fishing expedition to test out the individual's background and character. The Secretary of State therefore expects that such hearings should be rare and genuinely exceptional.

## CONVICTIONS AND LIAISON WITH THE COURTS

- 4.32 Where a personal licence holder is convicted by a court for a relevant offence, the court is under a duty to notify the relevant licensing authority of the conviction and of any decision to order that the personal licence is suspended or declared forfeit. The sentence of the court has immediate effect despite the fact that an appeal may be lodged against conviction or sentence (although the court may suspend the forfeiture or suspension of the licence pending the outcome of any appeal).
- 4.33 When the licensing authority receives such a notification, it should contact the holder and request the licence so that the necessary action can be taken. The holder must then produce their licence to the authority within 14 days. It is expected that the chief officer of police for the area in which the holder resides would be advised if they do not respond promptly. The licensing authority should record the details of the conviction, endorse them on the licence, together with any period of

suspension and then return the licence to the holder. If the licence is declared forfeit, it should be retained by the licensing authority.

## RELEVANT OFFENCES

- 4.34 Relevant offences are set out in Schedule 4 to the 2003 Act (see Annex C of this Guidance).

## DISAPPLICATION OF CERTAIN MANDATORY CONDITIONS FOR COMMUNITY PREMISES

- 4.35 The Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009 (SI 2009/1724) amends the 2003 Act to allow certain community premises which have, or are applying for, a premises licence that authorises alcohol sales to also apply to include the alternative licence condition in sections 25A(2) and 41D(3) ("the alternative licence condition") of the 2003 Act in the licence instead of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act. Such an application may only be made if the licence holder is, or is to be, a committee or board of individuals with responsibility for the management of the premises (the "management committee"). If such an application is successful, the effect of the alternative licence condition will be that the licence holder (i.e. the management committee) is responsible for the supervision and authorisation of all alcohol sales made pursuant to the licence. All such sales will have to be made or authorised by the licence holder. There will be no requirement for a Designated Premises Supervisor or for alcohol sales to be authorised by a personal licence holder.

The Order defines community premises as premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building. While there may be issues relating to whether a premises is a community premises with a proper management committee, there should not be many disputed cases and many will self evidently meet the definition of a community premises and have an appropriate management structure in place. There is more detailed commentary on what constitutes community premises in paragraphs 4.35 to 4.40 of this Guidance.

- 4.36 The process requires the completion of a new form which is set out in The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009/1809. Where the management committee of a community premises is applying for authorisation for the sale of alcohol for the first time, it should include the form with the new premises licence application or the premises licence variation application. No extra payment is required beyond the existing fee for a new application or a variation.
- 4.37 Where a community premises already has a premises licence to sell alcohol, but wishes to include the alternative licence condition in place of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act, it should submit the form on its own together with the required fee. The work required to process such an application is expected to be similar to that required to process an application for a variation of a Designated Premises Supervisor.

## Definition of community premises

- 4.38 In most instances, it should be self evident whether a premises is, or forms part of a church hall, chapel hall or other similar building or a village hall, parish hall, community hall or other similar building.
- 4.39 Many licensing authorities will already have taken a view on how to determine whether a premises meets the definition of community premises for the purpose of the fee exemptions set out in regulation 9(2)(b) of the Licensing Act 2003 (Fees) Regulations 2005 (SI 2005/79). As the criteria are the same, premises that qualify for these fee exemptions for regulated entertainment will also be "community premises" for present purposes.
- 4.40 However, there may be types of premises seeking disapplication of the personal licence and Designated Premises Supervisor requirements which have not previously sought exemption from the fee as a community premises. This might be because they had previously included alcohol or late night refreshment in their licence and therefore had to pay a fee regardless, or may have qualified for the exemption from the fee for regulated entertainment licences as an educational institution.
- 4.41 Where it is not clear whether premises are "community premises", licensing authorities will need to approach the matter on a case-by-case basis. The main consideration in most cases will be how the premises are predominately used. If they are genuinely made available for community benefit most of the time, and accessible by a broad range of persons and sectors of the local community for purposes which include purposes beneficial to the community as a whole, the premises will be likely to meet the definition. This could feasibly include educational premises, such as school halls, but only where they are genuinely and widely used for the benefit of the community as a whole, and not just for the particular school in question. As such, community premises are usually multi-purpose and a variety of activities can be expected to take place in them, such as playschools, senior citizens' clubs, indoor sports, youth clubs and public meetings.
- 4.42 Many community premises such as school and private halls are available for private hire by the general public. This fact alone would not be sufficient for such halls to qualify as "community premises". Although availability of premises for hire might be seen as providing a facility for the community, licensing authorities will want to consider whether halls used largely for private hire by individuals or private entities are genuinely by their nature "community premises". The statutory test is directed at the nature of the premises themselves, as reflected in their predominant use, and not only at the usefulness of the premises for members of the community for private purposes.
- 4.43 If the general use of the premises was contingent upon membership of a particular organisation or organisations, this would strongly suggest that the premises in question were not "community premises" within the definition. However, the hire of the premises to individual organisations and users who restrict their activities to their own members and guests would not necessarily conflict with the status of the premises as "community premises", provided the premises are generally available for use by the community in the sense described above. It is not the intention that 'qualifying' clubs which are able to apply for a club premises certificate should instead seek a premises licence with the disapplication of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to the supply of alcohol.

## Management of the premises

4.44 Sections 25A(1) and 41D(1) and (2) of the 2003 Act allow applications by community premises to apply the alternative licence condition rather than the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act only where the applicant for the licence is the management committee of the premises in question. In addition, sections 25A(6) and 41D(5) require the licensing authority to be satisfied that the arrangements for the management of the premises by the committee or board are sufficient to ensure the adequate supervision of the supply of alcohol on the premises.

4.46 The reference to a "committee or board of individuals" is intended to cover any formally constituted, transparent and accountable management committee or structure. Such a committee should have the capacity to provide sufficient oversight of the premises to minimise any risk to the licensing objectives that could arise from allowing the responsibility for supervising the sale of alcohol to be transferred from a personal licence holder/designated premises supervisor. This could include management committees, executive committees and boards of trustees. The application form requires the applicants to provide the names of the management committee's key officers e.g. the Chair, Secretary, Treasurer.

4.47 The application form requires applicants to set out how the premises is managed, its committee structure and how the supervision of alcohol sales is to be ensured in different situations (e.g. when the hall is hired to private parties) and how responsibility for this is to be determined in individual cases and discussed

and reviewed within the committee procedure in the event of any issues arising. The application form requires that the community premises submit copies of any constitution or other management documents with their applications and that they provide the names of their key officers e.g. the Chair, Secretary, Treasurer. Where the management arrangements are less clear, licensing authorities may wish to ask for further details to confirm that the management board or committee is properly constituted and accountable before taking a decision on whether to grant the application (subject to the views of the police). Community premises may wish to check with the licensing authority before making an application. The management committee is strongly encouraged to notify the licensing authority if there are key changes in the committee's composition e.g. to the Chair, Secretary, Treasurer and to submit a copy to the Chief Officer of Police. A failure to do so may form the basis of an application to review the premises licence, or be taken into account as part of the consideration of such an application.

4.48 As the premise licence holder, the management committee will collectively be responsible for ensuring compliance with licence conditions and the law (and may remain liable to prosecution for one of the offences in the Licensing Act) although there would not necessarily be any individual member always present at the premises. While overall responsibility will lie with the management committee, where the premises are hired out the hirer may be clearly identified as having responsibility for matters falling within his or her control (e.g. under the contract for hire offered by the licence holder), much in the same way that the event

organiser may be responsible for an event held under a Temporary Event Notice. Where hirers are provided with a written summary of their responsibilities under the 2003 Act in relation to the sale of alcohol, the management committee is likely to be treated as having taken adequate steps to avoid liability to prosecution if a licensing offence is committed.

- 4.49 As indicated above, sections 25A(6) and 41D(5) of the 2003 Act require the licensing authority to consider whether the arrangements for the management of the premises by the committee are sufficient to ensure adequate supervision of the supply of alcohol on the premises. Where private hire for events which include the sale of alcohol is permitted by the licence, it would be necessary to have an effective hiring agreement. Licensing authorities should consider arrangements for the use of hiring agreements in the light of recommendations for best practice made by organisations such as ACRE and Community Matters. Model hire agreements are available from these bodies. The model agreements can also be revised to cater for the circumstances surrounding each hire arrangement e.g. to state that the hirer is aware of the licensing objectives and offences in the 2003 Act and will ensure that it will take all necessary steps to ensure that no offences are committed during the period of the hire.

### Police views

- 4.50 An additional safeguard is that in exceptional circumstances the Chief Officer of Police for the area in which the community premises is situated can object to a request for inclusion of the alternative licence condition on the grounds of crime and disorder, and any

responsible authority and/or interested party can seek reinstatement of the mandatory conditions through a review of the licence (as provided in section 52A of the 2003 Act). The police will want to consider any history of incidents at an establishment in light of the actual or proposed management arrangements, including the use of appropriate hire agreements. If the Chief Officer of Police issues a notice seeking the refusal of the application to include the alternative licence condition, the licensing authority must hold a hearing in order to reach a decision on whether to grant the application.

### Appeals

- 4.51 Where the Chief Officer of Police has made relevant representations against the inclusion of the alternative licence condition, or given a notice under section 41D(6) which was not withdrawn, the Chief Officer of Police can appeal the decision of the licensing authority to allow the inclusion of the alternative licence condition. Similarly, a community premises can appeal a decision by the licensing authority to refuse to include the alternative licence condition following a hearing triggered by relevant representations or by a notice given under section 41D(6). Following a review of the licence in which the mandatory conditions are reinstated, the licence holder may appeal against the decision. If the alternative licence condition is retained on review, the applicant for the review or any person who made relevant representations may appeal against the decision.

## 5. Who needs a premises licence?

- 5.1 A premises licence authorises the use of any premises, (which is defined in the 2003 Act as a vehicle, vessel or moveable structure or any place or a part of any premises), for licensable activities described and defined in section 1(1) of and Schedules 1 and 2 to the 2003 Act.

### RELEVANT PARTS OF ACT

- 5.2 In determining whether any premises should be licensed, the following parts of the 2003 Act are relevant:

Relevant part of Act	Description
Section 1	Outlines the licensable activities
Part 3	Provisions relating to premises licences
Part 4	Provisions for qualifying clubs
Section 173	Activities in certain locations which are not licensable
Section 174	Premises that may be exempted on grounds of national security
Section 175	Minor raffles and tombolas
Section 175	Prizes of alcohol not to be treated as licensable if certain conditions are fulfilled
Section 176	Prohibits the sale of alcohol at motorway service areas; and restricts the circumstances in which alcohol may be sold at garages
Section 189	Special provision regarding the licensing of vessels, vehicles and moveable structures
Section 190	Where the place where a contract for the sale of alcohol is made is different from the place where the alcohol is appropriated to the contract, the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract.
Section 191	Defines "alcohol" for the purposes of the Act
Section 192	Defines the meaning of "sale by retail"
Section 193	Defines among other things "premises", "vehicle", "vessel" and "wine"
Schedules 1 and 2	Provision of regulated entertainment and Provision of late night refreshment

- 5.3 Section 191 provides the meaning of “alcohol” for the purposes of the 2003 Act. It should be noted that a wide variety of foodstuffs contain alcohol but generally in a highly diluted form when measured against the volume of the product. For the purposes of the Act, the sale or supply of alcohol which is of a strength not exceeding 0.5 per cent ABV (alcohol by volume) at the time of the sale or supply in question is not a licensable activity. However, where the foodstuff contains alcohol at greater strengths, for example, as with some alcoholic jellies, the sale would be a licensable activity.

## PREMISES LICENSED FOR GAMBLING

- 5.4 Gambling is the subject of separate legislation. The Gambling Act 2005 will come into force in September 2007, when the current law (the Betting Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976) will be repealed. Licensing authorities should not duplicate any conditions imposed by such legislation when granting, varying or reviewing licences that authorise licensable activities under the Licensing Act 2003. When making a licence application, the applicant may, in detailing the steps to be taken in promoting the licensing objectives, refer to the statutory conditions in respect of their gaming licence where relevant. In addition, any conditions which are attached to premises licences should not prevent the holder from complying with the requirements of gambling legislation or supporting regulations. Further information about the Gambling Act 2005 can be found on the DCMS website at [www.culture.gov.uk](http://www.culture.gov.uk).

## DESIGNATED SPORTS GROUNDS, DESIGNATED SPORTS EVENTS AND MAJOR OUTDOOR SPORTS STADIA

- 5.5 Outdoor sports stadia are regulated by separate legislation in relation to health and safety and fire safety, so licensing authorities should avoid any duplication when granting, varying or reviewing premises licences.
- 5.6 The sports events taking place at outdoor stadia do not fall within the definition of the provision of regulated entertainment under the 2003 Act; with the exception of boxing and wrestling matches. Licensing authorities should therefore limit their consideration of applications for premises licences to activities that are licensable under the 2003 Act.
- 5.7 Major stadia will often have several bars and restaurants, including bars generally open to all spectators as well as bars and restaurants to which members of the public do not have free access. Alcohol will also be supplied in private boxes and viewing areas. A premises licence may make separate arrangements for public and private areas or for restaurant areas on the same premises. It may also designate areas where alcohol may not be consumed at all or at particular times.
- 5.8 History demonstrates that certain sports events are more likely than others to give rise to concerns about the safety of, and disorder among, spectators. Licensing authorities should take this into account in determining premises licence conditions. Because of the issues of crowd control that arise in and around sports grounds, licensing authorities are expected to give considerable weight to the views of the local chief officer of police when representations are made concerning licensable activities.

5.9 Licensing authorities should be aware that paragraphs 98 and 99(c) of Schedule 6 to the Act and the repeals of section 2(1A) and section 5A of the Sporting Events (Control of alcohol etc.) Act 1985 have not been commenced with the remaining provisions of the 2003 Act, since the effect would have been different from that which Parliament had intended. The Government is likely to seek to introduce the intended policy by alternative means and any future developments on this will be available on the DCMS website.

## **SPORTS STADIA WITH ROOFS THAT OPEN AND CLOSE**

5.10 Major sports grounds with roofs that open and close, such as the Millennium Stadium in Cardiff, do not fall within the definition of an “indoor sporting event” under the 2003 Act. As a result events taking place in these stadia are not ‘regulated entertainment’ as defined and are not licensable under the 2003 Act.

## **VESSELS**

5.11 The 2003 Act applies to vessels (including ships and boats) as if they were premises. A vessel which is not permanently moored or berthed is treated as if it were premises situated in a place where it is usually moored or berthed. The relevant licensing authority for considering an application for a premises licence for a vessel is therefore the licensing authority for the area in which it is usually moored or berthed.

5.12 However, an activity is not a licensable activity if it takes place aboard a vessel engaged on an international journey. An “international journey” means a journey from a place in the United Kingdom to an immediate destination outside the United Kingdom or a journey from outside the United Kingdom to an immediate destination in the United Kingdom.

5.13 If a vessel is not permanently moored and carries more than 12 passengers it is a passenger ship and will be subject to safety regulation by the Maritime and Coastguard Agency (MCA).

5.14 When a licensing authority receives an application for a premises licence in relation to a vessel, it should consider the promotion of the licensing objectives, but should not focus on matters relating to safe navigation or operation of the vessel, the general safety of passengers or emergency provision, all of which are subject to regulations which must be met before the vessel is issued with its Passenger Certificate and Safety Management Certificate.

5.15 If the MCA is satisfied that the vessel complies with Merchant Shipping standards for a passenger ship, the premises should normally be accepted as meeting the public safety objective. In relation to other public safety aspects of the application, representations made by the MCA on behalf of the Secretary of State should be given particular weight.

5.16 If a vessel, which is not permanently moored and carries no more than 12 passengers, goes to sea, it will be subject to the code for the safety of Small Commercial Vessels. This code sets the standards for construction, safety equipment and manning for these vessels and MCA will be able to confirm that it has a valid safety certificate.

- 5.17 If a vessel carries no more than 12 passengers and does not go to sea, it may be regulated or licensed by the competent harbour authority, navigation authority or local authority. The recommended standards for these vessels are set out in the (non-statutory) Inland Waters Small Passenger Boat Code, which provides best-practice guidance on the standards for construction, safety equipment and manning. Some authorities may use their own local rules. MCA has no direct responsibility for these vessels and will not normally comment on a premises licence application.

## INTERNATIONAL AIRPORTS AND PORTS

- 5.18 Under the 2003 Act, the Secretary of State may 'designate' a port, hoverport or airport with a substantial amount of international traffic so that an activity carried on there is not licensable. The Secretary of State may also preserve existing designations made under earlier legislation. Details of designated ports, hoverports and airports can be viewed on the DCMS website.
- 5.19 Areas at designated ports which are "airside" or "wharveside" are included in the exemption in the 2003 Act from the licensing regime. The non-travelling public does not have access to these areas and they are subject to stringent bye-laws. The exemption allows refreshments to be provided to travellers at all times of the day and night. Other parts of designated ports, hoverports and airports are subject to the normal licensing controls.

## VEHICLES

- 5.20 Under the 2003 Act, alcohol may not be sold on a moving vehicle and the vehicle may not be licensed for that purpose. However, licensing authorities may consider applications for the sale of alcohol from a parked or stationary vehicle. For example, mobile bars could sell alcohol at special events as long as they were parked. Any permission granted would relate solely to the place where the vehicle is parked and where sales are to take place.
- 5.21 The provision of any entertainment or entertainment facilities on premises consisting of or forming part of any vehicle while it is in motion and not permanently or temporarily parked is not regulated entertainment for the purposes of the 2003 Act. For example, a band performing on a moving float in a parade would not require a premises licence if performances only take place while the vehicle is in motion.

## TRAINS AND AIRCRAFT

- 5.22 Railway vehicles and aircraft engaged on journeys are exempted from the licensing regime. However, licensing authorities should note that some defunct aircraft and railway carriages remain in a fixed position and are used as restaurants and bars. These premises are subject to the provisions of the 2003 Act.

## GARAGES

- 5.23 Section 176 of the 2003 Act prohibits the sale or supply of alcohol from premises that are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used as a garage if they are used for one or more of the following:
- the retailing of petrol;
  - the retailing of derv;
  - the sale of motor vehicles; and
  - the maintenance of motor vehicles.
- 5.24 The licensing authority must decide whether or not any premises is used primarily as a garage. The approach endorsed so far by the courts is based on intensity of use to establish primary use. For example, if a garage shop in any rural area is used more intensely by customers purchasing other products than by customers purchasing the products or services listed above, it may be eligible to seek authority to sell or supply alcohol.
- 5.25 Where there is insufficient evidence to establish primary use, it is for the licensing authority to decide whether to grant the licence and deal with any issues through enforcement action or to defer granting the licence until the primary use issue can be resolved to their satisfaction.

## LARGE SCALE TIME-LIMITED EVENTS REQUIRING PREMISES LICENCES

- 5.26 Licensing authorities should note that a premises licence may be sought for a short, discrete period. The 2003 Act provides for the giving of temporary event notices which are subject to various limitations (see Chapter 7 of this Guidance). Any temporary event which is not within these limits, would require the authority of a premises licence if the premises or place is currently unlicensed for the activities involved. For example, this would arise if the event would involve more than 499 attending or if a temporary event notice were given and would result in the limit for individual premises of 12 notices in a calendar year being exceeded.
- 5.27 The procedures for applying for and granting such a licence are identical to those for an unlimited duration premises licence except that it should be stated on the application that the applicant's intention is that the period of the licence should be limited. Licensing authorities should clearly specify on such a licence when it comes into force and when it ceases to have effect. If the sale of alcohol is involved, a personal licence holder must be specified as the designated premises supervisor.
- 5.28 Temporary events may range from relatively small local events, like traditional performances of a play, which may last for five days, to major pop festivals lasting only one day. The largest temporary events may attract huge crowds of over 100,000 people and the risks to public safety and to crime and disorder as well as public nuisance may be considerable.

Licensing authorities are expected to make clear in local publicity that they should be given very early notice of such major events to allow responsible authorities to discuss operating schedules with the organisers well before a formal application is submitted. Many of these events will give rise to special considerations in respect of public safety. Operating schedules should therefore reflect an awareness of these matters and in particular, advice given in the following documents will be relevant:

- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through [www.streetartsnetwork.org.uk/pages/publications.htm](http://www.streetartsnetwork.org.uk/pages/publications.htm)
- Fire Safety Risk Assessment – Open Air Events and Venues (ISBN 978 1 85112 823 5) is available from the Communities and Local Government website [www.communities.gov.uk/fire](http://www.communities.gov.uk/fire)

## ADDITIONAL FEES FOR LARGE SCALE EVENTS

- 5.29 It should be noted that premises licences for large scale temporary events do not automatically attract the higher fee levels set out in the relevant fee Regulations, which must be paid in addition to the standard application or variation fees when the premises licence relates to activities attracting the attendance of 5,000 or more.
- 5.30 Venues that are permanent or purpose built or structurally altered for the activity are exempt from the additional fee.
- 5.31 Regulations prescribe that the additional fee for large scale events would not be payable where the premises is a structure which is not a vehicle, vessel or moveable structure, and has been constructed or structurally altered to allow:
- the proposed licensable activities to take place;
  - the premises to be modified temporarily, from time to time, if relevant for the proposed licensable activities;
  - the proposed number of people on the premises at any one time;
  - the premises to be used in a manner which complies with the operating schedule.

The full details of where the additional fee is applicable can be found in Regulation 4(5) of The Licensing Act 2003 (Fees) Regulations 2005 which may be viewed on the DCMS website.

## 6. Club premises certificates

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6.1 This Chapter provides advice about best practice for the administration of the processes for issuing, varying, and reviewing club premises certificates and other associated procedures.

### GENERAL

6.2 Clubs are organisations where members have joined together for particular social, sporting or political purposes and then combined to buy alcohol in bulk as members of the organisation to supply in the club. They commonly include Labour, Conservative and Liberal Clubs, the Royal British Legion, other ex-services clubs, working men's clubs, miners welfare institutions, social and sports clubs.

6.3 Technically the club only sells alcohol by retail at such premises to guests. Where members purchase alcohol, there is no sale (as the member owns part of the alcohol stock) and the money passing across the bar is merely a mechanism to preserve equity between members where one may consume more than another. This explains why the 2003 Act often refers to the supply of alcohol in the context of clubs and not just to the sale by retail.

6.4 Only 'qualifying' clubs may hold club premises certificates. In order to be a qualifying club, a club must have at least 25 members and meet the conditions set out in paragraph 6.9 below. The grant of a club premises certificate means that a qualifying club is entitled to certain benefits. These include:

- the authority to supply alcohol to members and sell it to guests on the premises to which the certificate relates without the need for any member or employee to hold a personal licence;
- the absence of a requirement to specify a designated premises supervisor (see paragraphs 4.19 and 4.20 of this Guidance);

- more limited rights of entry for the police and authorised persons because the premises are considered private and not generally open to the public;
- exemption from police powers of instant closure on grounds of disorder and noise nuisance (except when being used under the authority of a temporary event notice or premises licence) because they operate under their codes of discipline and rules which are rigorously enforced ; and
- exemption from orders of the magistrates' court for the closure of all licensed premises in an area when disorder is happening or expected.

6.5 Qualifying clubs should not be confused with proprietary clubs, which are clubs run commercially by individuals, partnerships or businesses for profit. These require a premises licence and are not qualifying clubs.

6.6 A qualifying club will be permitted under the terms of a club premises certificate to sell and supply alcohol to its members and their guests only. Instant membership is not permitted and members must wait at least two days between their application and their admission to the club. Any qualifying club may choose to obtain a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public, including the sale of alcohol to them. However, an individual on behalf of a club may give temporary event notices in respect of the premises to cover a period of up to 96 hours on up to 12 occasions each calendar year, so long as no more than 499 people attend the event and subject to an overall maximum duration in the year of 15 days, and on such occasions may sell alcohol to the public or hire out their premises for use by the public.

- 6.7 The 2003 Act does not prevent visitors to a qualifying club being supplied with alcohol as long as they are 'guests' of any member of the club or the club collectively, and nothing in the 2003 Act prevents the admission of such people as guests without prior notice. For the sake of flexibility, the Act does not define "guest" and whether or not somebody is a genuine guest would in all cases be a question of fact. The term can include a wide variety of people who are invited by the qualifying club or any individual member to use the club facilities. The manner in which they are admitted as 'guests' would be for the club to determine and to consider setting out in their own club rules.
- 6.8 There is no mandatory requirement under the 2003 Act for guests to be signed in by a member of the club. However, a point may be reached where a club is providing commercial services to the general public in a way that is contrary to its qualifying club status. It is at this point that the club would no longer be conducted in "good faith" and would no longer meet "general condition 3" for qualifying clubs in section 62 of the 2003 Act. Under the 2003 Act the licensing authority must decide when a club has ceased to operate in "good faith" and give the club a notice withdrawing the club premises certificate. The club is entitled to appeal against such a decision to the magistrates' courts. Unless the appeal is successful, the club would need to apply for a full premises licence to cover any licensable activities taking place there.

## QUALIFYING CONDITIONS

- 6.9 Section 62 of the 2003 Act sets out five general conditions which a relevant club must meet to be a qualifying club. Section 63 also sets out specified matters for licensing authorities to enable them to determine whether a club is established and conducted in good faith – the third qualifying condition. Section 64 sets out additional conditions which only need to be met by clubs intending to supply alcohol to members and guests. Section 90 of the 2003 Act gives powers to the licensing authority to issue a notice to a club withdrawing its certificate where it appears that it has ceased to meet the qualifying conditions. There is a right of appeal against such a decision.

## ASSOCIATE MEMBERS AND GUESTS

- 6.10 As well as their own members and guests, qualifying clubs are also able to admit associate members and their guests (i.e. members and guests from another 'recognised club' as defined by section 193 of the 2003 Act) to the club premises when qualifying club activities are being carried on without compromising the use of their club premises certificate. This reflects traditional arrangements where such clubs make their facilities open to members of other clubs which operate reciprocal arrangements.

## APPLICATIONS FOR THE GRANT OR VARIATION OF CLUB PREMISES CERTIFICATES

- 6.11 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those for a premises licence. Clubs may also use the minor variation process to make small changes to their certificates as long as these could have no adverse impact on the licensing objectives. Licensing authorities should refer to Chapter 8 of this Guidance on the handling of such applications. In that Chapter most of the references to the premises licence, premises licence holders, and applicants can be read for the purposes of this Chapter as club premises certificates, qualifying clubs and club applicants.
- 6.12 In addition to a plan of the premises and a club operating schedule, clubs must also include the rules of the club with their application. On notifying any alteration to these rules to the licensing authority, the club is required to pay a fee set down in regulations. Licensing authorities may wish to consider returning a certified copy of the rules to the applicant with the certificate. Licensing authorities should bear in mind that they cannot require any changes to the rules to be made as a condition of receiving a certificate unless relevant representations have been made. However, if a licensing authority is satisfied that the rules of a club indicate that it does not meet the qualifying conditions in the Act, a club premises certificate should not be granted.

## STEPS NEEDED TO PROMOTE THE LICENSING OBJECTIVES

- 6.13 Club operating schedules prepared by clubs, as with operating schedules for premises licences, must include the steps the club intends to take to promote the licensing objectives. These will be translated into conditions included in the certificate, unless the conditions have been modified by the licensing authority following consideration of relevant representations. Guidance on these conditions is given in Chapter 10 of this Guidance.
- 6.14 The Secretary of State wishes to emphasise that non-profit making clubs make an important and traditional contribution to the life of many communities in England and Wales and bring significant benefits. Their activities also take place on premises to which the public do not generally have access and they operate under codes of discipline applying to members and their guests.
- 6.15 Licensing authorities should bear these matters in mind when considering representations and should not attach conditions to certificates unless they can be demonstrated to be strictly necessary. The indirect costs of conditions will be borne by individual members of the club and cannot be recovered by passing on these costs to the general public.

## SEX EQUALITY

6.16 The Secretary of State believes that all qualifying clubs should adopt fair and equal procedures for admitting people to membership, electing club officials and on voting rights. However, although equal treatment on the grounds of gender is important to society generally, it is not a licensing objective. Conditions should not therefore be imposed which interfere with the arrangements for granting membership or voting within the club. It would also be inappropriate to apply one set of rules to qualifying clubs and another set of rules to clubs that do not engage in qualifying club activities and do not therefore require club premises certificates. Licensing authorities should not therefore seek to challenge the bona fides of any qualifying club on these grounds.

## TEMPORARY EVENT NOTICES

6.17 Licensing authorities should note paragraph 7.13 of this Guidance in connection with permitted temporary activities in club premises.

## 7. Temporary event notices

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7.1 This Chapter describes best practice in administering the arrangements in the 2003 Act for the temporary carrying on of licensed activities at premises which are not authorised by a premises licence or club premises certificate.

### GENERAL

7.2 The most important aspect of the system of permitted temporary activities is that events do not have to be authorised as such by the licensing authority. Instead the premises user notifies the event to the licensing authority and the police, subject to fulfilling certain conditions.

7.3 In general, only the police may intervene to prevent such an event taking place or to agree a modification of the arrangements; and it is characterised by an exceptionally light touch bureaucracy. The licensing authority may only ever intervene of its own volition if the statutory limits on the number of temporary event notices that may be given in various circumstances would be exceeded. Otherwise, the licensing authority is only required to issue a timely acknowledgment.

7.4 It should be noted that giving a temporary event notice does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.

### LIMITATIONS

7.5 Such a light touch is possible because of the limitations directly imposed on the use of the system by the 2003 Act. The limitations apply to:

- the number of times a person (the “premises user”) may give a temporary event notice (50 times per year for a personal licence holder and 5 times per year for other people);

- the number of times a temporary event notice may be given for any particular premises (12 times in a calendar year);
- the length of time a temporary event may last (96 hours);
- the maximum total duration of the periods covered by temporary event notices at any individual premises (15 days); and
- the scale of the event in terms of the maximum number of people attending at any one time (less than 500).

7.6 In any other circumstances, a full premises licence or club premises certificate would be required for the period of the event involved. A person may also choose to apply for a premises licence or club premises certificate if they do not wish to take advantage of the light touch arrangements.

7.7 In determining whether the maximum total duration of the periods covered by temporary event notices at any individual premises has exceeded 15 days, licensing authorities should be aware that any event beginning before midnight and continuing into the next day would count as two days towards the 15 day limitation.

7.8 Many premises users giving temporary event notices will not have commercial backgrounds or ready access to legal advice, including for example, people acting on behalf of charities, community and voluntary groups, etc who may hold public events involving licensable activities to raise funding. Licensing authorities should therefore ensure that local publicity about the system of permitted temporary activities is clear and understandable and should strive to keep the arrangements manageable and user-friendly for these groups.

## WHO CAN GIVE A TEMPORARY EVENT NOTICE?

### Personal licence holders

- 7.9 A personal licence holder can give a temporary event notice for licensable activities, at any premises on up to 50 occasions in each year for up to four days on each occasion (subject to the limitations for each premises – see paragraph 7.11 below), subject to informing the licensing authority and the police for the area in which the event is to take place of relevant details. The relevant information is itemised in the prescribed notice contained in regulations made by the Secretary of State, which may be viewed on the DCMS website.
- 7.10 A personal licence holder may also use their allocation of 50 temporary event notices at premises which have a premises licence or club premises certificate. This might be, for example, to hold an event involving live music, to extend the hours when alcohol may be sold for an ad hoc occasion or to provide late night refreshment after a quiz night. However, if the ad hoc event is something that is predictable and anticipated to occur on a number of occasions it is expected that the licensable activities would form part of the application for a premises licence.
- 7.11 Only 12 notices may be granted for the same premises up to an overriding maximum total duration of 15 days.

### Non-personal licence holders

- 7.12 The 2003 Act provides that any individual person aged 18 or over may give a temporary event notice whether or not they hold a personal licence. They will not therefore have met the tests and qualifications described in Part 6 of the Act. Where alcohol is not to be sold, this should not matter. However, many events will involve combinations of licensable activities. In the absence of a premises user holding a personal licence, the Act limits the number of notices that may be given by any non-personal licence holder to 5 occasions per year. In every other respect, the Guidance and information set out in the paragraphs above applies.
- 7.13 Temporary event notices may also be given by non-personal licence holders for club premises covered by club premises certificates. This means, for example, that a club which under its certificate is normally only permitted to supply alcohol to its members and their guests may during the period covered by a temporary event notice (subject to the limitation on numbers and occasions) under the authority of the notice and the responsibility of the individual giving the notice (the premises user) admit members of the public and sell alcohol to them as well as provide regulated entertainment. Only 12 notices may be given for the same club premises in any calendar year and the maximum total duration of 15 days will also apply.

## NOTIFIED PREMISES

7.14 A temporary event notice may be given for part of a building such as a single room within a village hall, a plot within a larger area of land, or a discrete area within a marquee as long as it includes a clear description of the area where the licensable activities will take place and the premises user intends to restrict the number of people present in the notified area at any one time to less than 500. If the premises user fails to restrict the numbers to a maximum of 499, they would be liable to prosecution for carrying on unauthorised licensable activities.

## NOTIFICATION ARRANGEMENTS

7.15 Premises users notifying a temporary event are required to send a temporary event notice, in the form prescribed in the regulations, to the licensing authority at least 10 working days before an event. Premises users applying in writing must also send the notice to the police at least 10 working days before an event. The police have a period of no later than two working days from when they are given the notice to object to the temporary event on crime prevention grounds.

7.16 If the notice is sent electronically via businesslink or the licensing authority's own facility, the licensing authority must notify the police no later than the first working day after the notice is given. Otherwise the general guidance in paragraphs 8.27 – 8.35 on electronic applications applies.

7.17 There is nothing to prevent notification of multiple events at the same time so long as the first event is at least ten days away. For example, an individual personal licence holder wishing to exhibit and sell beer at a series of country shows may wish to give several notices simultaneously. However, this would only be possible where the events are to take place in the same licensing authority (and police area) and the premises to be used at the show would be occupied by no more than 499 people at any one time.

7.18 Although 10 working days is the minimum possible notice that may be given, licensing authorities should publicise locally their preferences in terms of forward notice and encourage notice givers to provide the earliest possible notice of events likely to take place. Licensing authorities should also consider publicising a preferred maximum time in advance of an event that applications should be made. For example, if an application is made too far in advance of an event, it may be difficult for the police to make a sensible assessment and could lead to objections that could be otherwise avoided.

7.19 Section 193 of the Act defines "working day" as any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales. "Ten working days" notice means ten working days exclusive of the day on which the event is to start, and exclusive of the day on which the notice is given.

## ROLE OF THE LICENSING AUTHORITY

7.20 One reason for the notification requirement is to enable the licensing authority to check that the limitations set down in Part 5 of the 2003 Act are being observed and to intervene if they are not. For example, a temporary event notice would be void unless there is a minimum of 24 hours between events notified by the same premises user, or an associate, or someone who is in business with the relevant premises user, in respect of the same premises. This is to prevent evasion of the 96 hour limit on such events and the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a notice is treated as being from the same premises user if it is given by an associate. The 2003 Act defines an associate as being:

- the spouse or civil partner of that person;
- child, parent, grandchild, grandparent, brother or sister of that person;
- an agent or employee of that person;
- the spouse or civil partner of a person listed in either of the two previous bullet points.

7.21 A person living with another person as their husband or wife is treated for these purposes as their spouse. 'Civil partner' is defined by the Civil Partnership Act 2004.

7.22 Where the application is not within the statutory parameters described earlier, the licensing authority will issue a counter notice to the person giving the notice – the premises user. Where the temporary event notice is in order, the fee prescribed by the Secretary of State paid, the event falls within the limitations

in the Act, and there has been no police intervention on crime prevention grounds, the licensing authority will record the notice in its register and send an acknowledgement to the premises user.

7.23 Licensing authorities may not seek to attach any terms, conditions, limitations or restrictions on the carrying on of licensable activities at such events under the authority of a temporary event notice. It is however desirable for licensing authorities to provide local advice about proper respect for the concerns of local residents; of other legislative requirements regarding health and safety, noise pollution or the building of temporary structures; of other necessary permissions, for example, with regard to road closures or the use of pyrotechnics in public places; with regard to local bye-laws; and the need to prevent anti-social behaviour by those attending. Premises users are not required to be on the premises for the entire duration of the event, but they will remain liable to prosecution for certain offences that may be committed at the premises during the temporary event if the event is not adequately managed/supervised including the laws governing sales of alcohol to minors. These matters may be covered in the licensing authority's statement of licensing policy.

7.24 In the case of an event proceeding under the authority of a temporary event notice, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.

7.25 Section 8 of the Act requires licensing authorities to keep a register containing certain matters, including a record of temporary notices received. Licensing authorities should be aware that there is no requirement to record all the personal information given on a temporary event notice, and should avoid recording certain details, such as national insurance numbers, which may give rise to identity fraud.

## POLICE INTERVENTION

7.26 The second and more important reason for the notification requirement is to give the police the opportunity to consider whether they should object to the event taking place on the grounds that it would undermine the crime prevention objective.

7.27 Such cases might arise because of concerns about the scale, location or timing of the event. However, in most cases, where alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder, (e.g. at weddings or small social, community, charitable or sporting events) this should not give rise to the use of these police powers. If the police do not intervene, they will still be able to rely on their powers of closure under Part 8 of the 2003 Act should disorder or noise nuisance arise subsequently.

7.28 The police may issue an objection notice within two working days of being notified. The licensing authority must consider the objection at a hearing before a counter notice can be issued, but it must restrict its consideration to the crime prevention objective. It may not, for example, uphold a police objection notice on grounds of public nuisance or an objection notice given more than two working days after the temporary event notice is given. At the hearing, the police and the premises user may be heard by the relevant licensing committee. A hearing would not be necessary if the objection notice is withdrawn by the police.

7.29 The possibility of police intervention is another reason why event organisers should be encouraged by local publicity not to rely on giving the minimum amount of notice and to contact local police licensing officers at the earliest possible opportunity about their proposals.

7.30 The police may withdraw their objection notice at any stage if the proposed premises user agrees to modify the proposal to meet their concerns. For example, if the premises user agrees to modify the period during which alcohol may be sold. The licensing authority will then be sent or delivered a copy of the modified notice by the police as proof of their agreement, but they can subsequently withdraw it.

## 8. Applications for premises licences

### RELEVANT LICENSING AUTHORITY

- 8.1 Premises licences are issued by the licensing authority in which the premises are situated or in the case of premises straddling an area boundary, the licensing authority where the greater part of the premises is situated. Where the premises is located equally in two or more areas, the applicant may choose but, in these rare cases, it is important that the licensing authorities involved maintain close contact.
- 8.2 In section 13, the 2003 Act defines three key groups that have important roles in the context of applications, inspection, enforcement and reviews of premises licences.

### AUTHORISED PERSONS

- 8.3 The first group – “authorised persons” – are bodies empowered by the Act to carry out inspection and enforcement roles. The police are not included because they are separately empowered by the Act to carry out their duties. For all premises, the authorised persons include:
- officers of the licensing authority;
  - fire inspectors;
  - inspectors locally responsible for the enforcement of the Health and Safety at Work etc Act 1974; and
  - environmental health officers.
- 8.4 Local authority officers will most commonly have responsibility for the enforcement of health and safety legislation, but the Health and Safety Executive is responsible for certain premises. In relation to vessels, authorised persons also include an inspector or a surveyor of ships appointed under section 256 of the Merchant Shipping Act 1995. These would normally be officers acting on behalf of the Maritime and Coastguard Agency.

The Secretary of State may also prescribe other authorised persons by means of regulations, but has not currently prescribed any additional bodies. If any are prescribed, details will be made available on the DCMS website.

### INTERESTED PARTIES

- 8.5 The second group – “interested parties” – are the bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:
- a person living in the vicinity of the premises in question;
  - a body representing persons living in that vicinity, for example, a residents’ association, or a parish or town council;
  - a person involved in a business in the vicinity of the premises in question;
  - a body representing persons involved in such businesses, for example, a trade association; and
  - a member of the relevant licensing authority, i.e. elected councillors of the licensing authority for the area in which a premises is situated (see paragraph 8.1).
- 8.6 It is expected that “a person involved in business” will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.
- 8.7 Any of these individuals or groups may specifically request a representative to make a representation on their behalf. For example, a legal representative, a friend, a Member of

Parliament, a Member of the National Assembly for Wales, or a local ward or parish councillor could all act in such a capacity.

- 8.8 Further information on the role of interested parties is available in "Guidance for interested parties: applying for a review" which can be found on the DCMS website.

## THE ROLE OF LOCAL COUNCILLORS

- 8.9 Local councillors play an important role in their local communities. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. Local councillors can also, as elected members of the licensing authority, make representations in their own right if they have concerns about any premises, regardless of whether they live or run a business in the vicinity of those premises. For example, councillors may apply for a review of a licence if problems at a specific premises which justify intervention are brought to their attention.
- 8.10 Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 which restricts their involvement in matters, and participation in meetings to discuss matters, in which they have a 'prejudicial' interest (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest). In cases where a local councillor makes a representation as an interested party, they will be considered to have a 'prejudicial' interest in the local authority's decision on a resulting review and in the local authority's representation to any appeal on this decision.
- 8.11 According to the Model Code of Conduct, councillors with a 'prejudicial' interest must not exercise executive functions in relation to that business and must not seek improperly to influence a decision about that business. Councillors with a prejudicial interest are allowed to attend relevant meetings to make representations, answer questions or give evidence, provided that the public are also allowed to attend for the same purpose, whether under the licensing legislation or otherwise and as long as they withdraw from the meeting immediately afterwards. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.
- 8.12 The Code applies to any elected council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right, would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. For example, where a councillor has made representations in their capacity as an elected member of the licensing authority. In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence in any other way.
- 8.13 In addition, councillors may wish to be kept informed of licensing related matters within the area, such as applications and reviews.

8.14 The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as 'soliciting' representations. It should be remembered that the 'licensing authority' in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.

8.15 Where an officer of the authority, such as a licensing officer, has information that raises concerns about a licensed premises, they are entitled to bring that information to the attention of an elected councillor. For example, in the case of underage alcohol sales, they may wish to alert the child protection portfolio holder or the chair of the licensing committee, who may then wish to consider calling for a licence review (subject to the points raised above).

- a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm;
- the local weights and measures authority (trading standards); and
- any licensing authority, other than the relevant licensing authority, in whose area part of the premises are situated.

8.17 The licensing authority should indicate in its licensing policy which body it has recognised to be competent to advise it on the protection of children from harm. This may be the local authority social services department, the Area Child Protection Committee, or another competent body. This is important as applications for premises licences have to be copied to the responsible authorities by the applicant in order for them to make any representations they think are relevant.

## RESPONSIBLE AUTHORITIES

8.16 The third group – “responsible authorities” – are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. All representations made by responsible authorities are relevant representations if they concern the effect of the application on the licensing objectives. For all premises, these include:

- the chief officer of police;
- the local fire and rescue authority;
- the local enforcement agency for the Health and Safety at Work etc Act 1974 (see paragraph 8.4 above).
- the local authority with responsibility for environmental health;
- the local planning authority;

8.18 In relation to a vessel, responsible authorities also include navigation authorities within the meaning of section 221(1) of the Water Resources Act 1991 that have statutory functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is proposed to be navigated when being used for licensable activities; the Environment Agency; the British Waterways Board; and the Secretary of State. The Secretary of State in this case means the Secretary of State for Transport who in practice acts through the Maritime and Coastguard Agency (MCA). In practice, the Environment Agency and British Waterways only have responsibility in relation to vessels on waters for which they are the navigation statutory authority.

8.19 The Maritime and Coastguard Agency (MCA) is the lead responsible authority for public safety, including fire safety, issues affecting passenger

ships (those carrying more than 12 passengers) wherever they operate and small commercial vessels (carrying no more than 12 passengers) which go to sea. The safety regime for passenger ships is enforced under the Merchant Shipping Acts by the Maritime and Coastguard Agency which operates certification schemes for these vessels. Fire and rescue authorities, the Health and Safety Executive and local authority health and safety inspectors should normally be able to make “nil” returns in relation to such vessels and rely on the MCA to make any necessary representations in respect of this licensing objective.

8.20 Merchant Shipping legislation does not, however, apply to permanently moored vessels. So, for example, restaurant ships moored on the Thames Embankment, with permanent shore connections should be considered by the other responsible authorities concerned with public safety, including fire safety. Vessels carrying no more than 12 passengers which do not go to sea are not subject to MCA survey and certification, but may be licensed by the local, port or navigation authority.

8.21 The Secretary of State for Culture, Media and Sport may prescribe other responsible authorities by means of regulations. Any such secondary legislation may be viewed at the DCMS website.

## WHO CAN APPLY FOR A PREMISES LICENCE?

8.22 Any person (if an individual aged 18 or over) who is carrying on or who proposes to carry on a business which involves the use of premises (any place including one in the open air) for licensable activities may apply for a premises licence either on a permanent basis or for a time-limited period.

8.23 “A person” in this context includes, for example, a business or a partnership. Licensing authorities should not require the nomination of an individual to hold the licence or decide who is the most appropriate person to hold the licence. For example, for most leased public houses, a tenant may run or propose to run the business at the premises in agreement with a pub owning company. Both would be eligible to apply for the appropriate licence and it is for these businesses or individuals to agree contractually amongst themselves who should do so. However, in the case of a managed public house, the pub operating company should apply for the licence as the manager (an employee) would not be entitled to do so. Similarly, with cinema chains, the normal holder of the premises licence would be the company owning the cinema and not the cinema manager (an employee of the main company).

8.24 In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for licensable activities. In the case of public houses, this would be easier for a tenant to demonstrate than for a pub owning company that is not itself carrying on licensable activities. The Secretary of State recommends that where licences are to be held by businesses, it is desirable that this should be a single business to avoid any lack of clarity in terms of accountability.

8.25 A public house may be owned or a tenancy held, jointly by a husband and wife or other partnerships of a similar nature, both actively involved in carrying on the licensable activities. In these cases, it is entirely possible for the husband and wife or the partners to apply jointly as applicant for the premises licence,

even if they are not formally partners in business terms. This is unlikely to lead to the same issues of clouded accountability that could arise where two separate businesses apply jointly for the licence. If the application is granted, the premises licence would identify the holder as comprising both names and any subsequent applications, for example for a variation of the licence, would need to be made jointly.

- 8.26 A wide range of other individuals and bodies set out in section 16 of the 2003 Act may apply for premises licences. They include, for example, Government Departments, local authorities, hospitals, schools, charities or police forces. In addition to the bodies listed in section 16, the Secretary of State may prescribe by regulations other bodies that may apply and any such secondary legislation may be viewed on the DCMS website.
- 8.27 There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises where a premises licence is already held. For example, one individual may hold a premises licence authorising the sale of alcohol and another individual could apply for a premises licence for the same premises or part of those premises to authorise regulated entertainment. This also ensures that one business could not seek premises licences, for example, for all potential circus sites in England and Wales, and prevent other circuses from using those sites even though they had the permission of the landowner.

## APPLICATION FORMS

- 8.28 An application for a premises licence may be made in writing, or electronically via businesslink or the licensing authority's own electronic application facility (if one exists).

## Written applications

- 8.29 A written application for a premises licence must be made in the prescribed form to the relevant licensing authority and be copied to each of the appropriate responsible authorities. For example, applications for premises which are not vessels should not be sent to the Maritime and Coastguard Agency. The application must be accompanied by:
- the required fee (details of fees may be viewed on the DCMS website);
  - an operating schedule (see below);
  - a plan of the premises in a prescribed form; and
  - if the application involves the supply of alcohol, a form of consent from the individual who is to be specified in the licence as the designated premises supervisor.
- 8.30 The Government recommends that forms should not be returned if they contain obvious and minor factual errors that can easily be amended. Regulations containing provisions on fees and the prescribed form of applications, operating schedules and plans may be viewed on the DCMS website.

## Electronic applications

- 8.31 Applicants may apply using the licensing forms available on the Electronic Application Facility (EAF) which is part of businesslink, or will be re-directed from businesslink to the licensing authority's own electronic facility if one is available. Applicants may also apply directly to the licensing authority's facility without going through businesslink.

### **Electronic applications using forms on businesslink**

- 8.32 Businesslink will send a notification to the licensing authority when a completed application form is available for it to download from the 'Electronic Licensing Management System' (ELMS). This is the day that the application is taken to be 'given' to the licensing authority, even if it is downloaded at a later stage, and the application must be advertised from the day after that day (as for a written application). The Government recommends that licensing authorities request at least daily notification of completed application forms available on the ELMS to ensure that applications are processed promptly. The licensing authority must acknowledge the application as quickly as possible, specifying the statutory time period and giving details of the appeal procedure.
- 8.33 The period of 28 consecutive days during which the application must be advertised on a notice outside the premises is, effectively, the statutory timescale by which the application must be determined (unless representations are made). This will be published on businesslink and must also be published on the licensing authority's own electronic facility if one exists. If no representations are made during this period, the licensing authority must notify the applicant as quickly as possible that the licence has been granted. The licensing authority must send the licence to the applicant as soon as possible after this, but the applicant may start the licensed activity as soon as they have been notified that the application is granted. The licence may be supplied in electronic or written format as long as the applicant is aware which document constitutes 'the licence'. If representations are made, the guidance in paragraph 8.35 below applies.

### **Requirement to copy application to responsible authorities**

- 8.34 The licensing authority must copy electronic applications, made via businesslink or its own facility, to responsible authorities no later than the first working day after the application is given. However, if an applicant submits any part of their application in writing, the applicant will remain responsible for copying it to responsible authorities.

### **Applications via the local authority electronic application facility**

- 8.35 Where applications are made on the licensing authority's own electronic facility, the application will be taken to be 'given' when the applicant has submitted a complete application form and paid the fee. The application is given at the point at which it becomes accessible to the authority by means of the facility. The licensing authority must acknowledge the application as quickly as possible, specifying the statutory time period and giving details of the appeal procedure.

### **'Holding' and 'deferring' electronic applications**

- 8.36 The Government recommends (as for written applications) that electronic applications should not be returned if they contain obvious and minor errors such as typing mistakes, or small errors that can be rectified with information already in the authority's possession. However, if this is not the case and required information is missing or incorrect, the licensing authority may 'hold' the application until the applicant has supplied all the required information. This effectively resets the 28 day period for determining an application and may be done any number of times until the application form is complete.

Licensing authorities must ensure that they notify the applicant as quickly as possible of any missing (or incorrect) information, and explain how this will affect the statutory timescale and advertising requirements.

- 8.37 If an application has been given at the weekend, the notice advertising the application (where applicable) may already be displayed outside the premises by the time that the licensing authority downloads the application. The Government therefore recommends that if a licensing authority holds an application, it should inform the applicant that the original (or if necessary, amended) notice must be displayed until the end of the revised period. The licensing authority should also advise the applicant that they should not advertise the application in a local newspaper until they have received confirmation from the LA that the application includes all the required information. To ensure clarity for applicants, the Government recommends that licensing authorities include similar advice on their electronic application facilities (where these exist) to ensure that applicants do not incur any unnecessary costs.
- 8.38 If an applicant persistently fails to supply the required information, the licensing authority may refuse the application and the applicant must submit a new application.
- 8.39 Licensing authorities may also 'defer' electronic applications once if the application is particularly complicated, for example if representations are received and a hearing is required. This allows the licensing authority to extend the statutory time period for the determination of the application by such time as is necessary, including, if necessary, arranging and holding a hearing. Licensing authorities must ensure that applicants are informed as quickly as possible of a decision to

defer, and the reasons for the deferral, before the original 28 days has expired.

## PLANS

- 8.40 Plans, for written and electronic applications, will not be required to be submitted in any particular scale, but they must be in a format which is 'clear and legible in all material respects, i.e. they must be accessible and provides sufficient detail for the licensing authority to be able to determine the application, including the relative size of any features relevant to the application. There is no requirement for plans to be professionally drawn as long as they clearly show all the prescribed information.

## STEPS TO PROMOTE THE LICENSING OBJECTIVES

- 8.41 In preparing an operating schedule, the Secretary of State expects applicants to have had regard to the statement of licensing policy for their area. They should also be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. Licensing authorities and responsible authorities are therefore expected so far as possible to publish material about the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters.
- 8.42 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Applicants are not required to seek the views of the key responsible authorities before formally submitting applications, but may find them a useful source of expert advice. Licensing authorities should encourage co-operation in

order to minimise the number of disputes which arise. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as set out in the operating schedule, will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

- 8.43 Where permission is to be sought for regulated entertainment involving the provision of live music or other cultural activity, licensing authorities may wish to advise applicants to consider consulting the local authority arts officer or local representatives of the Musicians' Union before completing their operating schedule.
- 8.44 The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises.
- 8.45 For some premises, it is entirely possible that no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that it is proposed to take to promote each of the licensing objectives and in particular, the protection of children from harm.

## VARIATIONS

### Introduction

- 8.46 This Guidance revises and replaces the Guidance on variations of premises licences published on 28 June 2007<sup>4</sup>. Where a premises licence holder wishes to amend the licence the Act allows, in most cases, for an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives. Applications to vary can be made electronically via the businesslink or the licensing authority's own electronic facility following the procedures set out in paragraphs 8.27 – 8.35 above.

### Simplified processes

- 8.47 There are simplified processes for making applications in the following cases:
- a change of the name or address of someone named in the licence (section 33);
  - an application to vary the licence to specify a new individual as the designated premises supervisor (section 37);
  - a request to be removed as the designated premises supervisor (section 41);
  - an application in relation to a licence in respect of community premises that authorises the sale of alcohol to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act concerning the supervision of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence (sections 25A and 41D); and
  - an application for minor variation of a premises licence (sections 41A to 41C) or club premises certificate.

- 8.48 If an application to specify a new DPS or to disapply the mandatory conditions concerning the supervision of alcohol sales is made electronically via businesslink or the licensing authority's own electronic facility, the authority must notify the police no later than the first working day after the application is given.
- 8.49 Where a simplified process set out in paragraph 8.43 requires the applicant (if they are not also the personal licence holder) to copy the application to the licence holder for information, this will apply regardless of whether the application is made in writing or electronically.
- 8.50 Otherwise the general guidance set out in paragraphs 8.27 – 8.35 on electronic applications applies.
- 8.52 On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. The Government recommends that decisions on minor variations should be delegated to licensing officers.
- 8.53 In considering the application, the licensing authority must consult relevant responsible authorities (whether the application is made in writing or electronically) if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision. For instance, they may need to consult the environmental health officer on an application with possible public nuisance implications. But there is no requirement to consult all responsible authorities on each application and in many cases the licensing authority may be able to make a decision without consultation.

### **Minor variations process**

- 8.51 The Licensing Act 2003 has been amended by the insertion of sections 41A to 41C relating to minor variations. These sections were commenced on 29 July 2009. Small variations that will not impact adversely on the licensing objectives are subject to a simplified 'minor variations' process. Under this process, the applicant is not required to advertise the variation in a newspaper or circular or copy it to responsible authorities. However, they must display it on a white notice (to distinguish it from the blue notice used for full variations and new applications). The notice must comply with the requirements set out in regulation 26A of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005/42). In accordance with those Regulations, the notice must be displayed for a period of ten working days starting on the working day after the minor variation application was given to the licensing authority.
- 8.54 The licensing authority must also consider any relevant representations received from interested parties within the time limit referred to below. As stated earlier in this Guidance, representations are only relevant if they clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives. In the case of minor variations, there is no right to a hearing (as for a full variation or new application), but licensing authorities must take any representations into account in arriving at a decision.
- 8.55 Interested parties have ten working days from the 'initial day', i.e. the day after the application is received by the licensing authority, to submit representations. The licensing authority must therefore wait until this period has elapsed before determining the application, but must do so at the latest within 15 working days, beginning on the first working day after the

authority received the application, with effect either that:

- the minor variation is granted; or,
- the application is refused.

8.56 If the licensing authority fails to respond to the applicant within 15 working days (see section 193 of the Act for the definition of working day) the application will be treated as refused and the authority must return the fee to the applicant forthwith. However, the licensing authority and the applicant may agree instead that the undetermined application should be treated as a new application and that the fee originally submitted will be treated as a fee for the new application.

8.57 Where an application is refused and is then re-submitted through the full variation process, the full 28 days notification period will apply from the date the new application is received and applicants should advertise the application and copy it to all responsible authorities (in accordance with the regulations applicable to full variations).

8.58 Minor variations will generally fall into four categories: minor changes to the structure or layout of a premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and the addition of certain licensable activities.

**In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.**

### Changes to structure/layout

8.59 Many small variations to layout will have no adverse impact on the licensing objectives. However, changes to layout should be referred to the full variation process if they could

potentially have an adverse impact on the promotion of the licensing objectives, for example by:

- increasing the capacity for drinking on the premises ;
- affecting access between the public part of the premises and the rest of the premises or the street or public way, e.g. block emergency exits or routes to emergency exits;
- impeding the effective operation of a noise reduction measure such as an acoustic lobby;

8.60 Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of a premises) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives. This emphasises the importance of having an up to date copy of the premises plan available.

8.61 An application to remove a licensable activity should normally be approved as a minor variation.

8.62 Variations to add the sale by retail or supply of alcohol to a licence are excluded from the minor variations process and must be treated as full variations in all cases.

8.63 The Act covers a wide range of other licensable activities and licensing authorities will need to consider each application on a case by case basis and in light of any licence conditions put forward by the applicant.

8.64 For example, the addition of live or recorded music to a licence may impact on the public nuisance objective, but this will depend on many factors. Licensing authorities will need to consider factors such as proximity to residential areas and any noise reduction conditions volunteered by the applicant. It is

very much the Government's intention that applications to vary a licence for live music should benefit from the minor variations process unless there is likely to be an adverse impact on the licensing objectives.

- 8.65 Similarly, in some circumstances, the addition of other types of regulated entertainment, such as the performance of plays or exhibition of films, to a licence may have no adverse impact on the licensing objectives.
- 8.66 In considering applications to add licensable activities, licensing authorities and officers may find it helpful to consider the following factors:
- the nature of the licensable activity;
  - proximity of the premises to residential areas;
  - any licence conditions volunteered by the applicant to mitigate the impact of the activity;
  - whether alcohol is sold at the premises when the licensable activity is taking place; and whether it will continue to be sold during the extended period. For example, a pub that applies to stay open an extra hour after the sale of alcohol has ended to sell hot drink and food could be considered to benefit the promotion of the licensing objectives;
  - track record of the premises – whether positive or negative. For example, any complaints or enforcement action related to the licensing objectives, or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
  - proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

This is not an exhaustive list and licensing officers should bring their own experience and knowledge of licensing to bear when considering applications.

### Licensing hours

8.67 Variations to:

- extend licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or
- to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises

are **excluded** from the minor variations process and must be treated as full variations in all cases.

Applications to reduce licensing hours for the sale or supply of alcohol or to move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.

8.68 Applications to vary the time during which other licensable activities take place should be considered on a case by case basis with reference to the likely impact on the licensing objectives. In arriving at a decision, licensing authorities may wish to consider the following factors:

- the nature of the licensable activity;
- the extent of additional hours sought and whether it will involve later opening or opening between 23.00 and 07.00;
- proximity of the premises to residential areas;
- any licence conditions already in place to mitigate the impact of the activity; any additional conditions volunteered by the applicant;
- arrangements for dispersal, i.e. when people leave the premises is there potential for

noise and disturbance near the venue?

Is the only means of dispersal a single route through residential areas?

- whether the proposed extension applies only on the weekend or also during week days;
- whether there will be new admittances during that period;
- track record of the establishment whether positive or negative, e.g. complaints related to the licensing objectives, any enforcement action or conversely any evidence of good practice in carrying on the licensable activity, e.g. under temporary event notices;
- whether the premises is already open during the extended period for other licensable activities;
- proximity and density of public houses, nightclubs, etc. if customers from these premises are likely to be attracted to the proposed licensable activity in large numbers. For example, people visiting a takeaway after leaving a public house.

8.69 These factors are not an exhaustive list and licensing authorities and officers should bring their own experience and knowledge of licensing to bear when considering applications.

## Licensing conditions

### a) Imposed conditions

8.70 Licensing authorities cannot impose their own conditions on the licence through the minor variations process. If the licensing officer considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, they should refuse it.

### b) Volunteered conditions

8.71 Applicants may volunteer conditions as part of the minor application process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with responsible authorities or the licensing authority.

8.72 For instance, there may be circumstances when the licence holder and a responsible authority such as the police or environmental health authority, agree that a new condition should be added to the licence. For example, that a nightclub adds the provision of late night refreshment to its licence to ensure a longer period of dispersal. Such a change would not normally impact adversely on the licensing objectives and could be expected to promote them by preventing crime and disorder or public nuisance. In these circumstances, the minor variation process may provide a less costly and onerous means of amending the licence than a review, with no risk to the licensing objectives. However, this route should only be used where the agreed variations are minor and the licensee and the responsible authority have come to a genuine agreement. The licensing authority should be alive to any attempts to pressure licensees into agreeing to new conditions where there is no evidence of a problem at the premises and, if there is any doubt, should discuss this with the relevant parties.

### c) Amending or removing existing conditions

8.73 Licence or club certificate conditions will normally have been volunteered or imposed to mitigate any possible adverse impact on the licensing objectives. In most cases therefore, any application to remove or change the wording of a condition should be treated as a full variation.

8.74 However, there may be some circumstances when the minor variation process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant. Equally some embedded conditions may no longer apply.

8.75 Changes in legislation may invalidate certain conditions. For instance, the recent Regulatory Reform (Fire Safety) Order 2005 annulled all fire safety related conditions imposed on licences purely for fire safety reasons. Although the conditions do not have to be removed from the licence, licensees and licensing authorities may agree that this is desirable to clarify the licensee's legal obligations.

8.76 There may also be cases where it is necessary to revise the wording of a condition that is unclear and/or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged. Such a change could be expected to promote the licensing objectives by making it easier for the licensee to understand and comply with the condition and easier for the licensing authority to enforce it.

### Full variations process

8.77 Any other changes to the licence require an application to vary under section 34 of the Act.

8.78 Licensing authorities will wish to consider whether there is any likely impact on the promotion of the licensing objectives in deciding whether there is a need for an application to vary in relation to features which are not required to be shown on the

plan under section 17 of the Act, but have nevertheless been included, for example, moveable furniture (altering the position of tables and chairs) or beer gardens (installation of a smoking shelter that will not affect the use of exits or escape routes).

8.79 However, it should be noted that a section 34 application cannot be used to vary a licence so as to:

- extend a time limited licence; or to
- transfer the licence from one premises to another.

8.80 If an applicant wishes to make these types of changes to the premises licence they should make a new premises licence application under section 17 of the Licensing Act 2003.

## RELAXATION OF OPENING HOURS FOR LOCAL, NATIONAL AND INTERNATIONAL OCCASIONS

8.81 It should normally be possible for applicants for premises licences and club premises certificates to anticipate special occasions which occur regularly each year – such as bank holidays and St George's or St Patrick's Day – and to include appropriate opening hours in their operating schedules. Similarly temporary event notices should be sufficient to cover other events which take place at premises that do not have a premises licence or club certificate.

8.82 However, exceptional events of local, national or international significance may arise which could not have been anticipated when the application was first made. In these circumstances, the Secretary of State may make a licensing hours order to allow premises to open for specified, generally extended, hours

on these special occasions. This avoids the need for large numbers of applications to vary premises licences and club certificates. Typical events might include a one-off local festival, a Royal Jubilee, a World Cup or an Olympic Games.

8.83 Such events should be genuinely exceptional and the Secretary of State will not consider making such an order lightly. Licensing authorities (or any other persons) are advised that they should approach the Secretary of State about making an order at least six months before the celebration. Before making an order, the Secretary of State is required to consult as appropriate and this would generally enable a wide range of bodies to make representations to her for consideration. In addition, an order must be approved by both Houses of Parliament. Nine months would be the minimum period in which such a process could be satisfactorily completed.

8.84 Licensing authorities should note that the Secretary of State has not made a licensing hours order in relation to New Year's Eve. As such applicants for new licences or certificates would need to include in their applications the hours that they propose for New Year's Eve, if these are different from the standard hours applied for.

## ADVERTISING APPLICATIONS

8.85 Regulations governing the advertising of applications for the grant or variation or review of premises licences are contained in secondary legislation made by the Secretary of State and can be viewed on the DCMS website.

8.86 Applicants are required to:

- publish a notice in a local newspaper or, if there is none, in a local newsletter, circular

or similar document circulating in the vicinity of the premises; and

- display a brief summary of the application on an A4 size notice immediately on or outside the premises

8.87 The summary of the application should set out matters such as the proposed licensable activities and the proposed hours of opening and should be clearly displayed for the period during which representations may be made, together with information about where the details of the application may be viewed.

8.88 Licensing authorities in Wales should consider encouraging applicants to provide details in the alternative language (Welsh or English) to that of the main advertisement itself where the application may be viewed. Therefore, if an applicant publishes a notice in English they should be encouraged to provide a statement in Welsh as to where the application may be viewed, and vice versa. This would allow the reader of the notice to make enquiries to the licensing authority and find out the nature of the application.

8.89 Notices of applications to vary a premises licence should include a brief description of the proposed variation, e.g. details of extra hours applied for, hours varied from/to.

8.90 In the case of applications for premises licences involving internet or mail order sales, notices should be conspicuously displayed at the place where the alcohol is appropriated to the contract in accordance with the relevant regulations (see paragraph 3.6).

8.91 A vessel which is not permanently moored or berthed is treated as if it were a premises situated in a place where it is usually moored or berthed. The newspaper advertisement notice for such a vessel would need to be in

relation to this place (where it is usually moored or berthed) and there is no provision requiring such advertising in other areas, for instance, if the vessel journeys through other licensing authority areas.

- 8.92 So far as possible, as well as putting in place arrangements for interested parties to view a record of the application in the licensing register as described in Schedule 3 to the 2003 Act, it is expected that licensing authorities will also include these details on their websites. Charges made for copies of the register should not exceed the cost of preparing such copies.
- 8.93 Licensing authorities may wish to conduct random and unannounced visits to premises to confirm that notices have been clearly displayed and include relevant and accurate information.
- 8.94 It is open to licensing authorities to notify residents living in the vicinity of premises by circular of premises making an application, but this is not a statutory requirement.

## APPLICATIONS TO CHANGE THE DESIGNATED PREMISES SUPERVISORS

- 8.95 Paragraphs 4.19 – 4.28 above cover designated premises supervisors and applications to vary a premises licence covering sales of alcohol by specifying a new designated premises supervisor. Paragraphs 4.32 to 4.47 cover applications by community premises to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act concerning the authorisation of alcohol sales by a personal licence holder and the need for a Designated Premises Supervisor who holds a personal licence.

## PROVISIONAL STATEMENTS

- 8.96 Where premises are being or are about to be constructed, extended or otherwise altered for the purpose of being used for one or more licensable activities, investors may be unwilling to commit funds unless they have some assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed.
- 8.97 The 2003 Act does not define the words “otherwise altered”, but the alteration must relate to the purpose of being used for one or more licensable activities. For example, a premises licence should indicate the whole of or part of the premises which are licensed for one or more licensable activity. If the building is to be altered to allow a previously unlicensed area to be used for a licensable activity, a provisional statement may be sought for the additional area.
- 8.98 Any person falling within section 16 of the 2003 Act can apply for a premises licence before new premises are constructed, extended or changed. This would be possible where clear plans of the proposed structure exist and the applicant is in a position to complete an operating schedule including details of:
- the activities to take place there;
  - the time at which such activities will take place;
  - the proposed hours of opening;
  - where the applicant wishes the licence to have effect for a limited period, that period;
  - the steps to be taken to promote the licensing objectives; and
  - where the sale of alcohol is involved, whether supplies are proposed to be for consumption on or off the premises (or both) and the

name of the designated premises supervisor the applicant wishes to specify.

8.99 In such cases, the licensing authority would include in the licence the date upon which it would come into effect. A provisional statement will normally only be required when the information described above is not available.

8.100 The 2003 Act therefore provides for a person, if an individual aged 18 or over, who has an interest in the premises to apply for a "provisional statement". This will not be time limited, but the longer there is a delay before a premises licence is applied for, the more likely it is that there will be material changes and that the licensing authority will accept representations.

8.101 "Person" in this context includes a business. The applicant could be a firm of architects, a construction company or a financier. The application would include the particulars and plans of the premises, describe the work to be done and the licensable activities planned to take place at the premises. The application must be advertised and notified to responsible authorities in a similar way to the arrangements for applications for premises licences and as set out in regulations. However, where the application is made electronically via businesslink or the licensing authority's electronic facility, the licensing authority must copy the application to responsible authorities no later than the first working day after it is given and the general guidance on electronic applications set out in paragraphs 8.27 – 8.35 applies. Responsible authorities and interested parties may make representations. Where no representations are made, a provisional statement must be issued. Where relevant representations are made, the licensing authority

must arrange a hearing to consider them. The need for a hearing can be dispensed with only by agreement of the licensing authority, the applicant for the provisional statement and all the parties who made relevant representations.

8.102 When a hearing is held, the licensing authority must decide whether, if the premises were constructed or altered in the way proposed in the schedule of works and if a premises licence was sought for those premises, it would consider it necessary for the promotion of the licensing objectives to:

- attach conditions to the licence;
- rule out any of the licensable activities applied for;
- refuse to specify the person nominated as premises supervisor; or
- reject the application.

8.103 It will then issue the applicant with a provisional statement setting out the details of that decision together with its reasons. The licensing authority must copy the provisional statement to each person who made relevant representations and the chief officer of police for the area in which the premises is situated. The licensing authority should give full and comprehensive reasons for its decision. This is important in anticipation of an appeal by any aggrieved party.

8.104 When a person applies for a premises licence in respect of premises (or part of the premises or premises which are substantially the same) for which a provisional statement has been made, representations by responsible authorities and interested parties will be excluded in certain circumstances. These are where:

- the application for a licence is in the same form as the licence described in the provisional statement;

- the work in the schedule of works has been satisfactorily completed; and
- given the information provided in the application for a provisional statement, the responsible authority or interested party could have made the same, or substantially the same, representations about the application then but failed to do so without reasonable excuse; and there has been no material change in the circumstances relating either to the premises or to the area in the vicinity of those premises since the provisional statement was made.

8.105 Licensing authorities should exclude representations in these circumstances. It will be important for investment and employment opportunities in their areas for provisional statements to function properly by providing a limited assurance. But it should be recognised that a great deal of time may pass between the issue of a provisional statement and the completion of a premises in accordance with a schedule of works. Genuine and material changes in circumstances may arise during the intervening years.

8.106 It should be noted that any decision of the licensing authority on an application for a provisional statement would not relieve an applicant of the need to apply for building control.

8.107 A provisional statement may not be sought or given for a vessel, a vehicle or a moveable structure (see section 189 of the 2003 Act).

## TRANSFERS OF PREMISES LICENCES

8.108 The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the chief officer of police. Where it is made electronically via businesslink or the licensing authority's electronic facility, the licensing authority must notify the police no later than the first working day after the application is given. However, the responsibility to notify the DPS remains with the applicant. Otherwise the general guidance on electronic applications set out in paragraphs 8.27 – 8.35 applies.

8.109 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. Section 43 of the 2003 Act provides a mechanism which allows the transfer to come into immediate interim effect as soon as the licensing authority receives it, until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.

8.110 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. Such objections are expected to be rare and arise because the police have evidence that the business or individuals seeking to hold the licence or business or individuals linked to such persons are involved in crime (or disorder).

For example, the police would rightly seek to prevent a company having a licence transferred to it if they had evidence that the premises might be used to launder money obtained from drugs crime. Where an objection is made, the licensing authority must hold a hearing at which the authority will consider the objection. The authority's consideration would be confined to the issue of the crime prevention objective and the hearing should not be permitted to stray into other extraneous matters. The burden would be on the police to demonstrate to the authority that there were good grounds for believing that the transfer of the licence would undermine the crime prevention objective. The licensing authority must give clear and comprehensive reasons for its eventual determination in anticipation of a possible appeal by either party.

- 8.111 It is stressed that such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, it is expected that it would raise the matter immediately with the chief officer of police.

## INTERIM AUTHORITIES

- 8.112 The 2003 Act provides special arrangements for the continuation of permissions under a premises licence when the holder of a licence dies suddenly or becomes bankrupt or mentally incapable. In the normal course of events, the licence would lapse in such circumstances. However, there may also be some time before, for example, the deceased person's estate can be dealt with or an administrative receiver appointed. This could have a damaging effect on those with interests
- in the premises, such as an owner, lessor or employees working at the premises in question; and could bring unnecessary disruption to customers' plans. The Act therefore provides for the licence to be capable of being reinstated in a discrete period of time in certain circumstances.
- 8.113 These circumstances arise only where a premises licence has lapsed owing to the death, incapacity or insolvency of the holder. In such circumstances, an "interim authority" notice may be given to the licensing authority within 28 consecutive days beginning the day after the licence lapsed. Where applications are made in writing, the applicant must give notice of the application to the chief officer of police. If an application is made electronically via businesslink or the licensing authority's electronic facility, the licensing authority must notify the police no later than the first working day after the notice is given. Otherwise the general guidance on electronic applications set out in paragraphs 8.27 – 8.35 applies.
- 8.114 An interim notice may only be given either by a person with a prescribed interest in the premises as set out by the Secretary of State in regulations which may be viewed on the DCMS website; or by a person connected to the former holder of the licence (normally a personal representative of the former holder or a person with power of attorney or where someone has become insolvent that persons insolvency practitioner).
- 8.115 The effect of giving the notice is to reinstate the premises licence as if the person giving the notice is the holder of the licence and thereby allow licensable activities to continue to take place pending a formal application for transfer. The maximum period for which an interim authority notice may have effect is three months.

- 8.116 The interim authority notice ceases to have effect unless by the end of the initial period of 28 consecutive days, a copy of the notice has been given to the chief officer of police. Within two working days of receiving the copy, and if satisfied that in the exceptional circumstances of the case failure to cancel the interim authority would undermine the crime prevention objective, the police may give a notice to that effect to the licensing authority. In such circumstances, the licensing authority must hold a hearing to consider the objection notice and cancel the interim authority notice if it decides that it is necessary to do so for the promotion of the crime prevention objective.
- 8.117 It is expected that licensing authorities will be alert to the urgency of the circumstances and the need to consider the objection quickly.
- 8.118 It should also be noted that, under section 50 of the 2003 Act, where the premises licence lapses (because of death, incapacity or insolvency of the holder etc) or by its surrender, but no interim authority notice has effect, a person who may apply for the grant of a premises licence under section 16(1) may apply within within 28 consecutive days of the lapse for the transfer of the licence to them with immediate effect pending the determination of the application. This will result in the licence being reinstated from the point at which the transfer application was received by the licensing authority. Where the application is made in writing, the person applying for the transfer must copy their application to the chief officer of police. If the application is made electronically the licensing authority must copy the application to the police in a similar manner to the process referred to in paragraph 8.97.

## RIGHT OF FREEHOLDERS ETC TO BE NOTIFIED OF LICENSING MATTERS

- 8.119 A person (which will include a business or company) with a property interest in any premises situated in the licensing authority's area may give notice of their interest to the authority using a prescribed form and on payment of a fee prescribed by the Secretary of State. The application may be made in writing or electronically via businesslink or the licensing authority's own facility, in which case the guidance in paragraphs 8.28 and 8.31 applies. Details of fees and forms are available on the DCMS website. It is entirely at the discretion of such persons whether they choose to register or not. It is not a legal requirement. Those who may take advantage of this arrangement include the freeholder or leaseholder, a legal mortgagee in respect of the premises, a person in occupation of the premises or any other person prescribed by the Secretary of State.
- 8.120 The notice will have effect for 12 months but a new notice can be given every year. Whilst the notice has effect, if any change relating to the premises concerned has been made to the licensing register (which the licensing authority has a duty to keep under section 8 of the 2003 Act), the licensing authority must notify the person who registered an interest of the matter to which the change relates. The person will also be notified of their right under section 8 to request a copy of the information contained in any entry in the register. In cases relating to interim authority notices (see above), it is important that such communications are dealt with promptly.

## 9. Determining applications

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### GENERAL

9.1 When a licensing authority receives an application for a new premises licence or an application to vary an existing premises licence, it must determine whether the application has been made properly in accordance with section 17 of the 2003 Act, and in accordance with regulations made by the Secretary of State under sections 17(4), 17(5), 54 and 55 of the Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with the regulations.

### WHERE NO REPRESENTATIONS ARE MADE

9.2 A hearing is not required where an application has been lawfully made and no responsible authority or interested party has made a representation. In these cases, the licensing authority must grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions in the Act. This should be undertaken as a simple administrative process by the licensing authority's officials who should translate the proposals contained in the operating schedule to promote the licensing objectives into clear and understandable conditions.

### WHERE REPRESENTATIONS ARE MADE

- 9.3 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule, it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e. those which are not frivolous or vexatious and which relate to the licensing objectives (see paragraphs 9.8 – 9.13 below). Representations can be made in opposition to, or in support of, an application.
- 9.4 It is for the licensing authority to decide in the first instance whether or not representations are relevant. This may involve determining whether they have been made by an interested party and whether or not, for example, an individual making a representation resides or is involved in business "in the vicinity" of the premises concerned. However, licensing authorities should be aware that their initial decision on this issue could be subject to legal challenge in the courts.
- 9.5 In making their initial decision on the question of vicinity, licensing authorities should consider whether the individual's residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises. In other words, it is the impact of issues relating to the four licensing objectives that is the key consideration. Elected councillors of the relevant licensing authority are, of course, interested parties regardless of whether they reside or carry on a business in the vicinity of the premises.

- 9.6 The Government recommends that, where local authorities have chosen to define vicinity as a fixed distance from a premises, they should only ever use this as a guideline and should indicate in their policy statements that they will consider representations from those who live or work outside that distance if they can demonstrate that they are (or, in the case of new premises, are likely to be), affected by disorder and disturbance occurring (or potentially occurring) on those premises.
- 9.7 Where a representation concerns “cumulative impact”, the licensing authority may be unable to consider this factor and would probably need to examine issues such as the proximity of the residence or business. In essence, it is expected that the decision will be approached with common sense and individuals living and working in the neighbourhood or area immediately surrounding the premises will be able to make representations.

## RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

- 9.8 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.
- 9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.
- 9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.

- 9.11 Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgement. This may be difficult for councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.
- 9.13 Licensing authorities should consider providing advice on their websites about how any interested party can make representations to them. This should include for example, whether they are happy to accept electronic representations and whether they will also require a subsequent written version. Amendments to the Regulations allow licensing authorities to waive this requirement. However, electronic representations are not included in the formal electronic application process and cannot be submitted via businesslink or the licensing authority's electronic facility.

## DISCLOSURE OF PERSONAL DETAILS OF INTERESTED PARTIES

- 9.14 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.
- 9.15 In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.
- 9.16 Where licensing authorities consider that the interested party has a genuine and well-founded fear of intimidation and may be deterred from making a representation because of this, they may wish to consider alternative approaches.
- 9.17 For instance, they could advise interested parties to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.
- 9.18 The licensing authority may also decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details (such as street name or general location within a street) which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. However, withholding such detail should only be considered where the circumstances justify such action and the licensing authority is satisfied that the complaints are not frivolous or vexatious.

## HEARINGS

- 9.19 Regulations governing hearings may be viewed on the DCMS website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is necessary. To this end it may wish to notify the interested parties concerned and give them the opportunity to withdraw their representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.
- 9.20 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences.
- 9.21 The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.22 Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of Regulations made by the Secretary of State. Where matters arise which are not covered by the Regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.
- 9.23 There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. However, an officer of the licensing authority may not perform this role which would compromise the licensing authority's independence.
- 9.24 As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.

- 9.25 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are necessary to promote the licensing objectives;
  - the representations (including supporting information) presented by all the parties;
  - this Guidance;
  - its own statement of licensing policy.
- 9.26 The licensing authority should give its decision at once, unless the Act itself states otherwise and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be necessary for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition which is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.
- 9.27 Alternatively, the licensing authority may refuse the application on the grounds that this is necessary for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that interested parties and others have the most current information.
- 9.28 In the context of variations, which may involve structural alteration to or change of use of the building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control or planning consent where appropriate.

# 10. Conditions attached to premises licences and club premises certificates

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## GENERAL

- 10.1 This chapter provides advice and recommendations concerning best practice in relation to conditions attached to premises licences and club premises certificates.
- 10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions the holder of the premises licence or the club premises certificate will be required to take or refrain from taking at all times when licensable activities are taking place at the premises in question.
- 10.3 All interests – licensing authorities, licence and certificate holders, authorised persons, the police, other responsible authorities and local residents and businesses – should be working together in partnership to ensure collectively that the licensing objectives are promoted.
- 10.4 Under former licensing regimes, the courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided. Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both.
- 10.5 Annex D provides pools of conditions (although not an exhaustive list) which relate to the four licensing objectives and could be used where necessary and appropriate to the particular circumstances of an individual licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances.

- 10.6 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

## PROPOSED CONDITIONS

- 10.7 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which applicants and clubs should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule which must also set out the proposed hours of opening.
- 10.8 In order to minimise problems and the necessity for hearings, it would be sensible for applicants and clubs to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.

## CONSISTENCY WITH STEPS DESCRIBED IN OPERATING SCHEDULE

- 10.9 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or interested parties, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required by the Act itself.

10.10 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule or club operating schedule. Some applicants for licences or certificates supported by legal representatives or trade associations can be expected to express steps necessary to promote the licensing objectives in clear and readily translatable terms. However, some applicants will express the terms of their operating schedules less precisely or concisely. Ensuring that conditions are consistent with the operating schedule will then be more difficult. If conditions are broken this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. It must be clear to the holder of the licence or club, to enforcement officers and to the courts what duty has been placed on the holder or club in terms of compliance.

## IMPOSED CONDITIONS

10.11 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

10.12 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

## Proportionality

10.13 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues. For example, charities, community groups, voluntary groups, churches, schools and hospitals which host smaller events and festivals will not usually be pursuing these events commercially with a view to profit and will inevitably operate within limited resources.

10.14 While the Secretary of State has set fees centrally for licences and certificates, licensing authorities and responsible authorities should be alive to the indirect costs that can arise because of conditions attached to licences. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Such bodies may be loath to pursue appeals against any unnecessary conditions because of the costs involved. Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further

than what is needed for that purpose. Public safety concerns (and the concerns identified in the other objectives) should not of course be ignored and in considering a proportionate response to the licensing needs for such events, the physical safety of those attending such events should remain a primary objective.

### **Duplication with other statutory provisions**

10.15 Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties. For example, employers and self-employed people are required by the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) to assess the risks to their workers and any others (including members of the public visiting the premises) who may be affected by their business and identify measures needed to avoid or control risks. Conditions enforcing these requirements are therefore unnecessary.

10.16 Similarly, licensing authorities should not seek to impose fire safety conditions that may duplicate any requirements or prohibitions that could be imposed under the Regulatory Reform (Fire Safety) Order 2005 (see paragraphs 2.20 – 2.29).

10.17 Further, the Act does not affect the continued use of inspection and enforcement powers conferred by other legislation; for example, the powers of an environmental health officer in relation to statutory nuisance under the Environmental Protection Act 1990.

10.18 However, these general duties will not always adequately address specific issues that arise on the premises in connection with, for example, certain types of entertainment. It is only where additional and supplementary measures are necessary to promote the licensing objectives that conditions will need to be attached to a licence.

### **Hours of trading**

10.19 In some town and city centre areas where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises.

10.20 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

10.21 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.

### **Workers rights**

10.22 It is not for the licensing authority to consider such matters as the rights of the workers employed on the premises who may be asked to work longer hours. There are existing protections under the Working Time Regulations 1998 (SI 1998/1833), the Employment Rights Act 1996 (as amended) and under the general employment law and laws of contract.

### **Disabled people**

10.23 It is important that proper steps should be taken to provide for the safety of people and performers with disabilities. However, licensing authorities and responsible authorities should avoid well meaning conditions which are intended to provide for the safety of people or performers with disabilities, but which may actively deter operators from admitting or employing them.

10.24 It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment. The Secretary of State encourages licence holders and clubs to provide facilities enabling their admission and reminds them of the duties imposed by the Disability Discrimination Act 1995. The law provides that any person providing a service to the public must make reasonable adjustments to enable disabled people to access the service. No licensing condition should therefore be attached to a licence or certificate which conflicts with or duplicates this requirement.

10.25 Service providers also have a duty to make reasonable adjustments to any physical features which make it impossible or unreasonably difficult for disabled persons to access a service, or they have to provide the service by a reasonable alternative means. Access to buildings and their facilities is also a matter addressed in Building Regulations and planned alterations affecting access may involve the need to apply for building control.

10.26 Licensing authorities should therefore be ready to offer advice to applicants for licences and certificates about how to achieve this. Conditions which state that "wheelchairs and similar equipment shall not be allowed on the premises except in accordance with the terms of any consent issued by the licensing authority" can be ambiguous and be used to justify exclusion and may be ultra vires. Conditions should be positively worded and assume the presence of people with disabilities on licensed premises.

10.27 In addition, Government guidelines exempting guide and assistance dogs from health and safety requirements have been in place since 1995. Any condition of a licence or certificate which states that "pets" may not be present on licensed premises for public safety reasons, must include a clear indication that the condition does not apply to guide or assistance dogs. Further advice can be obtained from the Disability Rights Commission's website [www.drc-gb.org](http://www.drc-gb.org).

10.28 The Disability Discrimination Act 1995 does not apply to ships. However the European Council Directive 2003/24/EC requires appropriate measures to be taken for 'persons of reduced mobility' (this means anyone who has a particular difficulty when using public transport; including elderly persons, disabled persons, persons with sensory impairments and wheelchair users, pregnant women and persons accompanying small children) on certain passenger ships engaged on domestic voyages. Further advice and guidance is contained in Merchant Shipping Notice 1789 (M) and Marine Guidance Note 306 (M) both of which are available in the Guidance and Regulations section of the Maritime and Coastguard Agency's website [www.mcga.gov.uk](http://www.mcga.gov.uk). These documents complement the existing guidance 'The design of large passenger ships and passenger infrastructure: Guidance on meeting the needs of disabled people' which is available on the website of the Disabled Persons Transport Advisory Committee at [www.dptac.gov.uk](http://www.dptac.gov.uk) in the maritime section.

## Race equality

10.29 Licensing authorities should also avoid imposing any condition on a licence or certificate which appears to apply to a wide group of people, but in fact would have an indirect discriminatory impact on particular ethnic groups. For example, a representation requesting that "No Travellers" or "No Caravan-Dwellers" be displayed inside or on premises purportedly to prevent crime or disorder should not be accepted not least because it would conflict with the authority's race equality scheme.

## The performance of plays

10.30 The 2003 Act provides that other than for the purposes of public safety, conditions must not be attached to premises licences or club premises certificates authorising the performance of a play which attempt to censor or modify the content of plays in any way. Any such condition would be ultra vires the Act.

## Censorship

10.31 In general, other than in the context of film classification for film exhibitions, licensing authorities should not use their powers under the 2003 Act to seek to impose conditions which censor the content of any form of regulated entertainment. This is not a proper function of licensing law and cannot be properly related to the licensing objectives. The content of regulated entertainment is a matter which is addressed by existing laws governing indecency and obscenity. Where the concern is about protecting children, their access should be restricted where necessary. But no other limitation should normally be imposed.

## Copyright and royalties

10.32 Copyright law is intended to safeguard the livelihood of authors, composers, arrangers, playwrights, film-makers, publishers and makers of recordings and is extremely important and offences relating to copyright are made "relevant offences" by the 2003 Act. Conditions attached to premises licences should not require adherence to requirements in the general law that the use of copyright material must be authorised. Licensing authorities should however strongly remind applicants of the need to obtain Performing Right Society (PRS) licences and Phonographic Performance Ltd (PPL) licences and to observe other copyright arrangements; and that failure to observe the law in this area could lead to an application for the review of the premises licence or the club premises certificate on grounds of the crime prevention objective.

## Major art and pop festivals, carnivals, fairs and circuses

10.33 Licensing authorities should publicise the need for the organisers of major festivals and carnivals to approach them at the earliest opportunity to discuss arrangements for licensing activities falling under the 2003 Act. For some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations within the premises. This would involve the preparation of a substantial operating schedule, and licensing authorities should offer advice and assistance about its preparation. In particular, the licensing authority should act as a co-ordinating body for the input from the responsible authorities.

10.34 For other events, applications for many connected premises licences may be made which in combination will represent a single festival. It is important that licensing authorities should publicise the need for proper co-ordination of such arrangements and will need to ensure that responsible authorities are aware of the connected nature of the individual applications. Licensing authorities should encourage applicants to establish a co-ordinating committee to ensure a strategic approach to the development of operating schedules. The purpose would be to ensure that conditions are not included in licences which conflict with each other, make compliance uncertain or would be difficult to enforce.

10.35 In the case of circuses and fairgrounds, much will depend on the content of any entertainment presented. For example, at fairgrounds, a good deal of the musical entertainment may be incidental to the main attractions and rides at the fair which are not themselves regulated entertainment. However, in the case of a circus, music and dancing are likely to be main attractions themselves (and would be regulated entertainment) amidst a range of other activities which are not all regulated entertainment.

10.36 Particular regard should be paid to the relevant guidance provided in the publications listed at Annex E of this Guidance under 'Public Safety'.

10.37 In addition, in the context of festivals and carnivals, local authorities should bear in mind their ability to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas where festivals and carnivals might take place. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give performances in these places, although they would need the permission of the local authority to put on the event. Care should be exercised to ensure that there is no confusion between the role of enforcing licensing legislation, which falls to the licensing authority, and the role of providing advice and assistance to festival and carnival organisers from other parts of the local authority.

### Fixed prices

10.38 Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area as this is likely to breach competition law. It is also likely to be unlawful for licensing authorities or the police to promote generalised voluntary schemes or codes of practice in relation to price discounts on alcoholic drinks, 'happy hours' or drinks promotions. However, it is important to note that the mandatory conditions made under section 19A of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk of not promoting any one of the four licensing objectives. The Government recommends that licensing authorities, police, trading standards, local trade and other partners

should discuss and reach agreement as to how those mandatory conditions translate to actual promotions in the local area and, ideally, reach a common shared understanding of what types of promotion are likely to be considered irresponsible. Please refer to the Home Office Guidance on the mandatory conditions for further information (<http://www.homeoffice.gov.uk/crime-victims/reducing-crime/alcohol-related-crime/>).

10.39 Where licensing authorities are asked by the police, other responsible authorities or interested parties to impose restrictions on promotions in addition to those restricted by the mandatory conditions, they should consider each application on its individual merits, tailoring any conditions carefully to cover only irresponsible promotions in the particular and individual circumstances of any premises where these are necessary for the promotion of the licensing objectives. In addition, when considering any relevant representations which demonstrate a clear causal link between sales promotions or price discounting and levels of crime and disorder on or in the vicinity of the premises, it would be appropriate for the licensing authority to consider the imposition of a new condition prohibiting irresponsible sales promotions or the discounting of prices of alcoholic beverages at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice. There will often be very fine lines between what is and is not lawful within the scope of their power under the 2003 Act.

### **Large capacity venues used exclusively or primarily for the “vertical” consumption of alcohol (HVVDs)**

10.40 Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with exceptionally high capacities, which are used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons.

10.41 A comprehensive review of the research conducted in the last twenty-five years into alcohol and crime and its relationship to licensed premises, “Alcohol and Crime: Taking Stock” by Ann Deehan, Home Office Crime Reduction Research Series No.3 (1999) can be viewed on [www.crimereduction.gov.uk/drugsalcohol8.htm](http://www.crimereduction.gov.uk/drugsalcohol8.htm). It shows that the environment within such establishments can have a significant bearing on the likelihood of crime and disorder arising on the premises. Key points on preventing crime and disorder include:

- controlling the capacity to prevent overcrowding and frustration to customers;
- ensuring adequate seating for customers; and
- ensuring the provision of door security teams at the premises to control capacity and ensure already drunk or disorderly individuals are not admitted.

10.42 Where necessary and appropriate, conditions can be attached to premises licences for the promotion of the prevention of crime and disorder at such premises (if not volunteered by the venue operator and following representations made on such grounds) which require adherence to:

- a prescribed capacity;
- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of security staff holding the appropriate SIA licence or exemption (see paragraphs 10.58-10.64) to control entry for the purpose of compliance with the capacity limit and to deny entry to individuals who appear drunk or disorderly or both.

## **MANDATORY CONDITIONS**

10.43 The 2003 Act provides for the following mandatory conditions to be included in every licence and/or club premises certificate.

### **Mandatory conditions in relation to the supply of alcohol**

#### **Designated Premises Supervisor**

10.44 Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. The main purpose of the ‘designated premises supervisor’ as defined in the 2003 Act is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force. That person will normally

have been given day to day responsibility for running the premises by the premises licence holder. The requirements set out in paragraph 10.46 to 10.53 below in relation to the designated premises supervisor and authorisation of alcohol sales by a personal licence holder do not apply to community premises in respect of which a successful application has been made to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (see paragraphs 4.32 to 4.47 of this Guidance).

- 10.45 The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or their licence has been suspended.
- 10.46 The Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the Licensing Act and conditions attached to the premises licence to promote the licensing objectives.

### **Authorisation by personal licence holders**

- 10.47 In addition, the licence must require that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. This in most instances will be the designated premises supervisor who must hold a valid personal licence. This does not mean that the condition should require the presence of the designated premises supervisor or any other personal licence holder on the premises at all material times.
- 10.48 Similarly, the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol but may be absent at times from the premises when a transaction takes place. However, the responsible personal licence holder will not be able to escape responsibility for the actions of anyone authorised to make sales.
- 10.49 "Authorisation" does not imply direct supervision by a personal licence holder of each sale of alcohol. The question arises as to how sales can be authorised. Ultimately, whether an authorisation has been given is a question of fact that would have to be decided by the courts on the evidence before it in the course of a criminal prosecution.

- 10.50 Nevertheless, it is important that licensing authorities, the police, employers and employees in the alcohol retail industry are given advice which promotes greater clarity and consistency. The Secretary of State considers that the following factors should be relevant in considering whether or not an authorisation has been given:
- the person(s) authorised to sell alcohol at any particular premises should be clearly identified;
  - the authorisation should have specified the acts which may be carried out by the person being authorised;
  - there should be an overt act of authorisation, for example, a specific written statement given to the individual being authorised; and
  - there should be in place sensible arrangements for the personal licence holder to monitor the activity that they have authorised on a reasonably regular basis.
- 10.51 The Secretary of State strongly recommends that personal licence holders give specific written authorisations to individuals that they are authorising to retail alcohol. A single written authorisation would be sufficient to cover multiple sales over an unlimited period. This would assist personal licence holders in demonstrating due diligence should issues arise with enforcement authorities; and would protect employees if they themselves are challenged in respect of their authority to sell alcohol. The form of written authorisation is a matter for the personal licence holder, but the Secretary of State recommends that it should satisfy the criteria listed in the paragraph above. Written authorisation is not a requirement of the Act and its absence alone could not give rise to enforcement action.

- 10.52 It must be remembered that whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises, and is also responsible for alcohol sales at community premises where the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to personal licence holders and Designated Premises Supervisors have been disapplied (see paragraphs 4.32 to 4.47 of this Guidance).

### **Arrangements for the new mandatory conditions**

- 10.53 The new mandatory conditions introduced in section 19A of the 2003 Act (governing e.g. irresponsible promotions), unlike the existing mandatory conditions (e.g. the requirement for a Designated Premises Supervisor under section 19 of the 2003 Act), do not have to be physically included in the licence or certificate but nonetheless will apply to every licence and certificate authorising the sale and supply of alcohol for consumption on the premises. However, like the existing mandatory conditions, the new mandatory conditions do not apply to activities (including the supply of alcohol) authorised by a temporary event notice.

10.54 Whereas the existing mandatory conditions are set out in Annex A of the licence or certificate, the new mandatory conditions are treated as if they were included in existing licences and certificates on the date that they came into force.

10.55 The new mandatory conditions override any pre-existing conditions already included in a licence or certificate insofar as the new mandatory conditions are identical to, or inconsistent with and more onerous than, any pre-existing conditions. The new mandatory conditions take effect on this basis in relation to existing licences and certificates on the date that the new mandatory conditions come into force, and the impact this will have on pre-existing conditions written into existing licences and certificates will not be recorded on the face of those documents. Local Authorities may like to make licence and certificate holders aware that the new conditions apply, to enable them to check that they thereafter operate in accordance with any changes which have been made to their conditions. Licensing Authorities may also wish to make license holders aware of Home Office Guidance on the new mandatory conditions (see 10.38 for weblink).

### **Irresponsible promotions**

10.56 Under this condition, the “responsible person” (defined in the 2003 Act as the holder of a premises licence, designated premises supervisor, a person aged 18 or over who is authorised to allow the sale or supply of alcohol by an under 18 or a member or officer of a club present on the club premises who can oversee the supply of alcohol) should be able to demonstrate that they have taken all reasonable steps to ensure that staff do not carry out, arrange or participate in any irresponsible promotions. An irresponsible promotion is one which encourages the sale or supply of alcohol for consumption on the premises and carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children. The aim of the condition is to prohibit or restrict promotions which encourage people to drink more than they might ordinarily do and in a manner which does not promote the licensing objectives.

10.57 Irresponsible promotions take a number of forms. The following activities are set out under the 2003 Act and cover the specific activities described below or those that are substantially similar. Please refer to guidance issued by the Home Office for fuller understanding of irresponsible promotions (see 10.38 for weblink).

## **Drinking Games**

10.58 Drinking games are those which may require or encourage individuals to drink a quantity of alcohol within a time limit, or drink as much alcohol as possible within a time limit or otherwise. For example, this may include organised 'drink downing' competitions if these carry a significant risk to any of the four licensing objectives. This would not prevent the responsible person (see paragraph 10.56) from requiring all drinks to be consumed or abandoned at, or before, the closing time of the premises. Nor does it necessarily prohibit 'happy hours' as long as these are not designed to encourage individuals to drink excessively or rapidly.

## **Large Quantities of Alcohol For Free or A Fixed Price**

10.59 The sale, supply or provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted price to the public or to a group defined by a particular characteristic. This does not apply to a promotion or discount on alcohol for consumption with a table meal. However, it may apply specifically to promotions aimed at groups that are defined by a particular characteristic if there is a significant risk that this does not promote the licensing objectives. This restriction does not mean that promotions cannot be designed with a particular group in mind but a common sense approach is encouraged, for example, by specifying the quantity of alcohol included in the promotion and not targeting groups that may become more vulnerable, or present a greater risk of crime and disorder, as a result of excessive alcohol consumption. For example, this prohibition is likely to apply to deals such as "all you can drink for £10".

## **Prizes and Rewards**

10.60 The sale, supply or provision of free or discounted alcohol or any other item as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less where there is a significant risk to any of the four licensing objectives.

## **Sporting Events**

10.61 The sale, supply or provision of alcohol for free or for a discounted price in relation to a sporting event shown on the premises, where the sale etc. depends on the outcome of a race, match or other event. For example, this may include offering unlimited drinks based on the outcome of a sporting competition where there is a significant risk to any of the four licensing objectives. It also applies to events which are unpredictable, such as offering free double shots for every foul committed in a football match, or heavily reduced drinks for five minutes after a try is scored in a rugby match.

## **Posters and Flyers**

10.62 The sale or supply of alcohol in association with promotional materials on display in or around the premises, which can either be reasonably considered to condone, encourage or glamorise anti social behaviour or refer to the effects of drunkenness in any favourable manner.

## **Dispensing alcohol directly into the mouth**

10.63 The responsible person (see paragraph 10.56) must ensure that no alcohol is dispensed directly by one person into the mouth of another person. For example, this may include drinking games such as the 'dentist's chair'

where a drink is poured continuously into the mouth of another individual and may also prevent a premises from allowing another body to promote its products by employing someone to dispense alcohol directly into customers' mouths. An exception to this condition would be when an individual is unable to drink without assistance due to a disability.

### Free tap water

10.64 The responsible person (see paragraph 10.56) must ensure that free potable tap water is provided on request to customers where it is reasonably available on the premises. What is meant by reasonably available is a question of fact; for example, it would not be reasonable to expect free tap water to be available in premises for which the water supply had temporarily been lost because of a broken mains water supply.

### Age-verification

10.65 The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.56) to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and a holographic mark.

10.66 It should be noted that it is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if a premises has a policy that

requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.

10.67 The age-verification condition ordinarily only applies in situations where the sale takes place face to face. Companies that sell alcohol remotely (e.g. online or by mail order) should operate an age verification policy, but as the sale of alcohol does not ordinarily take place on delivery, the condition does not in such cases require photo ID to be shown at the point of delivery. As long as age verification has taken place already via another means, these transactions will meet the requirement of the condition.

10.68 The premises licence holder or club premises certificate holder must ensure that staff (in particular staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy applied by the premises.

### Smaller Measures

10.69 The responsible person (see paragraph 10.56) shall ensure that the following drinks if sold or supplied on the premises are available in the following measures:

- Beer or cider – 1/2 pint
- Gin, rum, vodka or whisky – 25ml or 35ml
- Still wine in a glass: 125ml

10.70 As well as making the drinks available in the above measures, the responsible person must also make customers aware of the availability of these measures – for example, by making their availability clear on menus and price lists, and ensuring that these are displayed in a prominent place in the relevant premises (e.g. at the bar).

10.71 The above condition does not apply if the drinks in question are sold or supplied having been made up in advance ready for sale or supply in a securely closed container. For example, if beer is only available in pre-sealed bottles the condition to make it available in 1/2 pints does not apply.

10.72 The premises licence holder or club premises certificate holder must ensure that staff are made aware of the application of this condition.

### Exhibition of films

10.73 The 2003 Act provides that where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (currently only the British Board of Film Classification – BBFC) or by the licensing authority itself.

10.74 The BBFC classifies films in accordance with its published Guidelines which are based on extensive research into public opinion and professional advice. The Secretary of State therefore recommends that licensing authorities should not duplicate this effort by choosing to classify films themselves. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role. Licensing authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

10.75 It should be noted that the effect of paragraph 5 of Schedule 1 of the Act is to exempt adverts from the definition of regulated entertainment, but not to exempt them from the definition of exhibition of a film. Since the above mandatory condition applies to 'any film' it is therefore applicable to the exhibition of adverts.

10.76 See Annex D, Part 5 for further Guidance on current BBFC classifications and other conditions relating to the exhibition of films.

### Door supervision

10.77 Under section 21 of the 2003 Act when a condition is included in a premises licence that at specified times an individual must be present at the premises to carry out a security activity (as defined in section 21(3)(a) by reference to the Private Security Industry Act 2001 ("the 2001 Act")), the licence must include a condition requiring that individual to be licensed by the Security Industry Authority ("the SIA") under that Act, or be entitled to carry out that activity by virtue of section 4 of that Act.

10.78 Section 21 of the 2003 Act has been amended by section 25 of the Violent Crime Reduction Act 2006 to remove an anomaly whereby premises licences could require persons to be licensed by the SIA in circumstances where they were not required to be licensed under the 2001 Act. In particular, the amendment ensures that a premises licence need not require a person to hold a Security Industry Authority licence if they benefit from an exemption under section 4 of the 2001 Act. By way of example, certain employees benefit from an exemption when carrying out conduct in connection with a certified sports grounds (s.4(6 to 12)). Furthermore, in certain circumstances persons benefit from an

exemption where they operate under the SIA's Approved Contractor Scheme (s4(4)).

10.79 Conditions under section 21 of the 2003 Act (as amended by the Violent Crime Reduction Act 2006) should only relate to individuals carrying out security activities defined by section 21(3)(a) of the 2003 Act. Therefore they should only relate to an activity to which paragraph 2(1)(a) of Schedule 2 to the 2001 Act applies (certain manned guarding activities) and which is licensable conduct within the meaning of section 3(2) of that Act. The requirement does not relate to individuals performing non-security related activities, and section 21 should not be used in relation to any such activities.

10.80 Section 21 of the 2003 Act continues to ensure that a premises licence need not impose such a requirement in relation to those licensed premises which the 2001 Act treats as unlicensed premises. Those are:

- premises staging plays or exhibiting films;
- casinos or bingo halls licensed under the Gaming Act 1968;
- premises where a club certificate is in force when activities are being carried on under the authority of that certificate;

See paragraph 8(3) of Schedule 2 to the 2001 Act for full details.

10.81 It should be noted, however, that the 2001 Act will require contractors and a small number of employees (those managing/supervising and those supplied under contract) to be licensed as manned guards (rather than door supervisors) when undertaking licensable conduct on premises to which paragraph 8(3) of Schedule 2 to the 2001 Act applies.

10.82 It is therefore important that if a licensing authority intends that individuals must be present to carry out security activities (as defined by section 21(3)(a) of the 2003 Act) this should be explicit, as should the mandatory condition for those individuals to hold an SIA licence or be entitled to carry out that activity by virtue of section 4 of that Act. On the other hand, where a licensing authority intends that individuals must be present to carry out other activities (for example, activities related to safety or steward activities to organise, advise and direct members of the public) no mandatory condition should be imposed under section 21 of the 2003 Act. In all cases it is important when determining whether or not a condition is to be imposed under section 21 of the 2003 Act to consider whether the activities of any individual working in licensed premises fall within the definition of security activities in section 21(3)(a) of the 2003 Act. (Regardless of whether a condition is imposed under section 21, under the 2001 Act the appropriate SIA licence must be held by any individual performing an activity for which they are licensable under that Act).

10.83 Holders of premises licences should note that the amendment under the Violent Crime Reduction Act 2006 will not affect the requirements in existing licences regarding security provision. Anyone wishing to deploy staff under the terms of the amended legislation and whose licence does not permit them to do so will need to apply to have their licence varied. The Government recommends that where an application is made to vary a licence solely in order to remove the anomaly referred to in paragraph 10.59 the licensing authority should treat the matter as expeditiously as possible, in recognition of the fact that the variation sought will almost always be purely technical in nature.

# 11. Reviews

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## THE REVIEW PROCESS

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.
- 11.2 At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 The Regulations allow applications for reviews to be made electronically, as long as the licensing authority agrees and the applicant submits a subsequent written application. The licensing authority may also agree in advance that the application need not be given in writing. However, these applications are outside the formal electronic application process and may not be submitted via businesslink or the licensing authority's electronic facility.
- 11.4 In addition, a review of the licence will normally follow any action by the police to close down the premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a notice of magistrates' court's determination sent to the licensing authority.
- 11.5 Licensing officers may not initiate their own reviews of premises licences, but elected members of the licensing authority may request reviews if they are concerned about licensed activities at a premises or such matters are brought to their attention (see paragraph 8.15 above). Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may also request reviews on any matter which relates to the promotion of one or more of the licensing objectives.
- 11.6 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.
- 11.7 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.8 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.
- 11.9 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common

aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review.

- 11.10 Where the request originates with an interested party – e.g. a local resident, residents' association, local business or trade association – the licensing authority must first consider whether the complaint made is relevant, vexatious, frivolous or repetitious.
- 11.11 Further information for interested parties about the review process is available in "Guidance for interested parties: applying for a review" which can be found on the DCMS website.

## REPETITIOUS REPRESENTATIONS

- 11.12 Relevance, vexation and frivolousness were dealt with in paragraphs 9.8 – 9.13 above. A repetitious representation is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence which has already been determined; or
  - representations considered by the licensing authority when the premises licence was first granted; or
  - representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement;
- and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.
- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a second bite of the cherry following the failure of representations to persuade the licensing authority on earlier occasions. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, the Secretary of State recommends that more than one review originating from an interested party should not be permitted within a period of twelve months on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one request for a review of a premises within a 12 month period.
- 11.15 When a licensing authority receives a request for a review from a responsible authority or an interested party or in accordance with the closure procedures described in Part 8 of the 2003 Act, it must arrange a hearing. The arrangements for the hearing must follow the provisions set out by the Secretary of State in regulations. The details may be viewed on the DCMS website. The Secretary of State considers it particularly important that the premises licence holder is fully aware of the representations made in respect of the premises, any evidence supporting the representations and that they or their legal representatives have therefore been able to prepare a response.

## POWERS OF A LICENSING AUTHORITY ON THE DETERMINATION OF A REVIEW

11.16 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.

11.17 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.

11.18 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;

- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

11.19 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

11.20 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.21 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

11.22 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives.

## REVIEWS ARISING IN CONNECTION WITH CRIME

11.23 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority

to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.24 Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licensee and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any necessary steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.

11.25 As explained above, it is not the role of a licensing authority to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. There is therefore no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. As stated above, at the conclusion of a review, it will be for the licensing authority to determine on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the

licensing objectives in respect of the licence in question, regardless of any subsequent judgment in the courts about the behaviour of individuals.

11.26 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

11.27 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being

undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered. We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

11.28 It should be noted that it is unlawful to discriminate or to refuse service on grounds of race or by displaying racially discriminatory signs on the premises. Representations made about such activity from responsible authorities or interested parties would be relevant to the promotion of the crime prevention objective and justifiably give rise to a review.

## REVIEW OF A PREMISES LICENCE FOLLOWING CLOSURE ORDER

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review: The determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within 10 working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than 5 working days before the first hearing day. There must be five clear working days between the giving of the notice and the start of the hearing.

## 12. Appeals

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12.1 This Chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

### GENERAL

12.2 Other than in the case of personal licences, an appeal has to be made to the magistrates' court for the petty sessions area (or any such area) in which the premises concerned are situated. In the case of personal licences, the appeal must be made to the magistrates' court for the petty sessions area in which the licensing authority (or any part of it) which made the decision is situated.

12.3 An appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

12.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant licence holder, club or premises user against the representations of a responsible authority or an interested party or the objections of the chief officer of police, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal and the person who made the relevant representation or the chief officer of police will be the appellants.

12.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as witnesses interested parties or responsible authorities who made representations against the application, if it chooses to do so. For this reason, the licensing authority may wish to keep responsible authorities and interested parties informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.

12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both. On determining an appeal, the court may:

- dismiss the appeal;
- substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
- remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

### LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE

12.7 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case.

In other words, while the appellate court will normally consider the matter as if it was “standing in the shoes” of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.

- 12.8 In addition, the appellate court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

## GIVING REASONS FOR DECISIONS

- 12.9 It is important that licensing authorities should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority’s statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

## IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES’ COURTS

- 12.10 As soon as the decision of the magistrates’ courts has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, necessary action should be taken immediately unless ordered by the magistrates’ court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates’ courts and normal rules of challenging decisions of magistrates’ courts will apply.

## PROVISIONAL STATEMENTS

- 12.11 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be necessary for the promotion of the licensing objectives when, and if, an application was made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

# 13. Statements of licensing policy

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13.1 This Chapter provides guidance on the development and preparation of local statements of licensing policy for publication by licensing authorities, the general principles that the Secretary of State recommends should underpin them, and core content to which licensing authorities are free to add.

## GENERAL

13.2 Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy every three years. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the 2003 Act. During the three year period, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the statutory objectives are being met. The first, statutory three year period began on 7 January 2005.<sup>5</sup> Subsequent three year periods, eg. beginning 7 January 2008 etc, are fixed and would not be altered by any other revisions that a licensing authority may chose to make within a period, or by any determination of a new policy.

13.3 Where revisions to this section 182 Guidance are made by the Secretary of State it will be for the licensing authority to determine whether revisions to its own licensing policy statement are appropriate.

13.4 Where the licensing authority determines a new policy that will apply from the beginning of the next three year period it may also decide that any changes should also apply immediately as a revision to the current policy. However, to do so the licensing authority would have to be very clear at the time of consultation that the proposed changes were intended to constitute both the new policy for the next three year period and apply in the interim as a revision to the existing policy.

13.5 The longer the time between the consultation and the start of the next three year period, the less likely it is that the licensing authority could rely on it for that purpose without consulting again.

## CONSULTATION ON POLICIES

13.6 Before determining its policy for any three year period or if revising a policy within a period, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:

- the chief officer of police for the area;
- the fire and rescue authority for the area;
- persons/bodies representative of local holders of premises licences;
- persons/bodies representative of local holders of club premises certificates;
- persons/bodies representative of local holders of personal licences; and
- persons/bodies representative of businesses and residents in its area.

- 13.7 The views of all these persons/bodies listed should be given appropriate weight when the policy is determined. It is recognised that in some areas, it may be difficult to identify persons or bodies that represent all parts of industry affected by the provisions of the 2003 Act, but licensing authorities must make reasonable efforts to do so.
- 13.8 Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons before determining their policies. For example, certain authorities may consider it essential to consult the Crime and Disorder Reduction Partnerships (CDRPs), British Transport Police, local Accident and Emergency Departments, bodies representing consumers, local police consultative groups or those charged locally with the promotion of tourism. They may also consider it valuable to consult local performers, performers' unions (such as the Musicians' Union and Equity) and entertainers involved in the cultural life of the local community. In London, boroughs should consider consulting the Mayor and the Greater London Authority.
- 13.9 Beyond the statutory requirements, it is for each licensing authority to decide the full extent of its consultation and whether any particular person or body is representative of the group described in the statute. Whilst it is clearly good practice to consult widely and to follow the Consultation Guidance published by the Cabinet Office, this may not always be necessary or appropriate. For instance, where a revision is proposed that merely updates contact details for the licensing authority or responsible authorities a simpler consultation may suffice.
- 13.10 Similarly, where a licensing authority has recently revised its policy within a three year period following a full consultation exercise it may not consider that further changes are necessary when determining the policy for the next three year period. As such, it may decide on a simple consultation with those persons listed in section 5(3) of the 2003 Act.
- 13.11 However, licensing authorities should consider very carefully whether a full consultation is appropriate as a limited consultation may not allow all persons sufficient opportunity to comment on and influence local policy. For instance, where an earlier consultation was limited to a particular part of the policy, such as a proposal to introduce a cumulative impact policy.
- 13.12 When undertaking consultation exercises, licensing authorities should have regard to cost and time. The Secretary of State has established fee levels to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy, but this will be based on the statutory requirements. Where licensing authorities exceed these requirements, they will have to absorb those costs themselves.

## FUNDAMENTAL PRINCIPLES

- 13.13 All statements of policy should also begin by stating the four licensing objectives, which the licensing policy should promote. In determining its policy, a licensing authority must have regard to this Guidance and give appropriate weight to the views of consultees. The Guidance is important for consistency, particularly where licensing authority boundaries meet.

13.14 While statements of policy may set out a general approach to making licensing decisions, they must not ignore or be inconsistent with provisions in the 2003 Act. For example, a statement of policy must not undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its individual merits.

13.15 Similarly, no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act.

13.16 Statements of policies should make clear that:

- licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act; and
- the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity.

13.17 Whether or not incidents can be regarded as being “in the vicinity” of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. But statements of licensing policy should make it clear that in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.

13.18 A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres.

## DUPLICATION

13.19 Statements of licensing policy should include a firm commitment to avoid attaching conditions that duplicate other regulatory regimes as far as possible. Chapter 10 provides further detail on this issue.

## STANDARDISED CONDITIONS

13.20 Statements of policy should also make it clear that a key concept underscoring the 2003 Act is for conditions to be tailored to the specific premises concerned. This effectively rules out standardised conditions, as explained in paragraph 10.13 of this Guidance. However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions which applicants and others may draw on as appropriate.

## ENFORCEMENT

- 13.21 As part of their statement of policy, the Government strongly recommends that licensing authorities should express the intention to establish protocols with the local police and the other enforcing authorities as appropriate on enforcement issues. This would provide for a more efficient deployment of licensing authority staff, police officers, environmental health officers, and others who are commonly engaged in enforcing licensing law and the inspection of licensed premises.
- 13.22 In particular, these protocols should also provide for the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch for low risk premises which are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema, night café and late night refreshment house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks make such inspections necessary. The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. The principle of risk assessment and targeting should prevail and inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are more effectively concentrated on problem premises.

## THE NEED FOR LICENSED PREMISES

- 13.23 There can be confusion about the difference between "need" and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel. This is not a matter

for a licensing authority in discharging its licensing functions or for its statement of licensing policy. "Need" is a matter for planning committees and for the market.

## THE CUMULATIVE IMPACT OF A CONCENTRATION OF LICENSED PREMISES

### What is cumulative impact?

- 13.24 "Cumulative impact" is not mentioned specifically in the 2003 Act but means in this Guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.
- 13.25 In some areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport. Queuing in turn may be leading to conflict, disorder and anti-social behaviour. While more flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater in these cases than the impact of customers of individual premises. These conditions are more likely to occur in town and city centres, but may also arise in other urban centres and the suburbs.

## Evidence of cumulative impact

13.26 There should be an evidential basis for the decision to include a special policy within the statement of licensing policy. For example, Crime and Disorder Reduction Partnerships will often have collated information which demonstrates cumulative impact as part of their general role on anti-social behaviour; and crime prevention strategies may have already identified cumulative impact as a local problem. Similarly, environmental health officers may be able to demonstrate concentrations of valid complaints relating to noise disturbance. The open meetings recommended at paragraph 1.22 of this Guidance should also assist licensing authorities in keeping the situation as to whether an area is nearing this point under review.

13.27 After considering the available evidence and consulting those individuals and organisations listed in section 5(3) of the 2003 Act and any others, a licensing authority may be satisfied that it is appropriate and necessary to include an approach to cumulative impact in the licensing policy statement. In this case, it should indicate in the statement that it is adopting a special policy of refusing new licences whenever it receives relevant representations about the cumulative impact on the licensing objectives which it concludes after hearing those representations should lead to refusal (see paragraphs 13.29 – 13.32 below).

13.28 The steps to be followed in considering whether to adopt a special policy within the statement of licensing policy are summarised below.

## STEPS TO A SPECIAL POLICY

- Identify concern about crime and disorder or public nuisance
- Consider whether there is good evidence that crime and disorder or nuisance are happening and are caused by the customers of licensed premises, or that the risk of cumulative impact is imminent
- Identify the boundaries of the area where problems are occurring
- Consult with those specified in section 5(3) of the 2003 Act, and subject to the outcome of the consultation
- Include and publish details of special policy in licensing policy statement

## Effect of special policies

13.29 The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

13.30 However, a special policy must stress that this presumption does not relieve responsible authorities or interested parties of the need to make a relevant representation, referring to information which had been before the licensing authority when it developed its statement of licensing policy, before a licensing authority may lawfully consider giving effect to its special policy. If there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.

13.31 Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or need expanding.

13.32 The absence of a special policy does not prevent any responsible authority or interested party making representations on a new application for the grant, or variation, of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

### LIMITATIONS ON SPECIAL POLICIES RELATING TO CUMULATIVE IMPACT

13.33 It would normally not be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises. Special policies will usually address the impact of a concentration of licensed premises selling alcohol for consumption on the premises.

13.34 A special policy should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted. After receiving representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not. If the licensing authority

decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that necessary conditions would be ineffective in preventing the problems involved

13.35 Special policies should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises. The "cumulative impact" on the promotion of the licensing objectives of a concentration of multiple licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered. A review must relate specifically to individual premises, and by its nature, "cumulative impact" relates to the effect of a concentration of many premises. Identifying individual premises in the context of a review would inevitably be arbitrary.

13.36 Special policies can also not be used to justify rejecting applications to vary an existing licence or certificate except where those modifications are directly relevant to the policy (as would be the case with an application to vary a licence with a view to increasing the capacity limits of the premises) and are strictly necessary for the promotion of the licensing objectives.

13.37 A special policy relating to cumulative impact cannot justify and should not include provisions for a terminal hour in a particular area. For example, it would be wrong not to apply the special policy to applications that include provision to open no later than, for example, midnight, but to apply the policy to any other premises that propose opening later.

The effect would be to impose a fixed closing time akin to that under the “permitted hours” provisions of the Licensing Act 1964. Terminal hours dictated by the Licensing Act 1964 were abolished to avoid the serious problems that arise when customers exit licensed premises simultaneously. Attempting to fix a terminal hour in any area would therefore directly undermine a key purpose of the 2003 Act.

- 13.38 Special policies must not impose quotas – based on either the number of premises or the capacity of those premises – that restrict the consideration of any application on its individual merits or which seek to impose limitations on trading hours in particular areas. Quotas that indirectly have the effect of pre-determining the outcome of any application should not be used because they have no regard to the individual characteristics of the premises concerned. Public houses, nightclubs, restaurants, hotels, theatres, concert halls and cinemas all could sell alcohol, serve food and provide entertainment but with contrasting styles and characteristics. Proper regard should be given to those differences and the differing impact they will have on the promotion of the licensing objectives.

## OTHER MECHANISMS FOR CONTROLLING CUMULATIVE IMPACT

- 13.39 Once away from the licensed premises, a minority of consumers will behave badly and unlawfully. To enable the general public to appreciate the breadth of the strategy for addressing these problems, statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing such issues. For example:

### OTHER MEASURES TO CONTROL CUMULATIVE IMPACT

- Planning controls.
- Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority.
- The provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols.
- Powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly.
- Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices.
- The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk.
- The confiscation of alcohol from adults and children in designated areas.
- Police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance.
- The power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.
- Other local initiatives that similarly address these problems.

## LICENSING HOURS

- 13.40 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government recommends that statements of policy should recognise that, in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided. This can help to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance.
- 13.41 The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists. Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.
- 13.42 Statements of licensing policy should indicate that shops, stores and supermarkets, are free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there. Statements of licensing policy should therefore reflect this general approach.

## CHILDREN

- 13.43 The 2003 Act made it an offence to permit children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or primarily for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or where that activity is carried on under the authority of a temporary event notice.
- 13.44 In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at other premises supplying alcohol for consumption on the premises under the authority of any premises licence, club premises certificate or temporary event notice. Outside of these hours, the offence does not prevent the admission of unaccompanied children under 16 to the wide variety of premises where the consumption of alcohol is not the exclusive or primary activity. Between 5am and midnight the offence would not necessarily apply to many restaurants, hotels, cinemas and even many pubs where the main business activity is the consumption of both food and drink. This does not mean that children should automatically be admitted to such premises and the following paragraphs are therefore of great importance notwithstanding the new offences created by the 2003 Act.
- 13.45 It is not intended that the definition "exclusively or primarily" in relation to the consumption of alcohol should be applied in a particular way by reference to turnover, floor space or any similar measure. The expression should be given its ordinary and natural meaning in the context of the particular circumstances. It will normally be quite clear

that the business being operated at the premises is predominantly the sale and consumption of alcohol. Mixed businesses may be harder to pigeonhole and it would be sensible for both operators and enforcement agencies to consult where necessary about their respective interpretations of the activities taking place on the premises before any moves are taken which might lead to prosecution.

13.46 The fact that the new offence may effectively bar children under 16 unaccompanied by an adult from premises where the consumption of alcohol is the exclusive or primary activity does not mean that the 2003 Act automatically permits unaccompanied children under the age of 18 to have free access to other premises or to the same premises even if they are accompanied or to premises where the consumption of alcohol is not involved. Subject only to the provisions of the 2003 Act and any licence or certificate conditions, admission will always be at the discretion of those managing the premises. The 2003 Act includes on the one hand, no presumption of giving children access or on the other hand, no presumption of preventing their access to licensed premises. Each application and the circumstances obtaining at each premises must be considered on its own merits.

13.47 A statement of licensing policy must not therefore seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm to them. Licensing policy statements should not attempt to anticipate every issue of concern that could arise in respect of children in relation to individual premises and as such, general rules should be avoided. Consideration of the individual merits of each application remains the best mechanism for judging such matters.

13.48 A statement of policy should highlight areas that will give rise to particular concern in respect of children. For example, these should include premises:

- where entertainment or services of an adult or sexual nature are commonly provided;
- where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking;
- with a known association with drug taking or dealing<sup>6</sup>;
- where there is a strong element of gambling on the premises (but not, for example, the simple presence of a small number of cash prize gaming machines); and
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

13.49 In the context of paragraph 13.48 above, it is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to apply common sense to this matter. However, such entertainment or services, for example, would generally include topless bar staff, striptease, lap-, table- or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.

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<sup>6</sup> Police, licensing authorities and licensees need to be aware that following its commencement on the 20th January 2004, a new power is available under the Anti-Social Behaviour Act 2003 to close premises where there is the production supply or use of class A drugs and serious nuisance or disorder. This power provides an extra tool to the police to enable rapid action against a premises where there is a Class A drug problem, enabling its closure in as little as 48 hours should this be necessary. Police authorities are advised to consult the Notes of Guidance on the use of this power (Home Office, 2004) available on the Home Office website. These powers will also be covered in brief in the update to Safer Clubbing available in 2004.

13.50 A statement of policy should make clear the range of alternatives which may be considered for limiting the access of children where that is necessary for the prevention of harm to children. These, which can be adopted in combination, include:

- limitations on the hours when children may be present;
- limitations excluding the presence of children under certain ages when particular specified activities are taking place;
- limitations on the parts of premises to which children might be given access;
- age limitations (below 18);
- requirements for accompanying adults (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of those people under 18 from the premises when any licensable activities are taking place.

13.51 Statements of policy should also make clear that conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is necessary, this should remain a matter for the discretion of the individual licensee or club or person who has given a temporary event notice. Venue operators seeking premises licences and club premises certificates may also volunteer such prohibitions and restrictions in their operating schedules because their own risk assessments have determined that the presence of children is undesirable or inappropriate. Where no relevant representations are made to the licensing authority concerned, these volunteered prohibitions and restrictions will become conditions attached to the licence or certificate and will be enforceable as such. No other conditions concerning the presence of children on premises may be imposed by the licensing authority in these circumstances.

## RESPONSIBLE AUTHORITY AND CHILDREN

13.52 A statement of licensing policy should indicate which body the licensing authority judges to be competent to act as the responsible authority in relation to the protection of children from harm. This may be the local authority social services department, the Area Child Protection Committee, or another competent body. It would be practical and useful for statements of licensing policy to include the correct descriptions of the responsible authorities in any area and appropriate contact details.

## CHILDREN AND CINEMAS

13.53 The statement of policy should make clear that in the case of premises giving film exhibitions, the licensing authority will expect licensees or clubs to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the licensing authority itself. Where a licensing authority intends to adopt its own system of classification, its statement of policy should indicate where the information regarding such classifications will be published and made available to licensees, clubs and the general public.

13.54 The 2003 Act also provides that it is mandatory for a condition to be included in all premises licences and club premises certificates authorising the exhibition of films for the admission of children to the exhibition of any film to be restricted in accordance with the recommendations given to films either by a body designated under section 4 of the Video Recordings Act 1984 – the British Board of Film Classification is the only body which has been so designated – or by the licensing authority itself.

## INTEGRATING STRATEGIES

13.55 The Secretary of State recommends that statements of policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, race equality schemes, and cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Many of these strategies are not directly related to the promotion of the four licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

## CRIME PREVENTION

13.56 Licensing policy statements should indicate that conditions attached to premises licences and club premises certificates will, so far as possible, reflect local crime prevention strategies. For example, the provision of closed circuit television cameras in certain premises. Where appropriate it should reflect the input of the local Crime and Disorder Reduction Partnership.

## CULTURAL STRATEGIES

13.57 In connection with cultural strategies, licensing policy statements should include clearly worded statements indicating that they will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing, for example, by considering whether premises that provide live music or culture are represented on licensing stakeholder forums, and ensuring that local cultural officers are regularly consulted about the impact on local culture.

Where appropriate, town centre managers have an important role in coordinating live music events in town centres and can be an important source of information.

13.58 Care will be needed to ensure that only necessary, proportionate and reasonable licensing conditions impose any restrictions on these events. Where there is any indication that events are being deterred by licensing requirements, statements of licensing policy should be re-visited with a view to investigating how the situation might be reversed. Broader cultural activities and entertainment may also be affected. In developing their statements of licensing policy, licensing authorities should also consider any views of the local authority's arts committee, where one exists.

13.59 Over 325 local authorities from all over England and Wales are members of the National Association of Local Government Arts Officers (NALGAO), which is the largest organisation in the country representing local government art interests. Some local authorities do not yet have arts specialists or arts development officers and in such circumstances, a licensing authority may wish to consult NALGAO for practical help and advice.

13.60 The United Kingdom ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. Article 15 of the Covenant requires that progressive measures be taken to ensure that everyone can participate in the cultural life of the community and enjoy the arts. It is therefore important that the principles underpinning ICESCR are integrated, where possible, with the licensing authority's approach to the licensing of regulated entertainment.

## TRANSPORT

13.61 A statement should describe any protocols agreed between the local police and other licensing enforcement officers and indicate that arrangements will be made for them to report to local authority transport committees so that those committees may have regard to the need to disperse people from town and city centres swiftly and safely when developing their policies. When developing the statement licensing authorities should have regard to the existing policies and strategies of the relevant local transport authority, as set out in their Local Transport Plan. They may also wish to consult licensees who are likely to have a good knowledge of customer expectation and behavioural patterns in relation to transport options.

## TOURISM AND EMPLOYMENT

13.62 A statement should indicate that arrangements have been made for licensing committees to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations.

13.63 It should also state the licensing authority's intention to keep their licensing committee apprised of the employment situation in the area and the need for new investment and employment where appropriate.

## PLANNING AND BUILDING CONTROL

13.64 The statement of licensing policy should indicate that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. However, applications for licences may be made before any relevant planning permission has been sought or granted by the planning authority.

13.65 The planning and licensing regimes involve consideration of different (albeit related) matters. For instance, licensing considers public nuisance whereas planning considers amenity. As such licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee or following appeals against decisions taken by that committee. Licensing committees are not bound by decisions made by a planning committee, and vice versa.

13.66 The granting by the licensing committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control where appropriate.

13.67 There are also circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

13.68 Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This would enable the planning committee to have regard to such matters when taking its decisions and avoid any unnecessary overlap. A planning authority may also make representations as a responsible authority as long as they relate to the licensing objectives.

## PROMOTION OF RACIAL EQUALITY

13.69 A statement of licensing policy should also recognise that:

- the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups;
- local authorities are also required under the 1976 Act, as amended, to produce a race equality scheme, assess and consult on the likely impact of proposed policies on race equality, monitor policies for any adverse impact on the promotion of race equality, and publish the results of such consultations, assessments and monitoring;
- guidance on how to prepare race impact assessments has been produced by the Commission for Racial Equality (CRE) in consultation with a Home Office cross-Whitehall user group and a CRE-led public authority advisory group. This guidance is available on [www.cre.gov.uk/duty/reia/index.html](http://www.cre.gov.uk/duty/reia/index.html);

- the statement of licensing policy should therefore refer to this legislation and in turn, the statement of policy should be referenced in the race equality scheme.

## LIVE MUSIC, DANCING AND THEATRE

13.70 Statements of licensing policy should also recognise that as part of implementing local authority cultural strategies, proper account should be taken of the need to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre, including the performance of a wide range of traditional and historic plays, for the wider cultural benefit of communities. A natural concern to prevent disturbance in neighbourhoods should always be carefully balanced with these wider cultural benefits, particularly those for children.

13.71 In determining what conditions should be attached to licences and certificates as a matter of necessity for the promotion of the licensing objectives, licensing authorities should be aware of the need to avoid measures which deter live music, dancing and theatre by imposing indirect costs of a disproportionate nature. Performances of live music and dancing are central to the development of cultural diversity and vibrant and exciting communities where artistic freedom of expression is a fundamental right and greatly valued. Traditional music and dancing are parts of the cultural heritage of England and Wales. Music and dancing also help to unite communities and particularly in ethnically diverse communities, new and emerging musical and dance forms can assist the development of a fully integrated society. It should also be noted that the absence of cultural provision in any area can itself lead to the young people being diverted into anti-social activities that damage communities and the young people involved themselves.

13.72 To ensure that cultural diversity thrives, local authorities should consider establishing a policy of seeking premises licences from the licensing authority for public spaces within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give a performance in these places. They would still require the permission of the local authority as the premises licence holder for any regulated entertainment that it was proposed should take place in these areas. DCMS has established a Register of Local Authority Licensed Public Spaces in England in Wales. This is to help event organisers and touring entertainment providers determine whether their event could take place in a particular local authority area without the need for a separate authorisation. It also directs them to the appropriate person to find out more information and to obtain permission to use the space. The Register and further details are available on the DCMS website.

13.73 The Violent Crime Reduction Act 2006 amends the Criminal Justice and Police Act 2001 to clarify when and where a Designated Public Places Order (DPPO) would apply. The effect of the amendment is that where a local authority occupies or manages premises, or where premises are managed on its behalf, and it licences that place for alcohol sales, the DPPO will not apply when the licence is being used for alcohol sales (or 30 minutes after), but the place will be the subject to the DPPO at all other times. This will allow local authorities to promote community events whilst still using DPPOs to tackle the problems of anti-social drinking. Further guidance about DPPOs is available from the Home Office.

13.74 It should be noted that when one part of a local authority seeks a premises licence of this kind from the licensing authority, the licensing committee and its officers must consider the matter from an entirely neutral standpoint. If relevant representations are made, for example, by local residents or the police, they must be considered fairly by the committee. Anyone making a representation who is genuinely aggrieved by a positive decision in favour of a local authority application by the licensing authority would be entitled to appeal to the magistrates' court and thereby receive an independent review of any decision.

13.75 The Secretary of State recommends that licensing authorities should publish contact points in their statements of licensing policy where members of public can obtain advice about whether or not activities fall to be licensed.

## ADMINISTRATION, EXERCISE AND DELEGATION OF FUNCTIONS

13.76 The 2003 Act provides that the functions of the licensing authority (including its determinations) are to be taken or carried out by its licensing committee (except those relating to the making of a statement of licensing policy or where another of its committees has the matter referred to it). The licensing committee may delegate these functions to sub-committees or in appropriate cases, to officials supporting the licensing authority. Where licensing functions are not automatically transferred to licensing committees, the functions must be carried out by the licensing authority as a whole and not by its executive. Statements of licensing policy should indicate how the licensing authority intends to approach its various functions. Many of the decisions and functions will be purely

administrative in nature and statements of licensing policy should underline the principle of delegation in the interests of speed, efficiency and cost-effectiveness.

13.77 The 2003 Act does not prevent the development by a licensing authority of collective working practices with other parts of the local authority or other licensing authorities for work of a purely administrative nature, e.g. mail-outs. In addition, such administrative tasks may be contracted out to private businesses. But any matters regarding licensing decisions must be carried out by the licensing committee, its sub-committees or officers.

13.78 Where under the provisions of the 2003 Act, there are no relevant representations on an application for the grant of a premises licence or club premises certificate or police objection to an application for a personal licence or to an activity taking place under the authority of a temporary event notice, these matters should be dealt with by officers in order to speed matters through the system. Licensing committees should receive regular reports on decisions made by officers so that they maintain an overview of the general situation. Although essentially a matter for licensing authorities to determine themselves, the Secretary of State recommends that delegation should be approached in the following way:

13.79 RECOMMENDED DELEGATION OF FUNCTIONS

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/ club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/ club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/ club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

# Annex A

## Extract from the Licensing Act 2003: Regulated Entertainment

### SCHEDULE 1

#### Section 1

#### PROVISION OF REGULATED ENTERTAINMENT

#### PART 1

#### GENERAL DEFINITIONS

#### *The provision of regulated entertainment*

- 1 (1) For the purposes of this Act the "provision of regulated entertainment" means the provision of-
- (a) entertainment of a description falling within paragraph 2, or
  - (b) entertainment facilities falling within paragraph 3, where the conditions in sub-paragraphs (2) and (3) are satisfied.
- (2) The first condition is that the entertainment is, or entertainment facilities are, provided-
- (a) to any extent for members of the public or a section of the public,
  - (b) exclusively for members of a club which is a qualifying club in relation to the provision of regulated entertainment, or for members of such a club and their guests, or
  - (c) in any case not falling within paragraph (a) or (b), for consideration and with a view to profit.
- (3) The second condition is that the premises on which the entertainment is, or entertainment facilities are, provided are made available for the purpose, or for purposes which include the purpose, of enabling the entertainment concerned (whether of a description falling within paragraph 2(1) or paragraph 3(2)) to take place.
- To the extent that the provision of entertainment facilities consists of making premises available, the premises are to be regarded for the purposes of this sub-paragraph as premises "on which" entertainment facilities are provided.
- (4) For the purposes of sub-paragraph (2)(c), entertainment is, or entertainment facilities are, to be regarded as provided for consideration only if any charge-
- (a) is made by or on behalf of-
    - (i) any person concerned in the organisation or management of that entertainment, or
    - (ii) any person concerned in the organisation or management of those facilities who is also concerned in the organisation or management of the entertainment within paragraph 3(2) in which those facilities enable persons to take part, and

- (b) is paid by or on behalf of some or all of the persons for whom that entertainment is, or those facilities are, provided.
- (5) In sub-paragraph (4), "charge" includes any charge for the provision of goods or services.
- (6) For the purposes of sub-paragraph (4)(a), where the entertainment consists of the performance of live music or the playing of recorded music, a person performing or playing the music is not concerned in the organisation or management of the entertainment by reason only that he does one or more of the following-
  - (a) chooses the music to be performed or played,
  - (b) determines the manner in which he performs or plays it,
  - (c) provides any facilities for the purposes of his performance or playing of the music.
- (7) This paragraph is subject to Part 2 of this Schedule (exemptions).

### *Entertainment*

- 2 (1) The descriptions of entertainment are-
- (a) a performance of a play,
  - (b) an exhibition of a film,
  - (c) an indoor sporting event,
  - (d) a boxing or wrestling entertainment,
  - (e) a performance of live music,
  - (f) any playing of recorded music,
  - (g) a performance of dance,
  - (h) entertainment of a similar description to that falling within paragraph (e), (f) or (g),

where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience.

- (2) Any reference in sub-paragraph (1) to an audience includes a reference to spectators.
- (3) This paragraph is subject to Part 3 of this Schedule (interpretation).

### *Entertainment facilities*

- 3 (1) In this Schedule, "entertainment facilities" means facilities for enabling persons to take part in entertainment of a description falling within sub-paragraph (2) for the purpose, or for purposes which include the purpose, of being entertained.
- (2) The descriptions of entertainment are-
- (a) making music,
  - (b) dancing,

- (c) entertainment of a similar description to that falling within paragraph (a) or (b).

(3) This paragraph is subject to Part 3 of this Schedule (interpretation).

#### *Power to amend Schedule*

- 4 The Secretary of State may by order amend this Schedule for the purpose of modifying-
- (a) the descriptions of entertainment specified in paragraph 2, or
  - (b) the descriptions of entertainment specified in paragraph 3,
- and for this purpose "modify" includes adding, varying or removing any description.

## PART 2

### EXEMPTIONS

#### *Film exhibitions for the purposes of advertisement, information, education, etc.*

- 5 The provision of entertainment consisting of the exhibition of a film is not to be regarded as the provision of regulated entertainment for the purposes of this Act if its sole or main purpose is to-
- (a) demonstrate any product,
  - (b) advertise any goods or services, or
  - (c) provide information, education or instruction.

#### *Film exhibitions: museums and art galleries*

- 6 The provision of entertainment consisting of the exhibition of a film is not to be regarded as the provision of regulated entertainment for the purposes of this Act if it consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery.

#### *Music incidental to certain other activities*

- 7 The provision of entertainment consisting of the performance of live music or the playing of recorded music is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it is incidental to some other activity which is not itself-
- (a) a description of entertainment falling within paragraph 2, or
  - (b) the provision of entertainment facilities.

#### *Use of television or radio receivers*

- 8 The provision of any entertainment or entertainment facilities is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it consists of the simultaneous reception and playing of a programme included in a programme service within the meaning of the Broadcasting Act 1990 (c. 42).

*Religious services, places of worship etc.*

- 9 The provision of any entertainment or entertainment facilities-
- (a) for the purposes of, or for purposes incidental to, a religious meeting or service, or
  - (b) at a place of public religious worship,
- is not to be regarded as the provision of regulated entertainment for the purposes of this Act.

*Garden fêtes, etc.*

- 10 (1) The provision of any entertainment or entertainment facilities at a garden fête, or at a function or event of a similar character, is not to be regarded as the provision of regulated entertainment for the purposes of this Act.
- (2) But sub-paragraph (1) does not apply if the fête, function or event is promoted with a view to applying the whole or part of its proceeds for purposes of private gain.
- (3) In sub-paragraph (2) "private gain", in relation to the proceeds of a fête, function or event, is to be construed in accordance with section 22 of the Lotteries and Amusements Act 1976 (c. 32).

*Morris dancing etc.*

- 11 The provision of any entertainment or entertainment facilities is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it consists of the provision of-
- (a) a performance of morris dancing or any dancing of a similar nature or a performance of unamplified, live music as an integral part of such a performance, or
  - (b) facilities for enabling persons to take part in entertainment of a description falling within paragraph (a).

*Vehicles in motion*

- 12 The provision of any entertainment or entertainment facilities-
- (a) on premises consisting of or forming part of a vehicle, and
  - (b) at a time when the vehicle is not permanently or temporarily parked,
- is not to be regarded as the provision of regulated entertainment for the purposes of this Act.

PART 3  
INTERPRETATION

*General*

- 13 This Part has effect for the purposes of this Schedule.

*Plays*

- 14 (1) A "performance of a play" means a performance of any dramatic piece, whether involving improvisation or not,-
- (a) which is given wholly or in part by one or more persons actually present and performing, and
  - (b) in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role.
- (2) In this paragraph, "performance" includes rehearsal (and "performing" is to be construed accordingly).

*Film exhibitions*

- 15 An "exhibition of a film" means any exhibition of moving pictures.

*Indoor sporting events*

- 16 (1) An "indoor sporting event" is a sporting event-
- (a) which takes place wholly inside a building, and
  - (b) at which the spectators present at the event are accommodated wholly inside that building.
- (2) In this paragraph-
- "building" means any roofed structure (other than a structure with a roof which may be opened or closed) and includes a vehicle, vessel or moveable structure,
- "sporting event" means any contest, exhibition or display of any sport, and
- "sport" includes-
- (a) any game in which physical skill is the predominant factor, and
  - (b) any form of physical recreation which is also engaged in for purposes of competition or display.

*Boxing or wrestling entertainments*

- 17 A "boxing or wrestling entertainment" is any contest, exhibition or display of boxing or wrestling.

*Music*

- 18 "Music" includes vocal or instrumental music or any combination of the two.

## Annex B

### Extract from the Licensing Act 2003: Late Night Refreshment

#### SCHEDULE 2

#### Section 1

#### PROVISION OF LATE NIGHT REFRESHMENT

##### *The provision of late night refreshment*

- 1 (1) For the purposes of this Act, a person "provides late night refreshment" if-
- (a) at any time between the hours of 11.00 p.m. and 5.00 a.m., he supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises, or
  - (b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises,
- unless the supply is an exempt supply by virtue of paragraph 3, 4 or 5.
- (2) References in this Act to the "provision of late night refreshment" are to be construed in accordance with sub-paragraph (1).
- (3) This paragraph is subject to the following provisions of this Schedule.

##### *Hot food or hot drink*

- 2 Food or drink supplied on or from any premises is "hot" for the purposes of this Schedule if the food or drink, or any part of it,-
- (a) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature, or
  - (b) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

##### *Exempt supplies: clubs, hotels etc. and employees*

- 3 (1) The supply of hot food or hot drink on or from any premises at any time is an exempt supply for the purposes of paragraph 1(1) if, at that time, a person will neither-
- (a) be admitted to the premises, nor
  - (b) be supplied with hot food or hot drink on or from the premises,

except by virtue of being a person of a description falling within sub-paragraph (2).

- (2) The descriptions are that-
  - (a) he is a member of a recognised club,
  - (b) he is a person staying at a particular hotel, or at particular comparable premises, for the night in question,
  - (c) he is an employee of a particular employer,
  - (d) he is engaged in a particular trade, he is a member of a particular profession or he follows a particular vocation,
  - (e) he is a guest of a person falling within any of paragraphs (a) to (d).
- (3) The premises which, for the purposes of sub-paragraph (2)(b), are comparable to a hotel are-
  - (a) a guest house, lodging house or hostel,
  - (b) a caravan site or camping site, or
  - (c) any other premises the main purpose of maintaining which is the provision of facilities for overnight accommodation.

*Exempt supplies: premises licensed under certain other Acts*

- 4 The supply of hot food or hot drink on or from any premises is an exempt supply for the purposes of paragraph 1(1) if it takes place during a period for which-
  - (a) the premises may be used for a public exhibition of a kind described in section 21(1) of the Greater London Council (General Powers) Act 1966 (c. xxviii) by virtue of a licence under that section, or
  - (b) the premises may be used as near beer premises within the meaning of section 14 of the London Local Authorities Act 1995 (c. x) by virtue of a licence under section 16 of that Act.

*Miscellaneous exempt supplies*

- 5 (1) The following supplies of hot food or hot drink are exempt supplies for the purposes of paragraph 1(1)-
  - (a) the supply of hot drink which consists of or contains alcohol,
  - (b) the supply of hot drink by means of a vending machine,
  - (c) the supply of hot food or hot drink free of charge,
  - (d) the supply of hot food or hot drink by a registered charity or a person authorised by a registered charity,
  - (e) the supply of hot food or hot drink on a vehicle at a time when the vehicle is not permanently or temporarily parked.
- (2) Hot drink is supplied by means of a vending machine for the purposes of sub-paragraph (1)(b) only if-
  - (a) the payment for the hot drink is inserted into the machine by a member of the public, and
  - (b) the hot drink is supplied directly by the machine to a member of the public.

- (3) Hot food or hot drink is not to be regarded as supplied free of charge for the purposes of sub-paragraph (1)(c) if, in order to obtain the hot food or hot drink, a charge must be paid-
  - (a) for admission to any premises, or
  - (b) for some other item.
- (4) In sub-paragraph (1)(d) "registered charity" means-
  - (a) a charity which is registered under section 3 of the Charities Act 1993 (c. 10), or
  - (b) a charity which by virtue of subsection (5) of that section is not required to be so registered.

*Clubs which are not recognised clubs: members and guests*

- 6 For the purposes of this Schedule-
  - (a) the supply of hot food or hot drink to a person as being a member, or the guest of a member, of a club which is not a recognised club is to be taken to be a supply to a member of the public, and
  - (b) the admission of any person to any premises as being such a member or guest is to be taken to be the admission of a member of the public.

## Annex C

### Extract from the Licensing Act 2003: Relevant Offences

This reproduces Schedule 4 of the Licensing Act 2003 as amended by SI 2005/2366 The Licensing Act 2003 (Personal licence : relevant offences) (Amendment) Order 2005. NB. A violent offence under paragraph 19 is 'any offence which leads, or is intended or likely to lead to a person's death or to physical injury to a person'. This would include Actual Bodily Harm and, common assault where it leads to physical injury.

#### SCHEDULE 4

Section 113

#### PERSONAL LICENCE: RELEVANT OFFENCES

- 1 An offence under this Act.
- 2 An offence under any of the following enactments-
  - (a) Schedule 12 to the London Government Act 1963 (c. 33) (public entertainment licensing);
  - (b) the Licensing Act 1964 (c. 26);
  - (c) the Private Places of Entertainment (Licensing) Act 1967 (c. 19);
  - (d) section 13 of the Theatres Act 1968 (c. 54);
  - (e) the Late Night Refreshment Houses Act 1969 (c. 53);
  - (f) section 6 of, or Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30);
  - (g) the Licensing (Occasional Permissions) Act 1983 (c. 24);
  - (h) the Cinemas Act 1985 (c. 13);
  - (i) the London Local Authorities Act 1990 (c. vii).
- 3 An offence under the Firearms Act 1968 (c. 27).
- 4 An offence under section 1 of the Trade Descriptions Act 1968 (c. 29) (false trade description of goods) in circumstances where the goods in question are or include alcohol.
- 5 An offence under any of the following provisions of the Theft Act 1968 (c. 60)-
  - (a) section 1 (theft);
  - (b) section 8 (robbery);
  - (c) section 9 (burglary);
  - (d) section 10 (aggravated burglary);
  - (e) section 11 (removal of articles from places open to the public);
  - (f) section 12A (aggravated vehicle-taking), in circumstances where subsection (2)(b) of that section applies and the accident caused the death of any person;

- (g) section 13 (abstracting of electricity);
  - (h) section 15 (obtaining property by deception);
  - (i) section 15A (obtaining a money transfer by deception);
  - (j) section 16 (obtaining pecuniary advantage by deception);
  - (k) section 17 (false accounting);
  - (l) section 19 (false statements by company directors etc.);
  - (m) section 20 (suppression, etc. of documents);
  - (n) section 21 (blackmail);
  - (o) section 22 (handling stolen goods);
  - (p) section 24A (dishonestly retaining a wrongful credit);
  - (q) section 25 (going equipped for stealing etc.).
- 6 An offence under section 7(2) of the Gaming Act 1968 (c. 65) (allowing child to take part in gaming on premises licensed for the sale of alcohol).
- 7 An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)-
- (a) section 4(2) (production of a controlled drug);
  - (b) section 4(3) (supply of a controlled drug);
  - (c) section 5(3) (possession of a controlled drug with intent to supply);
  - (d) section 8 (permitting activities to take place on premises).
- 8 An offence under either of the following provisions of the Theft Act 1978 (c. 31)-
- (a) section 1 (obtaining services by deception);
  - (b) section 2 (evasion of liability by deception).
- 9 An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c. 2)-
- (a) section 170 (disregarding subsection (1)(a)) (fraudulent evasion of duty etc.);
  - (b) section 170B (taking preparatory steps for evasion of duty).
- 10 An offence under either of the following provisions of the Tobacco Products Duty Act 1979 (c. 7)-
- (a) section 8G (possession and sale of unmarked tobacco);
  - (b) section 8H (use of premises for sale of unmarked tobacco).
- 11 An offence under the Forgery and Counterfeiting Act 1981 (c. 45) (other than an offence under section 18 or 19 of that Act).

- 12 An offence under the Firearms (Amendment) Act 1988 (c. 45).
- 13 An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48)-
  - (a) section 107(1)(d)(iii) (public exhibition in the course of a business of article infringing copyright);
  - (b) section 107(3) (infringement of copyright by public performance of work etc.);
  - (c) section 198(2) (broadcast etc. of recording of performance made without sufficient consent);
  - (d) section 297(1) (fraudulent reception of transmission);
  - (e) section 297A(1) (supply etc. of unauthorised decoder).
- 14 An offence under any of the following provisions of the Road Traffic Act 1988 (c. 52)-
  - (a) section 3A (causing death by careless driving while under the influence of drink or drugs);
  - (b) section 4 (driving etc. a vehicle when under the influence of drink or drugs);
  - (c) section 5 (driving etc. a vehicle with alcohol concentration above prescribed limit).
- 15 An offence under either of the following provisions of the Food Safety Act 1990 (c. 16) in circumstances where the food in question is or includes alcohol-
  - (a) section 14 (selling food or drink not of the nature, substance or quality demanded);
  - (b) section 15 (falsely describing or presenting food or drink).
- 16 An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c. 26) (unauthorised use of trade mark, etc. in relation to goods) in circumstances where the goods in question are or include alcohol.
- 17 An offence under the Firearms (Amendment) Act 1997 (c. 5).
- 18 A sexual offence, being an offence -
  - (a) listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003[2], other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));
  - (b) an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);
  - (c) an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).

- 19 A violent offence, being any offence which leads, or is intended or likely to lead, to a person's death or to physical injury to a person, including an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).
- 20 An offence under section 3 of the Private Security Industry Act 2001 (c. 12) (engaging in certain activities relating to security without a licence).

# Annex D

## Pools of conditions

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### CORE PRINCIPLES

1. When applicants are preparing their operating schedules or club operating schedules, responsible authorities are considering applications and licensing authorities are considering applications following the receipt of relevant representations, they should consider whether the measures set out below are necessary to promote the licensing objectives.
2. Any risk assessment to identify necessary measures should consider the individual circumstances of the premises (including local knowledge) and take into account a range of factors including:
  - the nature and style of the venue;
  - the activities being conducted there;
  - the location; and
  - the anticipated clientele.

**Under no circumstances should licensing authorities regard these conditions as standard conditions to be automatically imposed in all cases.**

3. Any individual preparing an operating schedule or club operating schedule is at liberty to volunteer any measure, such as those below, as a step they intend to take to promote the licensing objectives. When measures are incorporated into the licence or certificate as conditions, they become enforceable under the law and any breach could give rise to prosecution.
4. Licensing authorities should carefully consider conditions to ensure that they are not only necessary but realistic, practical and achievable, so that they are capable of being met. Failure to comply with any conditions

attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both. As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises. It is also important that conditions which are imprecise or difficult to enforce should be avoided.

5. It should be borne in mind that club premises operate under codes of discipline to ensure the good order and behaviour of members and that conditions enforcing offences under the Act are unnecessary.

### PART 1. CONDITIONS RELATING TO THE PREVENTION OF CRIME AND DISORDER

#### Text/Radio pagers

Text and radio pagers connecting premises licence holders, designated premises supervisors, managers of premises and clubs to the local police can provide for rapid response by the police to situations of disorder which may be endangering the customers and staff on the premises.

Pagers provide two-way communication, allowing licence holders, managers, designated premises supervisors and clubs to report incidents to the police, and the police to warn those operating a large number of other premises of potential trouble-makers or individuals suspected of criminal behaviour who are about in a particular area. Pager systems can also be used by licence holders, door supervisors, managers, designated premises supervisors and clubs to warn each other of the presence in an area of such people.

The Secretary of State recommends that text or radio pagers should be considered for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These conditions may also be appropriate and necessary in other areas.

It is recommended that a condition requiring the text/radio pager links to the police should include the following requirements:

- the text/pager equipment is kept in working order at all times;
- the pager link is activated, made available to and monitored by the designated premises supervisor or a responsible member of staff at all times that the premises are open to the public;
- any police instructions/directions are complied with whenever given; and
- all instances of crime or disorder are reported via the text/radio pager link by the designated premises supervisor or a responsible member of staff to an agreed police contact point.

### **Door supervisors**

Conditions relating to the provision of door supervisors and security teams may be valuable in:

- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
- keeping out individuals excluded by court bans or by the licence holder;
- searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
- maintaining orderly queuing outside venues.

Where the presence of door supervisors conducting security activities is to be a condition of a licence, which means that they would have to be registered with the Security Industry Authority, conditions may also need to deal with:

- the number of supervisors;
- the displaying of name badges;
- the carrying of proof of registration;
- where, and at what times, they should be stationed on the premises; and
- whether at least one female supervisor should be available (for example, if female customers are to be given body searches).

Door supervisors also have a role to play in ensuring public safety (see Part 2) and the prevention of public nuisance (see Part 4).

### **Bottle bans**

Glass bottles may be used as weapons to inflict serious harm during incidents of disorder. A condition can prevent sales of drinks in glass bottles for consumption on the premises. This should be expressed in clear terms and include the following elements:

- no bottles containing beverages of any kind, whether open or sealed, shall be given to customers on the premises whether at the bar or by staff service away from the bar;
- no customers carrying open or sealed bottles shall be admitted to the premises at any time that the premises are open to the public (note: this needs to be carefully worded where off-sales also take place);

In appropriate circumstances, the condition could include exceptions, for example, as follows:

- but bottles containing wine may be sold for consumption with a table meal by customers who are seated in an area set aside from the main bar area for the consumption of food.

Bottle bans may also be a relevant necessary measure to promote public safety (see Part 2).

### **Plastic containers and toughened glass**

Glasses containing drinks may be used as weapons and in untoughened form, can cause very serious injuries. Where necessary, consideration should therefore be given to conditions requiring the use of safer alternatives which inflict less severe injuries. Location and style of the venue and the activities carried on there are particularly important in assessing whether a condition is necessary. For example, the use of glass containers on the terraces of some outdoor sports grounds may obviously be of concern, and similar concerns may also apply to indoor sports events such as boxing matches. Similarly, the use of plastic containers or toughened glass may be a necessary condition during the televising of live sporting events, such as international football matches, when there may be high states of excitement and emotion fuelled by alcohol.

The use of plastic or paper drinks containers and toughened glass may also be relevant as measures necessary to promote public safety (see Part 2).

### **Open containers not to be taken from the premises**

Drinks purchased in licensed premises or clubs may be taken from those premises for consumption elsewhere. This is lawful where premises are licensed for the sale of alcohol for consumption off the premises. However, consideration should be given to a condition preventing customers from taking alcoholic and other drinks from the premises in open containers (eg glasses and opened bottles) for example, by requiring the use of bottle bins on the premises. This may again be necessary to prevent the use of these containers as offensive weapons in surrounding streets after individuals have left the premises.

Restrictions on taking open containers from the premises may also be relevant necessary measures to prevent public nuisance (see Part 4).

### **CCTV**

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises. Conditions should not just consider a requirement to have CCTV on the premises, but also the precise siting of each camera, the requirement to maintain cameras in working order, and to retain recordings for an appropriate period of time.

The police should provide individuals conducting risk assessments when preparing operating schedules with advice on the use of CCTV to prevent crime.

### **Restrictions on drinking areas**

It may be necessary to restrict the areas where alcoholic drinks may be consumed in premises after they have been purchased from the bar. An example would be at a sports ground where the police consider it necessary to prevent the consumption of alcohol on the terracing during particular sports events. Conditions should not only specify these areas, but indicate the circumstances in which the ban would apply and times at which it should be enforced.

Restrictions on drinking areas may also be relevant necessary measures to prevent public nuisance (see Part 4).

### **Capacity limits**

Capacity limits are most commonly made a condition of a licence on public safety grounds (see Part 2), but should also be considered for licensed premises or clubs where overcrowding may lead to disorder and violence. If such a condition is considered necessary, door supervisors may be needed to ensure that the numbers are appropriately controlled (see above).

### **Proof of age cards**

It is unlawful for children under 18 to attempt to buy alcohol just as it is unlawful to sell or supply alcohol to them. To prevent the commission of these criminal offences, licensed premises should have in place an age verification policy. This requires the production of "proof of age" before sales are made. The Secretary of State strongly supports the PASS accreditation system which aims to approve and accredit various proof of age schemes that are in existence. This ensures that such schemes maintain high standards, particularly in the area of integrity and security. While age verification policies may refer directly to PASS accredited proof of age cards, they should also allow for the production of other proof which bears a photograph, the individual's date of birth and a holographic mark, such as photo-driving licences, National Identity Cards, some student cards and passports.

Since many adults in England and Wales do not currently carry any proof of age, the wording of any condition will require careful thought. For example, many premises have adopted the "Challenge 25", "Challenge 21" or other similar initiatives. Under these initiatives those premises selling or supplying alcohol require sight of evidence of age from any person appearing to be under the specified age and who is attempting to buy alcohol.

### **Crime prevention notices**

It may be necessary at some premises for notices to be displayed which warn customers of the prevalence of crime which may target them. Some premises may be reluctant to volunteer the display of such notices for commercial reasons. For example, in certain areas, a condition attached to a premises licence or club premises certificate might require the display of

notices at the premises which warn customers about the need to be aware of pickpockets or bag snatchers, and to guard their property. Similarly, it may be necessary for notices to be displayed which advise customers not to leave bags unattended because of concerns about terrorism. Consideration could be given to a condition requiring a notice to display the name of a contact for customers if they wish to report concerns.

### **Drinks promotions**

Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club premises certificates in an area as this is likely to breach competition law. It is also likely to be unlawful for licensing authorities or police officers to promote voluntary arrangements of this kind as this can risk creating cartels. Discounting at individual premises may be permissible provided it is consistent with the licensing objectives.

Irresponsible promotions are addressed through mandatory licensing conditions (see section 10). Licensing authorities are reminded that there may be a judgement needed on whether a specific promotion is responsible or irresponsible. It is therefore vital that they consider these matters objectively in the context of the licensing objectives and before pursuing any form of restrictions at all, take their own legal advice.

### **Signage**

It may be necessary for the normal hours at which licensable activities are permitted to take place under the terms of the premises licence or club premises certificate to be displayed on or immediately outside the premises so that it is clear if breaches of these terms are taking place.

Similarly, it may be necessary for any restrictions on the admission of children to be displayed on or immediately outside the premises to deter those who might seek admission in breach of those conditions.

### **Large capacity venues used exclusively or primarily for the “vertical” consumption of alcohol (HVVDs)**

Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises which have exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and little or no seating for patrons.

Where necessary and appropriate, conditions can be attached to licences for these premises which require adherence to:

- a prescribed capacity;
- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of security staff holding the appropriate SIA licence or exemption (see paragraphs 10.58-10.64) to control entry for the purpose of compliance with the capacity limit.

## **PART 2. CONDITIONS RELATING TO PUBLIC SAFETY**

The attachment of conditions to a premises licence or club premises certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work etc Act 1974, associated regulations and especially the requirements under the Management of Health and Safety at Work Regulations 1999, and the Regulatory Reform (Fire Safety) Order 2005 to undertake risk assessments. Employers should assess the risks, including risks from fire, and take measures necessary to avoid and control them. Conditions enforcing these requirements are therefore unnecessary.

From 1 October 2006 the Regulatory Reform (Fire Safety) Order 2005 replaced previous fire safety legislation. Licensing authorities should note that under article 43 of the Regulatory Reform (Fire Safety) Order 2005 any conditions imposed by the licensing authority that relate to any requirements or prohibitions that are or could be imposed by the Order have no effect. This means that licensing authorities should not seek to impose fire safety conditions where the Order applies. See Chapter 2 for more detail about the Order.

### **General**

Additional matters relating to cinemas and theatres are considered in Part 3. It should also be recognised that special issues may arise in connection with outdoor and large scale events.

In addition, to considering the points made in this Part, those preparing operating schedules or club operating schedules, licensing authorities and responsible authorities should consider:

- Model National and Standard Conditions for Places of Public Entertainment and Associated Guidance ISBN 1 904031 11 0 (Entertainment Technology Press – ABTT Publications)
- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through: [www.streetartsnetwork.org.uk/pages/publications.htm](http://www.streetartsnetwork.org.uk/pages/publications.htm)

- The London District Surveyors Association's "Technical Standards for Places of Public Entertainment" ISBN 0 9531229 2 1

The following British Standards should also be considered:

- BS 5588 Part 6 (regarding places of assembly)
- BS 5588 Part 9 (regarding ventilation and air conditioning systems)
- BS 5588 Part 9 (regarding means of escape for disabled people)
- BS 5839 (fire detection, fire alarm systems and buildings)
- BS 5266 (emergency lighting systems)

**In most premises existing legislation will provide adequately for the safety of the public or club members and guests. However, where this is not the case, consideration might be given to the following conditions.**

### Safety checks

- Safety checks are carried out before the admission of the public.
- Details of such checks are kept in a Log-book.

### Escape routes

- Exits are kept unobstructed, with non-slippery and even surfaces, free of trip hazards and clearly identified.
- Where chairs and tables are provided in restaurants and other premises, internal gangways are kept unobstructed.
- All exits doors are easily openable without the use of a key, card, code or similar means.
- Doors at such exits are regularly checked to ensure that they function satisfactorily and a record of the check kept.

- Any removable security fastenings are removed whenever the premises are open to the public or occupied by staff.
- The edges of the treads of steps and stairways are maintained so as to be conspicuous.

### Disabled people

- When disabled people are present, adequate arrangements exist to enable their safe evacuation in the event of an emergency; and disabled people on the premises are made aware of those arrangements.

### Lighting

- In the absence of adequate daylight, the lighting in any area accessible to the public, members or guests shall be fully in operation when they are present.
- Emergency lighting is not altered.
- Emergency lighting batteries are fully charged before the admission of the public, members or guests.
- In the event of the failure of normal lighting, where the emergency lighting battery has a capacity of one hour, arrangements are in place to ensure that the public, members or guests leave the premises within 20 minutes unless within that time normal lighting has been restored and the battery is being re-charged; and, if the emergency lighting battery has a capacity of three hours, the appropriate period by the end of which the public should have left the premises is one hour.

### **Curtains, hangings, decorations and upholstery**

- Curtains, hangings and temporary decorations are arranged so as not to obstruct exits
- temporary decorations are not used without prior notification to the licensing authority/relevant responsible authority.

### **Capacity limits**

- Arrangements are made to ensure that any capacity limit imposed under the premises licence or club premises certificate is not exceeded.
- The licence holder, a club official, manager or designated premises supervisor should be aware of the number of people on the premises and required to inform any authorised person on request.

### **Access for emergency vehicles**

- Access for emergency vehicles is kept clear and free from obstruction.

### **First aid**

- Adequate and appropriate supply of first aid equipment and materials is available on the premises.
- If necessary, at least one suitably trained first-aider shall be on duty when the public are present; and if more than one suitably trained first-aider that their respective duties are clearly defined.

### **Temporary electrical installations**

- Temporary electrical wiring and distribution systems are not provided without notification to the licensing authority at least ten days before commencement of the work and/or prior inspection by a suitable qualified electrician.

- Temporary electrical wiring and distribution systems shall comply with the recommendations of BS 7671 or where applicable BS 7909.
- Where they have not been installed by a competent person, temporary electrical wiring and distribution systems are inspected and certified by a competent person before they are put to use.

With regard to the first bullet above, it should be recognised that ten days notice may not be possible where performances are supported by outside technical teams. For example, where temporary electrical installations are made in theatres for television show performances. In such circumstances, the key requirement is that conditions should ensure that temporary electrical installations are only undertaken by competent qualified persons, for example, employed by the television company.

### **Indoor sports entertainments**

- If necessary, an appropriately qualified medical practitioner is present throughout a sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature.
- Any ring is constructed and supported by a competent person and inspected by a competent authority.
- At any wrestling or other entertainments of a similar nature members of the public do not occupy any seat within 2.5 metres of the ring.
- At water sports entertainments, staff adequately trained in rescue and life safety procedures are stationed and remain within the vicinity of the water at all material times (see also Managing Health and Safety in Swimming Pools issued jointly by the Health and Safety Commission and Sport England).

### Special effects

The use of special effects in venues of all kinds being used for regulated entertainment is increasingly common and can present significant risks. Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff. Further details and guidance are given in Part 3.

### Alterations to the premises

Premises should not be altered in such a way as to make it impossible to comply with an existing licence condition without first seeking a variation of the premises licence to delete the relevant public safety condition. The applicant will need to propose how they intend to take alternative steps to promote the public safety objective in a new operating schedule reflecting the proposed alteration to the premises. The application for variation will enable the responsible authorities with expertise in safety matters to consider whether the proposal is acceptable.

### Other measures

Other measures previously mentioned in relation to the Prevention of Crime and Disorder may also be relevant as necessary to promote public safety. These might include the provision of door supervisors, bottle bans, and requirements to use plastic or toughened glass containers (see Part 1 for further detail).

## PART 3. THEATRES, CINEMAS, CONCERT HALLS AND SIMILAR PLACES (PROMOTION OF PUBLIC SAFETY)

In addition to the points in Part 2, there are particular public safety matters which should be considered in connection with theatres and cinemas.

### PREMISES USED FOR CLOSELY SEATED AUDIENCES

#### Attendants

- (a) The number of attendants on each floor in a closely seated auditorium should be as set out on the table below:

Number of members of the audience present on a floor	Minimum number of attendants required to be present on that floor
1 – 100	One
101 – 250	Two
251 – 500	Three
501 – 750	Four
751 -1000	Five
And one additional attendant for each additional 250 persons (or part thereof)	

- (b) Attendants shall not be engaged in any duties that would prevent them from promptly discharging their duties in the event of an emergency or require their absence from that floor or auditorium where they are on duty.
- (c) Any attendant shall be readily identifiable to the audience (but this need not entail the wearing of a uniform).

- (d) The premises shall not be used for a closely seated audience except in accordance with seating plan(s), a copy of which is available at the premises and shall be shown to any authorised person on request.
- (e) No article shall be attached to the back of any seat which would reduce the clear width of seatways or cause a tripping hazard or obstruction.
- (f) A copy of any certificate relating to the design, construction and loading of any temporary seating shall be kept available at the premises and shall be shown to any authorised person on request.

### Seating

Where the potential audience exceeds 250 all seats in the auditorium should, except in boxes accommodating not more than 8 persons, be either securely fixed to the floor or battened together in lengths of not fewer than four or more than twelve.

### Standing and sitting in gangways etc

- (a) Sitting on floors shall not be permitted except where authorised in the premises licence or club premises certificate.
- (b) Waiting or standing shall not be permitted except in areas designated in the premises licence or club premises certificate.
- (c) In no circumstances shall anyone be permitted to-
  - (i) sit in any gangway;
  - (ii) stand or sit in front of any exit; or
  - (iii) stand or sit on any staircase including any landings.

### Drinks

Except as authorised by the premises licence or club premises certificate, no drinks shall be sold to or be consumed by a closely seated audience except in plastic and paper containers.

### Balcony Fronts

Clothing or other objects shall not be placed over balcony rails or upon balcony fronts.

### Special effects

Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

Special effects include:

- dry ice machines and cryogenic fog;
- smoke machines and fog generators;
- pyrotechnics, including fireworks;
- real flame;
- firearms;
- motor vehicles;
- strobe lighting;
- lasers;
- explosives and highly flammable substances.

In certain circumstances, it may be necessary to require that certain special effects are only used with the prior notification of the licensing authority. In these cases, the licensing authority should notify the fire and rescue authority, who will exercise their inspection and enforcement powers under the Regulatory Reform (Fire Safety) Order 2005.

Further guidance can be found in the following publications:

- HSE Guide 'The radiation safety of lasers used for display purposes' (HS(G)95
- 'Smoke and vapour effects used in entertainment' (HSE Entertainment Sheet No 3);
- 'Special or visual effects involving explosives or pyrotechnics used in film and television production' (HSE Entertainment Sheet No 16);
- 'Electrical safety for entertainers' (HSE INDG 247)
- 'Theatre Essentials' – Guidance booklet produced by the Association of British Theatre Technicians 8

## **Ceilings**

All ceilings in those parts of the premises to which the audience are admitted should be inspected by a suitably qualified person who will decide when a further inspection is necessary and a certificate concerning the condition of the ceilings forwarded to the licensing authority.

## PREMISES USED FOR FILM EXHIBITIONS

### Attendants – premises without a staff alerting system

Where the premises are not equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty
1 – 250	Two
And one additional attendant for each additional 250 members of the audience present (or part thereof)	
Where there are more than 150 members of audience in any auditorium or on any floor	At least one attendant shall be present in any auditorium or on any floor

### Attendants – premises with a staff alerting system

- (a) Where premises are equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the the audience present on the premises	Minimum number of attendants required to be on duty	Minimum number of other staff on the premises who are available to assist in the event of an emergency
1 – 500	Two	One
501 – 1000	Three	Two
1001 – 1500	Four	Four
1501 or more	Five plus one for every 500 (or part thereof) persons over 2000 on the premises	Five plus one for every 500 (or part thereof) persons over 2000 on the premises

- (b) Staff shall not be considered as being available to assist in the event of an emergency if they are:
- (i) the holder of the premises licence or the manager on duty at the premises; or
  - (ii) a member of staff whose normal duties or responsibilities are likely to significantly affect or delay their response in an emergency situation; or
  - (iii) a member of staff whose usual location when on duty is more than 60 metres from the location to which they are required to go on being alerted to an emergency situation.
- (c) Attendants shall as far as reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access and keep under observation all parts of the premises to which the audience have access.
- (d) The staff alerting system shall be maintained in working order.

### Minimum lighting

The level of lighting in the auditorium should be as great as possible consistent with the effective presentation of the film; and the level of illumination maintained in the auditorium during the showing of films would normally be regarded as satisfactory if it complies with the standards specified in BS CP 1007 (Maintained Lighting for Cinemas).

## PART 4. CONDITIONS RELATING TO THE PREVENTION OF PUBLIC NUISANCE

It should be noted that provisions of the Environmental Protection Act 1990, the Noise Act 1996 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from the effects of noise nuisance. In addition, the provisions in Part 8 of the Licensing Act 2003 enable a senior police officer to close down instantly for up to 24 hours licensed premises and premises carrying on temporary permitted activities that are causing nuisance resulting from noise emanating from the premises. These matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

### Hours

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance. But this must be balanced by the potential impact on disorder which may result from arbitrarily fixed closing times. However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times.

Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public as such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue. Or the playing of recorded music might only be permitted after a certain time where conditions have been attached to the licence or certificate to ensure that any potential nuisance is satisfactorily prevented.

Restrictions might also be necessary on the parts of premises that might be used for certain licensable activities at certain times. For example, while the provision of regulated entertainment might be permitted while the premises is open to the public or members and their guests, regulated entertainment might not be permitted in garden areas of the premises after a certain time.

In premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to the following conditions.

### Noise and vibration

In determining which conditions are necessary and appropriate, licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter the holding of events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues. The following conditions may be considered:

- Noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by one or more of the following conditions:
  - a simple requirement to keep doors and windows at the premises closed;
  - limiting live music to a particular area of the building;
  - moving the location and direction of speakers away from external walls or walls that abut private premises;
  - installation of acoustic curtains;
  - fitting of rubber seals to doorways;
  - installation of rubber speaker mounts;
  - requiring the licensee to take measure to ensure that music will not be audible above background level at the nearest noise sensitive location;

- require licensee to undertake routine monitoring to ensure external levels of music are not excessive and take appropriate action where necessary;
- noise limiters on amplification equipment used at the premises (if other measures have been unsuccessful).
- Prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
- The use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted.
- The placing of refuse – such as bottles – into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

### Noxious smells

- Noxious smells from licensed premises are not permitted so as to cause a nuisance to nearby properties and the premises are properly vented.

### Light pollution

- Flashing or particularly bright lights on or outside licensed premises do not cause a nuisance to nearby properties. Any such condition needs to be balanced against the benefits to the prevention of crime and disorder of bright lighting in certain places.

### Other measures

Other measures previously mentioned in relation to the Prevention of Crime and Disorder may also be relevant as necessary to prevent public nuisance. These might include the provision of door supervisors, open containers not to be taken from the premises, and restrictions on drinking areas (see Part 1 for further detail).

## PART 5. CONDITIONS RELATING TO THE PROTECTION OF CHILDREN FROM HARM

An operating schedule or club operating schedule should indicate any decision for the premises to exclude children completely. This would mean there would be no need to detail in the operating schedule steps that the applicant proposes to take to promote the protection of children from harm. Otherwise, where entry is to be permitted, the operating schedule should outline the steps to be taken to promote the protection of children from harm while on the premises.

### Access for children to licensed premises – in general

Restrictions on the access of children under 18 to premises where licensable activities are being carried on should be made where it is necessary to protect children from harm. Precise policy and details will be a matter for individual licensing authorities.

The Secretary of State recommends (unless there are circumstances justifying the contrary) that:

- for any premises with known associations (having been presented with evidence) with or likely to give rise to:
  - heavy or binge or underage drinking;
  - drugs;
  - significant gambling; or
  - any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature,

there should be a strong presumption against permitting any access at all for children under 18 years.

- for any premises, not serving alcohol for consumption on the premises, but where the public are allowed on the premises after 11.00pm in the evening, there should be a presumption against the presence of children under the age of 12 unaccompanied by adults after that time.

Applicants wishing to allow access under the above circumstances, should when preparing new operating schedules or club operating schedules or variations of those schedules:

- explain their reasons; and
- outline in detail the steps that they intend to take to protect children from harm on such premises.

In any other case the Secretary of State recommends that, subject to the premises licence holder's or club's discretion, the expectation would be for unrestricted access for children subject to the terms of the 2003 Act

### Age Restrictions – specific

Whilst it may be appropriate to allow children unrestricted access at particular times and when certain activities are not taking place, licensing authorities will need to consider:

- the hours of day during which age restrictions should and should not apply. For example, the fact that adult entertainment may be presented at premises after 8.00pm does not mean that it would be necessary to impose age restrictions for earlier parts of the day;
- types of event or activity that are unlikely to require age restrictions, for example:
  - family entertainment; or
  - non-alcohol events for young age groups, such as under 18s dances,
- types of event or activity which give rise to a more acute need for age restrictions than normal, for example:

- during “Happy Hours” or on drinks promotion nights;
- during activities outlined in the first bullet point in the first paragraph above.

### Age restrictions – cinemas

The British Board of Film Classification classifies films in accordance with its published Guidelines which are based on extensive research into public opinion and professional advice. The Secretary of State therefore recommends that licensing authorities should not duplicate this effort by choosing to classify films themselves. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role. Licensing authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

Licensing authorities should be aware that the BBFC currently classifies films in the following way:

- U Universal – suitable for audiences aged four years and over
- PG – Parental Guidance. Some scenes may be unsuitable for young children.
- 12A – Passed only for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.
- 15 – Passed only for viewing by persons aged 15 years and over.
- 18 – Passed only for viewing by persons aged 18 years and over.

Licensing authorities should note that these classifications may be subject to occasional change and consult the BBFC’s website at [www.bbfc.co.uk](http://www.bbfc.co.uk) before applying relevant conditions.

The Secretary of State considers that, in addition to the mandatory condition imposed by section 20, conditions restricting the admission of children to film exhibitions should include that:

- where the licensing authority itself is to make recommendations on the admission of children to films, the cinema or venue operator must submit any film to the authority that it intends to exhibit 28 days before it is proposed to show it. This is to allow the authority time to classify it so that the premises licence holder is able to adhere to any age restrictions then imposed;
- immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the classification of the film;
- when a licensing authority has made a recommendation on the restriction of admission of children to a film, notices are required to be displayed both inside and outside the premises so that persons entering can readily be made aware of the classification attached to any film or trailer. Such a condition might be expressed in the following terms:

“Where a programme includes a film recommended by the licensing authority as falling into an age restrictive category no person appearing to be under the age specified shall be admitted to any part of the programme; where a programme includes a film recommended by the licensing authority as falling into a category requiring any persons under a specified age to be accompanied by an adult no person appearing to be under the age specified shall be admitted to any part of the programme unaccompanied by an adult, and the licence holder shall display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements. For example:

## **PERSONS UNDER THE AGE OF [INSERT APPROPRIATE AGE] CANNOT BE ADMITTED TO ANY PART OF THE PROGRAMME**

Where films of different categories form part of the same programme, the notice shall refer to the oldest age restriction.

This condition does not apply to members of staff under the relevant age while on-duty provided that the prior written consent of the person's parent or legal guardian has first been obtained."

### **Theatres**

The admission of children to theatres, as with other licensed premises, is not expected to be restricted normally unless it is necessary to promote the protection of children from harm. However, theatres may be the venue for a wide range of activities.

The admission of children to the performance of a play should normally be left to the discretion of the licence holder and no condition restricting the access of children to plays should be attached. However, theatres may also present entertainment including, for example, variety shows, incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be necessary. Entertainment may also be presented at theatres specifically for children (see below).

Licensing authorities are also expected to consider whether a condition should be attached to a premises licence which requires the presence of a sufficient number of adult staff on the premises to ensure the well being of children during any emergency (See Part 3).

### **Performances especially for children**

Where performances are presented especially for unaccompanied children in theatres and cinemas, licensing authorities will also wish to consider conditions to specify that:

- an attendant to be stationed in the area(s) occupied by the children, in the vicinity of each exit, provided that on each level occupied by children the minimum number of attendants on duty should be one attendant per 50 children or part thereof.

Licensing authorities should also consider whether or not standing should be allowed. For example, there may be reduced risk for children in the stalls than at other levels or areas in the building.

### **Children in performances**

There are many productions each year that are one-off shows where the cast is made up almost entirely of children. They may be taking part as individuals or as part of a drama club, stage school or school group. The age of those involved may range from 5 to 18. The Children (Performances) Regulations 1968 as amended set out requirements for children performing in a show. Licensing authorities should familiarise themselves with these Regulations and not duplicate any of these requirements. However, if it is necessary to consider imposing conditions, in addition to these requirements, for the promotion of the protection of children from harm then the licensing authority should consider the matters outlined below.

- **Venue** – the backstage facilities should be large enough to accommodate safely the number of children taking part in any performance.

- **Special effects** – it may be inappropriate to use certain special effects, including smoke, dry ice, rapid pulsating or flashing lights, which may trigger adverse reactions especially with regard to children.
- **Care of children** – theatres, concert halls and similar places are places of work and may contain a lot of potentially dangerous equipment. It is therefore important that children performing at such premises are kept under adult supervision at all times including transfer from stage to dressing room and anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

### **The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks**

The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important mechanism in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors.

Consideration can be given to attaching conditions to premises licences and club premises certificates that require compliance with the Portman Group's Retailer Alert Bulletins.

### **Proof of Age cards**

Proof of age cards are discussed under Part 1 in connection with the prevention of crime and disorder. However, a requirement for the production of proof of age cards before any sale or supply of alcohol is made could be attached to any premises licence or club premises certificate for the protection of children from harm.

Proof of age cards can also ensure that appropriate checks are made where the presence of children is restricted by age at certain times, such as 16.

Since many adults in England and Wales do not currently carry any proof of age, the wording of any condition will require careful thought. For example, many premises have adopted the "Challenge 25", "Challenge 21" or other similar initiatives. Under the "Challenge 25" or "Challenge 21" initiatives those premises selling or supplying alcohol require sight of evidence of age from any person appearing to be under the age of 25 or 21 and who is attempting to buy alcohol. Making this a licensing condition would ensure that most minors – even those looking older – would need to produce appropriate proof of age before making such a purchase.

# Annex E

## Useful information and contacts

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### BRITISH BEER AND PUB ASSOCIATION PARTNERSHIPS INITIATIVE

The Government and the British Beer and Pub Association (BBPA) are committed to encouraging the voluntary participation of licensees' groups in their local Crime and Disorder Reduction Partnerships; and encouraging CDRPs and local representatives of the hospitality industry to work together in partnership. Since March 2000, 240 CDRPs have sought industry involvement in the work of their partnership. The Government and the BBPA continue to work to encourage further participation.

### NATIONAL PUBWATCH AND LOCAL PUBWATCH SCHEMES

Pubwatch schemes have been in existence throughout the United Kingdom for over 20 years and range in size from over 200 premises in cities to small rural schemes with as few as 5 premises involved. The basic working principle underpinning a Pubwatch scheme is that the licensees of the premises involved agree on a number of policies to counter individuals who threaten damage, disorder, and violence or use or deal in drugs in their premises. Normally, action consists of agreeing to refuse to serve individuals that cause, or are known to have caused, these sorts of problems. Refusal of admission and service to those that cause trouble has proved to be effective in reducing anti-social behaviour. To work effectively any Pubwatch scheme must work closely with the police, licensing authorities and other agencies. National Pubwatch is an entirely voluntary organisation set up to support existing pubwatches and encourage the creation of new pubwatch schemes with the key aim of achieving a safe, secure social drinking environment in all licensed premises throughout the UK helping to reduce drink-related crime.

The National Pubwatch Good Practice Guide provides advice on how such schemes can be established locally and includes Codes of Practice on sharing information, photographs and banning policies with regard to responsibilities under the Data Protection Act 1998. Licensing authorities should familiarise themselves with Pubwatch schemes operating in their areas and support their aims. Information about Pubwatch can be obtained through their website: [www.nationalpubwatch.org.uk](http://www.nationalpubwatch.org.uk)

### BEST BAR NONE

The Best Bar None Awards scheme was developed by the Manchester City Centre Safe project in late 2001 as part of its overall remit to address alcohol related crime. The scheme provides an incentive for operators to raise management standards and complements targeted enforcement action.

The key elements of Best Bar None are:

- the promotion of responsible licensed trade management;
- promotion of socially responsible drinking;
- commitment to caring for and protecting customers;
- commitment to reducing the potential for disorder in town centres and public places arising from alcohol abuse.

Assessment involves examination of policy and practice in a wide range of areas, including, for example:

- door and security policies and practice;
- first aid provision;
- health and safety provision;
- policy and practice in dealing with customers;
- handling instances of alcohol abuse.

- pastoral care of customers, including provision of advice and information;
- policy and practice in dealing with drugs;
- managing customer behaviour;
- attention to detail in licensing standards compliance;
- engagement with all relevant stakeholders in tackling the issues.

Information about Best Bar None and further contact details can be obtained through their website: [www.bestbarnone.com](http://www.bestbarnone.com)

## SAFER CLUBBING – DRUGS IN CLUBS

The Government outlined its commitment to addressing drugs in clubs in 1998 in its strategy 'Tackling Drugs to Build a Better Britain'. In 2001 the Home Office and the London Drug Policy Forum produced guidance entitled "Safer Clubbing" which, building on the earlier success of 'Dance Till Dawn Safely', was nationally welcomed and proved an extremely useful document for licensing officers, club managers and promoters. The aim of reducing the potential for harm through better management of dance venues was affirmed in the 2003 "Updated Drug Strategy" which may be viewed with "Safer Clubbing" at [www.drugs.gov.uk](http://www.drugs.gov.uk)

A key element of the strategy described in "Safer Clubbing" is the use of necessary and appropriate licensing conditions to control the environment at relevant premises. The Secretary of State commends this document for use by the police, all licensing authorities, all responsible authorities and all authorised persons under the 2003 Act.

"Safer Clubbing" recommends that every Drug Action Team which has clubs in its area, should take the lead in getting the police, club owners and promoters, local authorities and local drug agencies to sit down

together and plan a strategy which ensures that dance events take place in as safe an environment as possible. There may also be the need to involve existing multi-agency partnerships, such as Crime and Disorder Reduction Partnerships, or town centre management groups, in developing a strategy.

"Safer Clubbing" also shows that clubs themselves have a responsibility to develop a drugs policy and in many cases will wish to contact the Drug Action Team (DAT) in order to pursue this. Clubs and their owners will need to work with the police, local and licensing authorities and drug services, as represented on the DAT, to develop a drug policy combating drugs dealing and use and ensuring the safety of their venue. Certain factors exacerbate the risks to the safety of those taking drugs. These include taking combinations of controlled drugs and/or mixing these with alcohol and becoming overheated and exercising to exhaustion. All these factors are commonly found at dance events. Many drugs, and combinations of drugs, are used in the club setting and staff should be trained to recognise symptoms and there should be appropriate provision of trained first aiders. Recreational drug misuse frequently involves Ecstasy, from which approximately 80-100 people have died in the last ten years. The majority of these deaths have been due to acute heat stroke. In most cases the heat stroke has been caused by a combination of factors:

- Ecstasy causes body temperature to rise significantly;
- non-stop dancing increases this already elevated temperature;
- poor ventilation, over-heated venues and over-crowding, increase temperature further;
- inadequate intake of water (or other non-alcoholic drinks) exacerbates dehydration and impairs the body's ability to cool itself; and
- taking alcohol or other drugs with Ecstasy can further cause the body to overheat.

Licensing conditions can impact on all these factors. In addition, licensing authorities are encouraged to ensure that their officers engage in the following key activities:

- providing clear information on the licensing authority's policy on safer clubbing in its local statement of policy;
- providing clear information on how to prepare operating schedules or club operating schedules in support of applications for premises licences or club premises certificates;
- providing induction training to councillors serving on licensing committees;
- advising venue owners on how to establish and maintain a safe environment;
- advising venue owners, in partnership with police licensing officers, on developing a venue drug policy;
- advising venue operators what to do in the event of an emergency where drugs are known or suspected to be involved;
- ensuring that sufficient first aiders are always present at a venue and are trained to a high standard;
- informing clubbers of their rights;
- liaising with police licensing and other officers to ensure good communication about potentially dangerous venues;
- encouraging venues to use outreach services;
- encouraging venues to provide safe and accessible transport home;
- surveying clubbers on their views of the safety aspects of different local venues;
- monitoring the operation of clubs at times of peak occupancy;
- ensuring that door supervisors are properly registered with the Security Industry Authority;
- ensuring that door supervisors have been properly trained; and

- encouraging the provision of free cool water and "chill out areas" so that clubbers do not become overly exhausted or dehydrated.

Safer Clubbing has been directly aimed at late night club type venues which have been associated with drug misuse. It will be updated in 2004 to take account of the need to ensure the safety of people attending events at all licensed premises which can now operate the type of music events at which people are more likely to take drugs.

"Safer Clubbing" concerns drugs and nightclubs. The Home Office, in conjunction with the Department of Health, the DCMS and key stakeholders, has also produced the Safer Clubbing Guide that provides comprehensive new advice for nightclub owners, dance event promoters and existing local authority licensing departments on how to ensure the health and safety of anyone attending dance events in England. The Guide can be viewed in full on [www.drugs.gov.uk](http://www.drugs.gov.uk).

## RESEARCH

For information on potential alcohol-related harms generally, and the relationship between alcohol and crime specifically, licensing authorities are invited to look at the Prime Minister's Strategy Unit's interim analysis paper which was produced to summarise the evidence based on all forms of alcohol-related harm [www.strategy.gov.uk/work\\_areas/alcohol\\_misuse/interim.asp](http://www.strategy.gov.uk/work_areas/alcohol_misuse/interim.asp). Up-to-date information on alcohol-related crime research can be found on the Home Office's alcohol and crime research page <http://www.homeoffice.gov.uk/rds/alcohol1.html>. It is also important for local areas to understand their local alcohol-related crime problems. The Home Office has produced guidance for local agencies into the different sources of data available and how to collect it in order to adequately audit local problems <http://www.homeoffice.gov.uk/rds/dprpubs1.html>. Some key findings from the British Crime Survey in relation to alcohol and crime are:

- Almost half of all violence is alcohol-related (47%)  
Stranger violence and acquaintance violence are the most likely to be committed by someone under the influence of alcohol (58% and 51% respectively)
- One in 5 violent incidents occur in or around a pub or clubs (21%)
- A quarter of the population consider drunk and rowdy behaviour a 'very' or 'fairly' big problem in their local area.

## PUBLIC SAFETY

There are a number of key safety publications in the context of regulated entertainment with which licensing authorities should be familiar. They include:

- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) ("The Purple Book") ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) ("The Green Guide") ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through [www.streetartsnetwork.org.uk/pages/publications.htm](http://www.streetartsnetwork.org.uk/pages/publications.htm)

## QUALIFICATIONS SUPPORTING THE LICENSING OBJECTIVES

A range of qualifications, designed to support the licensing objectives, are available from the British Institute of Innkeeping (BII), in addition to the statutory requirement for personal licence holders to have an accredited licensing qualification. These include the National Certificate for Entertainment Licensees, the National Certificate for Licensees (Drugs Awareness), the National Certificate for Door Supervisors and the Barperson's National Certificate. The BII is also developing a further range of courses and qualifications covering issues such as risk assessment, conflict management, retail operations and the sale of age-restricted products. Further information is available by contacting the BII by e-mail at the following address: [info@bii.org](mailto:info@bii.org).

## THE PORTMAN GROUP CODE OF PRACTICE ON THE NAMING, PACKAGING AND PROMOTION OF ALCOHOLIC DRINKS

The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important

weapon in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors. The Secretary of State commends the Code to licensing authorities and recommends that they should commend it in their statements of licensing policy.

## **RESPONSIBLE RETAILING OF ALCOHOL: GUIDANCE FOR THE OFF TRADE**

The Association of Convenience Stores, the British Retail Consortium and the Wine and Spirits Trade Association have jointly produced a guide to responsible alcohol retailing. The Guide covers the key areas of underage sales, proof of age cards, staff training and alcohol promotions. The Guide is available online at:  
[www.thelocalshop.com/responsible-retailing](http://www.thelocalshop.com/responsible-retailing).

For more information on alcohol retailing in off licences contact:

Association of Convenience Stores  
[www.thelocalshop.com](http://www.thelocalshop.com) or ring 01252515001

British Retail Consortium [www.brc.org.uk](http://www.brc.org.uk) or ring  
020 7854 8900

Wine and Spirit Trade Association  
[www.wsta.org.uk](http://www.wsta.org.uk) or ring 020 7089 3877

## **ENQUIRIES**

Any enquires about the content of this Guidance should be made to:

**Licensing Policy Team**  
**Department for Culture, Media and Sport**  
**Tourism, Licensing and Economic Impact Division**  
**6th Floor**  
**2-4 Cockspur Street**  
**London SW1Y 5DH**

**Telephone: 020 7211 6380**

**e.mail: [enquiries@culture.gov.uk](mailto:enquiries@culture.gov.uk)**

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