

13 Transitional Matters

- 13.1 This Chapter of the Guidance deals with applications which will be made for personal licences, premises licences and club premises certificates (and any variation of converted premises licences and club premises certificates applied for at the same time) to a licensing authority after the Secretary of State has declared the first appointed day by terms of an order, and before the second appointed day on which all licences and certificates issued during the period of transition will be given full effect simultaneously. The details of the relevant statutory instruments made may be viewed on the DCMS website.

General

- 13.2 In this Chapter the term “transitional period” is taken to be the period between the first appointed day and the second appointed day. A period of at least six months is necessary between the publication of this Guidance and the first appointed day. This is to allow licensing authorities to prepare their draft of the first statements of licensing policy, to consult with the groups specified in section 5(3) of the 2003 Act as modified for such first statement by paragraph 29 of Schedule 8 to the Act, to analyse the results of the consultation, and to publish their statements. In carrying out any licensing function (which, other than the statement of licensing policy, will begin to be carried out from the first appointed day), a licensing authority must have regard to both this Guidance and its own statement of licensing policy.
- 13.3 The licensing authority’s aim should be to ensure as smooth, efficient and rapid a transition as possible. During the first six months of the transitional period, it will receive an income from licensing fees with at least 155,000 individuals likely to seek personal licences on the basis of their existing justices’ licences and approximately 180,000 businesses and clubs seeking to convert their existing licences and certificates into premises licences and club premises certificates. However, during the period of transition, the licensing authority will have no enforcement costs associated with their licensing functions under the 2003 Act as the premises licences and club premises certificates granted in the transitional period will have no authorising effect until the second appointed day when the existing licensing regimes will have been repealed.
- 13.4 The transitional period will be a difficult and demanding period for licensing authorities, responsible authorities and for applicants. It is therefore important that, so far as possible, licensing authorities, responsible authorities and representatives of the holders of existing licences and registration certificates should work together to ensure a smooth transition both before and from the first appointed day at the start of the transitional period. This might include, for example, agreeing arrangements with many of the businesses affected for staggering applications throughout the first six months of the transitional period to avoid gluts of applications made on the same day. This would be in the interests of all. While applicants are entitled to make applications under the provisions of the 2003 Act and any regulations made by the Secretary of State in accordance with it when they see fit, the

Secretary of State recommends that licensing authorities, responsible authorities and representatives of existing licence holders and registration certificates should seek, so far as possible, to work in partnership to minimise the burden on all those involved and to ensure that the arrangements work satisfactorily and successfully.

- 13.5 Generally, during the transitional period, all current holders of justices' licences are entitled to apply for a personal licence without the need to provide evidence of a criminal record check or of a licensing qualification. This is because the licensing justices have already judged such people to be "fit and proper" to sell alcohol by retail under the provisions in the Licensing Act 1964. These preserved rights are subject to the possibility of police intervention in certain circumstances, which are explained in more detail below.
- 13.6 In addition, following the first appointed day, applications may be made in respect of all existing alcohol, public entertainment, theatre, cinema, late night refreshment house and night café licences to convert these licences subject to the conditions and restrictions to which they are currently subject into premises licences. The same applies to "registered members clubs" (now "qualifying clubs" in the 2003 Act) who may apply to convert their registration certificates (granted under the Licensing Act 1964) and other licences (for example, a cinema licence) into club premises certificates and premises licences. This will allow the authorisations of the current licences and certificates to continue under the new licensing regimes. For example, all justices' licences are currently subject to permitted hours under the terms of Part 3 of the Licensing Act 1964 and conversion would mean that sales of alcohol would continue to be permitted only during those hours or any extension of them which has been granted by the licensing justices. Where extensions of hours have been granted to premises, the conversion would also be subject to any restrictions contained in the Licensing Act 1964 (and any other restrictions in other legislation which is specifically referred to in an order made by the Secretary of State; the details of any relevant order may be viewed on the DCMS website). For example, certain special hours certificates may only have effect if the premises provides music and dancing and substantial refreshment. Applications for conversion may be accompanied – on the same form – by an application to vary the hours, terms, conditions and restrictions of the existing licences and permissions.
- 13.7 In the case of a pub, for example, the form would detail the existing permission to sell alcohol for consumption off and on the premises, any extension of normal permitted hours of a permanent nature held (e.g. special hours certificate, general order of exemption, or extended hours order etc.), any public entertainment licence authorising the provision of public entertainment, and any children's certificate held. Mandatory conditions dictated by the Licensing Act 1964 would still apply. For example, an automatic restriction would apply to on-licensed premises (but not to theatres, cinemas, Part IV restaurants or registered clubs) to any premises not holding a children's certificate whereby children aged under 14 years would not be permitted into bar areas. In this context, "bar area" means any place (but not a restaurant previously holding a licence issued under Part IV of the Licensing Act 1964) which is exclusively or mainly used for the supply and consumption of alcohol. However, it should be noted that from the second appointed day, section 145 of the 2003 Act (which provides a new offence in respect of unaccompanied children under 16 prohibited from certain places) will also apply to premises in respect of which newly converted premises licences have been issued.

- 13.8 If the application is for the conversion of the existing authorisations and not for a variation (in accordance with Part 2 of the form), these notified details will be converted by the licensing authority into a new premises licence, which would have effect from the second appointed day when all new premises licences and club premises certificates would come into effect. The principle underlying this approach is that the authorisations covered by all of these licences, certificates or permissions have already been approved by either the licensing justices, the magistrates' courts or a local authority licensing committee in respect of the six licensing regimes to be replaced by this regime.
- 13.9 There would be exceptions to this process concerning only the intervention of the police in connection with the prevention of crime and disorder. Further details are provided below.
- 13.10 However, Part 2 of the form is essentially an application to vary any of the existing terms, conditions and restrictions, including hours of trading, which would otherwise take effect through the conversion of existing licences and certificates to new premises licences or certificates and would follow the procedures for variation which are laid down in the 2003 Act. This is where, for example, the applicant would set out in an operating schedule or club operating schedule his or her proposed new hours, expand any entertainment arrangements (including, in the case of a club holding a certificate under Part 2 of the Licensing Act 1964, the addition of regulated entertainment to the new club premises certificate), and express its intention to admit children. The application to vary (Part 2 of the form) would have to be advertised and notified to the responsible authorities. Accordingly, responsible authorities and interested parties would only be able to address the variations applied for and not the new licence or certificate derived from the conversion of the existing authorisation; i.e. the converted hours, terms and conditions which are not subject to variation.
- 13.11 Prior to the second appointed day, all premises licences and certificates with any associated variations granted during the transitional period would be licences and certificates without effect, lying dormant until brought into force on the second appointed day. Existing licences and permissions would therefore continue to be in full force and effect throughout the transitional period under the control of the existing licensing authorities, including the licensing justices. Responsibility for any variation, extension of hours or the renewal of any of these existing licences would therefore continue to be that of the existing licensing authority (magistrates' courts for registered clubs, licensing justices for alcohol licences, and the local authority for all the others) pending the coming into force of the new premises licences and certificates simultaneously on the second appointed day. The new and old systems would therefore to some extent run in parallel until the transitional period is completed.
- 13.12 For the sake of national and local economies, these provisions are intended to provide the retail, hospitality, leisure and entertainment industries with greater certainty of continued trading without any disincentive to apply for longer hours or wider permissions.
- 13.13 Until the second appointed day, the existing licensing regimes will continue to govern existing licences and related offences will apply. Where existing licences fall for renewal during this period, they will need to be renewed in accordance with that existing law and any appeals concerning decisions under existing law will be dealt with in accordance with that law.

Undertakings

- 13.14 It has been established practice since 1968 for the effect and scope of a justices' licence to be limited in some cases by an undertaking given by the holder when it was granted. Such undertakings are usually associated with an off-licence, because any restriction which the licensing justices might wish to place on the grant of an on-licence can be achieved by the imposition of a condition. Licensing committees of licensing justices do not sit as a court and such undertakings are without legal force and lack any statutory support. There are in effect non-binding personal assurances. As such, it would be wholly inappropriate for the effect of transition to be to give legal force to such an assurance or undertaking where no such force existed before, and where the licensing justices had either no power to impose the content of such an undertaking as a condition or had chosen not to impose it as a legally binding condition.
- 13.15 Accordingly, undertakings and assurances will not be transferred to converted premises licences as new conditions. Where such undertakings existed, they generally and often indirectly concerned three of the four licensing objectives: the prevention of crime and disorder, public safety and the prevention of public nuisance. Following the second appointed day, if any such premises was to be used for any licensable activity which gives rise to concerns about the promotion of any of the licensing objectives, any responsible authority or any interested party can apply to the licensing authority for a review of the licence. As a result, it would be open to the licensing authority to consider appropriate, necessary remedial action. The transfer of such undertakings as a condition of the newly converted licence would be without purpose.

Conversions to new premises licences

- 13.16 A person who is either the holder of an existing licence or who has the consent of the holder of an existing licence may, within 6 months of the first appointed day, apply to the relevant licensing authority for the conversion of an existing licence, or existing licences, to a new premises licence. For example, this means that the business owning a supermarket may apply for the conversion of the licence that might have been held under the old regime by one of its employees with the consent of that employee.
- 13.17 The application for conversion of the licence or licences must be accompanied by the existing licences or certified copies, a plan of the premises, any relevant certificates (e.g. extensions of permitted hours or children's certificate), where the application is not by the holder of the existing licence a form of consent given by that person, and where the licence will concern the sale of alcohol the applicant must provide details of the individual to be specified in the new licence as the designated premises supervisor and a form given of that person's consent. Where a particular permission (for example, a special hours certificate) is subject to certain requirements of existing law (for example, the provision of substantial refreshment and music and dancing), these restrictions will need to be reflected in the newly converted licence. The Secretary of State may also specify other information and documents that would need to be supplied. The details of any relevant order may be viewed on the DCMS website.
- 13.18 A copy of the application and accompanying documents must also be given by the applicant within 48 hours to the chief officer of police. In circumstances where an appeal is pending against a decision to revoke or reject an application for the renewal of an existing licence and

the chief officer of police is satisfied that the conversion of the existing licence would undermine the crime prevention objective or where he is satisfied that there has been a material change in circumstances since the grant of the existing licence or its last renewal such that the conversion of the existing licence would undermine the crime prevention objective, he must give a notice within 28 days to that effect to both the applicant and the licensing authority.

- 13.19 To avoid unnecessary hearings, it is important that the police only give such notices in the circumstances dictated by the 2003 Act. If a licensing authority believes that the police are failing to adhere to these limitations, it should raise the matter with the chief officer of police for the area without delay.
- 13.20 The giving of such a notice by the police would automatically trigger a hearing before a licensing committee at which (unless all parties consider a hearing is unnecessary) the licensing authority will consider it. In considering the police notice, the jurisdiction of the licensing authority is restricted to considerations relating to the crime prevention objective and it has no discretion outside of that issue. The licensing authority must, having regard to the notice, reject the application if necessary for the promotion of the crime prevention objective to do so. For example, the police objection may have provided evidence relating to the development of a drugs problem at the premises in question since the existing licence was last renewed. The licensing authority may only refuse to convert the licence if it is necessary to do so for the promotion of the prevention of crime and disorder.
- 13.21 A licensing authority must grant the application for conversion of an existing licence unless a notice has been given by the chief officer of police which has not been withdrawn.
- 13.22 An application must not be granted in circumstances where the existing licence has ceased to be held by the applicant before the application is granted. For example, the licensing justices may have revoked the licence or it may have been declared forfeit by a criminal court.
- 13.23 If the licensing authority fails to determine the application for conversion of the existing licence within 2 months of the receipt of the application, the application will be treated as granted, so long as the existing licence has not ceased to be held by the applicant.
- 13.24 The applicant may appeal against a decision by the licensing authority to reject the application for conversion of an existing licence and the chief officer of police may appeal against a decision to grant the application after consideration of his notice. A separate appeal may be taken in respect of any decision to grant or refuse to vary the licence: the application to convert may be granted, while an application to vary may be refused.

Variations of new premises licences

- 13.25 A person, which includes a business, that makes an application for the conversion of an existing licence may at the same time apply for a variation of the newly converted premises licence under sections 34 and 37 of the 2003 Act as if that converted licence is in force. Section 37 concerns applications to vary a licence to specify an individual as premises supervisor and section 34 concerns applications to otherwise vary premises licences. When such applications are made the relevant licensing authority may discharge its functions in relation to them once the application to convert the existing licence has been granted and the relevant provisions in Part 3 of the Act will apply. The guidance in Chapters 5 to 7 would therefore be relevant.

- 13.26 Where this part of the application concerns a major variation (for example, in connection with hours of trading) the application will need to include an operating schedule, to be copied to responsible authorities and advertised for the benefit of interested parties. As is normal, if there is no relevant representation by either a responsible authority or an interested party, the application must be granted and there should be no hearing. If a relevant representation is made, there must be a hearing (unless all parties have agreed this is not necessary) when the licensing authority will consider the representations. Following the hearing, the licensing authority would determine the application to vary and grant the application with or without additional conditions or refuse the variation as it considers necessary for the promotion of the licensing objectives. The licensing authority may not however do anything to reduce the effect of the rights guaranteed under the first part of the application to convert the existing licence(s) authorisations to a new premises licence. So, for example, it could not reduce the hours of trading to less than the permitted hours under the Licensing Act 1964.
- 13.27 Where no decision has been made by the licensing authority in respect of an application to vary a premises licence that has been converted from existing licence(s) under the “grandfather right” arrangements within 2 months from the receipt by the licensing authority of the application, the application will be deemed to have been refused. A right of appeal is provided for the “applicant” against a decision by the licensing authority not to vary the new licence and such a deemed refusal.
- 13.28 When considering an application for the variation of a premises licence held by a casino or a bingo club, consideration should be given to the points raised in paragraphs 53 and 54 of Chapter 5 of this Guidance and to the fact that the hours during which gaming may take place on such premises is prescribed by the Gaming Act 1968 and regulations made under it. The hours during which alcohol may be sold should normally be restricted to lesser hours only where that is necessary for the promotion of the licensing objectives.
- 13.29 In addition, many premises where a justices’ on-licence granted under the Licensing Act 1964 is in force have previously enjoyed disapplication from the requirement for a public entertainment licence under legislation relating to public entertainment for two performers providing live musical entertainment (the “two in a bar” rule). This disapplication will not be carried forward when existing licences are converted. Premises which do not hold existing public entertainment licences will need to apply to vary their newly converted premises licences if they wish to continue providing such performances.

Revocation of a new premises licence prior to the second appointed day

- 13.30 If an existing justices’, public entertainment, theatre, cinema, late night refreshment or night café licence is revoked or declared forfeit before the second appointed day (and any appeals in relation to such decisions will continue to be dealt with under the appeal mechanisms appropriate to the former regimes), the new licence granted in respect of the licensable activities affected will lapse. Where the new licence relates to more than one existing licence, the licensing authority is obliged to amend the new premises licence to remove such activity or activities as one covered by the affected licence or licences from it.

Licensing hours

- 13.31 As has been made clear above, in respect of a new premises licence authorising the sale of alcohol by retail, a licensing authority is prohibited from attaching conditions to the premises licence which would have the effect of restricting the opening hours to more limited hours than the current “permitted hours” under Part 3 of the Licensing Act 1964. This includes any attempt to reduce the hours of premises that have been granted for example by a special hours certificate, a general order of exemption or an extended hours order.

Qualifying clubs

- 13.32 The 2003 Act makes similar transitional provisions to those for conversion to new premises licences both in respect of the conversion of existing registration certificates and for the variation of the existing permissions in relation to applications by clubs registered for the purposes of Part 2 of the Licensing Act 1964 and other licences, for example, cinema licences in respect of club premises. A registered club for the purposes of the 1964 Act, if it holds other licences, will be able to convert those other licences to a new premises licence or to apply to vary the new club premises certificate to include within its scope of authorisation, authority for the provision of regulated entertainment on club premises.

Personal licences

- 13.33 Personal licences concern only the sale of or supply of alcohol on premises under the authorisation of a premises licence. The 2003 Act makes transitional provisions in respect of personal licences for those holding current justices’ licences. During an initial period of not less than six months specified by order by the Secretary of State, the holder of an existing justices’ licence (granted under the Licensing Act 1964) is entitled to apply for the grant to him or her of a personal licence without having to possess the licensing qualification ordinarily required under Part 6 of the 2003 Act, provided that certain requirements are met. These are that he produces his current justices’ licence (or a certified copy of it), his photograph (in a form prescribed by statutory instrument that may be viewed on the DCMS website) and a statement (if relevant) relating to his convictions for relevant offences or foreign offences since his justices’ licence was granted, last renewed or, if transferred and not subsequently renewed, transferred. Such applicants are not required to produce Criminal Record Bureau (CRB) certificates. All such applicants have appeared before licensing justices and been judged “fit and proper” individuals to retail alcohol and no CRB check is necessary.
- 13.34 Where a statement is made to the effect that a relevant or foreign offence has been committed, this may give rise to the possibility in exceptional circumstances of a police objection on the grounds that granting the application would, in the chief officer of police’s opinion, undermine the crime prevention objective. The applicant must give a copy of the application for a personal licence to the chief officer of police within 48 hours of making the application. The chief officer of police may give an objection notice if he is satisfied that, having regard to the applicant’s conviction for any relevant offence or foreign offence which he considers to be comparable to a relevant offence, the exceptional circumstances of the case are such that the grant of the licence would undermine the crime prevention objective. If no notice has been given by the police (or any notice given has been withdrawn) and the licensing authority is satisfied that the

applicant holds a justices' licence, the application must be granted. If the authority is not satisfied that the applicant holds a licence it must reject the application.

- 13.35 Licensing authorities should note that some justices' licences have been issued in joint or multiple names. All those named as holders of the licence are entitled to benefit from these provisions of the 2003 Act as all named will have been considered "fit and proper" to retail alcohol by the licensing justices.
- 13.36 If the police have objected to the grant, the licensing authority must hold a hearing to consider the objection. As a result of the consideration of the objection notice the licensing authority must reject the application if it considers it necessary for the promotion of the crime prevention objective to do so or grant the application in any other case.
- 13.37 Provisions in Part 6 of the 2003 Act relating to the notification of determinations by the licensing authority apply in relation to the authority's decision. The applicant or the chief officer of police may appeal if aggrieved by the licensing authority's decision. Licensing authorities should therefore give clear and comprehensive reasons for their determination of the application.
- 13.38 If a licensing authority fails to determine an application for a personal licence under these transitional arrangements within 3 months of its receipt, the application will be treated as granted.
- 13.39 It should be noted that a person who is not currently a justices' licence holder may apply for a personal licence during the period of transition in accordance with Part 6 of the 2003 Act and regulations made under it, which may be viewed on the DCMS website. Chapter 4 of this Guidance would apply to such an application.
- 13.40 Any personal licences issued take immediate effect. However, the authorisation given by the licence has no practical effect until the second appointed day when premises licences will have effect and the provisions of the 2003 Act will be fully implemented.

Provisional Licences

- 13.41 Applications may be made during the transitional period for the grant of a premises licence in respect of premises for which the licensing justices had granted a provisional licence under section 6 of the Licensing Act 1964. Where such a provisional licence has not been made final and the premises to which the provisional licence relates have been completed in a manner which substantially complies with the plans deposited under the 1964 Act (or, as the case may be, with those plans with modifications to which the licensing justices had consented), the licensing authority **must** have regard to the provisional grant of the justices' licence when determining the application for the grant of the premises licence.

"Denatured alcohol"

- 13.42 Section 191 of the 2003 Act, which defines the meaning of "alcohol" for the purposes of the Act, excludes "denatured alcohol". This is the term which, from the commencement of section 5 of the Finance Act 1995 is to be used to refer to what is currently referred to as "methylated spirits". Pending the commencement of that provision, section 191 has effect by virtue of paragraph 30 of Schedule 8 as if it referred to "methylated spirits".