



**GUIDANCE ISSUED UNDER
SECTION 177 OF THE LICENSING ACT
2003**

and

**GUIDANCE TO POLICE OFFICERS ON THE
OPERATION OF CLOSURE POWERS IN
PART 8 OF THE 2003 ACT**

issued by

**THE SECRETARY OF STATE FOR
CULTURE, MEDIA AND SPORT**

[XXXX 2003]

v2.0

The final terms of this guidance have not yet been agreed or approved by Ministers or completed. This is an early rough draft which is being provided to enable and enhance Parliamentary scrutiny and debate in connection with the Stages of the Licensing Bill.

It has been prepared on the basis of the Licensing Bill in its form prior to Report Stage in the House of Lords. It can be reasonably assumed that the Bill will be altered in certain respects at subsequent Stages and the Guidance would be amended to reflect any changes.

The Guidance to police officers also included in this document has not been formally approved or agreed by the Association of Chief Police Officers, although much of it has been discussed with them.

Discussion with the wide-range of stakeholders and other Government Departments and Agencies affected has also not yet been completed and the guidance may be altered to reflect any concerns, anxieties or views on best practice that they may have.

The Guidance may also be amended to reflect undertakings given to Parliament by Ministers during the Bill's passage through each House.

Contents

Section	Subject
1	Background
2	Introduction and Purpose
3	The Content of the Licensing Act 2003
4	Statements of Licensing Policy
5	Personal Licences
6	Premises Licences
7	Hours of Trading
8	Conditions
9	Temporary Event Notices
10	Club Premises Certificates
11	Appeals
12	Police Powers to Close Premises
13	Sale and Supply of Alcohol to Minors
14	Transitional Matters
15	Other Offences
Annexes	
A	Schedule 1 of the Licensing Act 2003 (regulated entertainment)
B	Schedule 2 of the Licensing Act 2003 (late night refreshment)

- C** Schedule 4 of the Licensing Act 2003 (relevant offences)
- D** Model Pool of conditions relating to crime and disorder (*being prepared*)
- E** Model pool of conditions relating to public safety (*being prepared*)
- F** Model pool of conditions relating to cinemas and fire safety (*being prepared*)
- G** Model pool of conditions relating to public nuisance (*being prepared*)
- H** Model pool of conditions relating to the protection of children from harm (*being prepared*)
- I** Statutory qualifying conditions for cubs
- J** Safer Clubbing Checklist
- K** Key actions for licensing authorities in connection with Safer Clubbing
- L** Specimen closure order described in section 158 of the 2003 Act

1 Background

- 1.1 Section 177 of the Licensing Act 2003 provides that the Secretary of State may issue, and from time to time revise, guidance to licensing authorities on the discharge of their functions under the 2003 Act. This document represents the Guidance and is issued by the Secretary of State for Culture, Media and Sport. The Guidance has been published on the DCMS website and on UK Online. Any local authority is free to publish its terms on its own website or provide an appropriate link to either of these websites.
- 1.2 The Guidance has been prepared in consultation with other Government Departments, executive agencies and an Advisory Group comprising representatives of the following organisations:

Alcohol Concern
Arts Council
Association of Chief Police Officers
Association of Licensed Multiple Retailers
Association of London Government
British Beer and Pub Association
Bar, Entertainment and Dance Association
British Institute of Innkeepers
British Marine Federation
British Retail Consortium
Business in Sport and Leisure
Cinema Exhibitors Association
Chartered Institute of Environmental Health
Committee of Registered Clubs Associations
Editor of Paterson's Licensing Acts
Federation of Licensed Victuallers Association
Guild of Master Victuallers
Justices' Clerks Society
Licensed Victuallers of Wales
Local Government Association
The Magistrates' Association
The Musicians Union
National Parliamentary Committee of the Licensed Victuallers Associations
The Restaurant Association
Theatrical Management Association
The Society of London Theatre

- 1.3 In addition, the guidance takes account of the views of over 650 interested organisations, businesses and public bodies that have written to the Government about licensing reform.
- 1.4 The Guidance is provided for licensing authorities carrying out their functions. Furthermore it provides information for magistrates hearing appeals against licensing decisions. It is also being 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. 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 Licensing Act 2003 in the interests of public protection, the prevention of crime and disorder, the protection of children from harm and the reduction of anti-social and nuisance behaviour.
- 1.5 Part 8 of the Licensing Act 2003 also significantly extends the existing powers of the police (a) to seek court orders closing licensed premises in a geographical area that is experiencing or likely to experience disorder; and (b) to close down instantly individual licensed premises that are disorderly, likely to become disorderly or are causing nuisance as a result of noise from the premises. Ministers have previously given undertakings to Parliament that guidance would be issued to police officers about the operation of those powers. Section 12 of this Guidance therefore constitutes that guidance.
- 1.6 The Guidance will be kept under constant review in consultation with all stakeholders and will be amended or supplemented as necessary at any time to address problems affecting local communities, licensing committees, the police, applicants for licences and club premises certificates and those giving temporary event notices.
- 1.7 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden. The Guidance does not in any way replace the statutory provisions of the 2003 Act and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities using the Guidance must take their own professional and legal advice about its implementation.

2 Introduction and Purpose

- 2.1 This section explains the statutory effect of the Guidance and the requirement for licensing authorities to have regard to it when carrying out any function under the 2003 Act.

The Guidance

- 2.2 Section 4 of the Licensing Act 2003 provides that in carrying out its functions a licensing authority must have regard to Guidance issued by the Secretary of State. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully considered, licensing authorities may depart from it. When doing so, licensing authorities will need to give good and full reasons for their actions. 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.
- 2.3 Section 4 also requires that licensing authorities must also have regard to its own licensing statement of policy made under section 5. However, it should be noted that the making of such 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.

The licensing objectives

- 2.4 The Licensing Act 2003 also provides in section 4 that it is the duty of all licensing authorities to carry out its functions under the Act with a view to promoting the licensing objectives. The licensing objectives are:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 2.5 Each objective has equal importance.

Partnership working

- 2.6 Licensing functions are only one means of securing the delivery of the objectives described. They can make a substantial contribution in respect of the premises affected but cannot be regarded as a panacea for community problems. Delivery should therefore involve partnership working with local authorities, the police, local business and local people working together towards the promotion of the common objectives described.
- 2.7 It is also important that licensing authorities should guard against the possibility of licensing policies and decisions driving a wedge between the hospitality and leisure industries and those charged with enforcing the licensing regime, including the police. Co-operation and partnership remain the best means of promoting the licensing objectives.

Alcohol Harm Reduction Strategy

- 2.8 The [Alcohol Harm Reduction Strategy] has also identified a number of priorities which should be considered when taking decisions in connection with licensing matters. These are:

- [bulleted list]

- 2.9 Full details of the Strategy can be viewed on [website address].

Crime and Disorder Act 1998

- 2.10 All licensing authorities should fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions under the Licensing Act 2003.

Action Plan for Tackling Alcohol Related Crime, Disorder and Nuisance

- 2.11 The Home Office has an existing Action Plan for Tackling Alcohol Related Crime, Disorder and Nuisance. A summary of the key actions required by the Plan, some of which have already been delivered, is given below:

Alcohol Related Crime Action Plan

Summary of Key Actions

Under age drinking

1. Rigorous enforcement of the legislative provisions set out in the Licensing Act 2003 to prevent the sale of alcohol to under 18s.
2. The provisions of the Confiscation of Alcohol (Young Persons) Act 1997 and Licensing Act 2003 to be widely used to reduce the incidence of under age drinking and associated nuisance in public places.
3. More widespread use of "Proof of Age" schemes to restrict under 18s' access to alcohol in licensed premises.

4. Establish whether more can be done to strengthen alcohol education for young people and adults.

Public drunkenness

5. More widespread adoption of good practice in preventing alcohol-related problems on licensed premises, including: exclusion of troublemakers; a refusal to sell alcohol to those who are already intoxicated; and good design and management of premises to avoid factors which can increase the potential for disorder.

6. Tough new powers for the police to enable them to close premises to deal effectively with violent and disorderly behaviour.

7. Consideration of primary legislation to provide an adoptive power in place of existing byelaws to prevent the consumption of alcohol and associated misbehaviour in specified public places; and allow the police to seize open bottles, glasses or cans.

8. Consideration to be given to the use of Fixed Penalty Notices as an effective and speedy response to minor offences of public drunkenness.

9. Targeting of hotspots associated with alcohol-related crime and disorder.

10. Greater use to be made of information sharing schemes – such as Pub-watch schemes - to keep troublemakers from pubs and clubs.

11. Support the role of both bar staff and door supervisors in helping to reduce incidents of disorder on licensed premises.

12. More widespread use of toughened drinking glasses in pubs and bars.

13. More use of plastic "glasses" and refusal to sell beer in bottles in pubs and clubs.

14. Launch good practice "toolkit" on tackling alcohol and crime.

2.12 Many elements of the Plan are already in place, and the Plan will be updated. Full details of the Plan and any updates can viewed on www.homeoffice.gov.uk/pcrg/aap0700.htm

Safer Clubbing

2.13 The Home Office, in conjunction with the Department of Health and the DCMS, has also produced the Safer Clubbing Guide that provides comprehensive new advice for club owners, dance event promoters and 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.doh.gov.uk/drugs/polguide.htm

- 2.14 Key details describing necessary action for licensing authorities relating to safer clubbing are reproduced in this guidance at Annex [].

Guidance to the Police on Part 8 of the Licensing Act 2003

- 2.15 In October 2001, the Government issued non-statutory Guidance to police officers in respect of section 17 of the Criminal Justice and Police Act 2001, which concerned their powers to close without notice for up to 24 hours certain licensed premises that were disorderly, likely to become disorderly or excessively noisy. This Guidance has been replaced to reflect the terms of Part 8 of the 2003 Act and is set out in Section 12 of this Guidance. [*Current Guidance viewable on the DCMS website*].

The Anti-Social Behaviour Act 2003 [*Yet to be presented to Parliament as the Anti-Social Behaviour Bill*]

- 2.16 [*Relevant material regarding the new Bill/ Act to be included here*]

LACORS/TSI Code of Best Practice on Test Purchasing

- 2.17 Licensing authorities should also be aware of the LACORS and Trading Standards Institute Code of Best Practice on Test Purchasing insofar as it relates to the test purchasing of alcohol by trading standards officers.

Research

- 2.18 For a comprehensive review of the research conducted in the last twenty-five years into alcohol and crime and its relationship to licensed premises, licensing authorities should see “Alcohol and Crime: Taking Stock” by Ann Deehan, Home Office Crime Reduction Research Series Paper 3 which can be viewed on www.crimereduction.gov.uk/drugsalcohol8.htm.

3 The Content of the Licensing Act 2003

3.1 The Explanatory Notes and advice regarding all secondary legislation published with the Licensing Act 2003 and made under it are reproduced below:

3.2

3.3 [The Explanatory Notes emerging following completion of all Parliamentary Stages and Royal Assent will be reproduced here]

3.4 [Similar material relating to any secondary legislation, orders and regulations will be reproduced here]

4 Statements of Licensing Policy

General

- 4.1 This section provides guidance on the development and preparation of local statements of licensing policy for publication by licensing authorities, the general principles that should underpin them, and core content to which licensing authorities would be free to add.
- 4.2 Section 5 of the Licensing Act 2003 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.
- 4.3 Before determining its policy for any three year period, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:
- (a) the chief officer of police for the area
 - (b) the fire authority
 - (c) bodies representing local holders of premises licences
 - (d) bodies representing local holders of club premises certificates
 - (e) bodies representing local holders of personal licences
 - (f) bodies representing businesses and residents in its area
- 4.4 The views of all these bodies listed should be given proper weight when the policy is determined.
- 4.5 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 valuable or essential to consult the British Transport Police, local Accident and Emergency Departments, bodies representing consumers or those charged locally with the promotion of tourism.
- 4.6 Beyond the statutory requirements, it is for each licensing authority to decide the full extent of its consultation and for it to decide whether any particular body does represent the group described in the statute. For example, personal licence holders may be represented locally by trade unions, professional bodies and by trade associations. But when undertaking consultation exercises, licensing authorities should also have regard to cost and time. Licensing authorities should note that the Secretary of State will establish fee levels to include 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 should note that they would have to absorb those costs themselves. It is important that the transitional period is completed smoothly and efficiently, and

consideration of applications cannot proceed without a statement of policy being in place.

- 4.7 Licensing authorities consulting on its first statement of licensing policy should also note the requirements of paragraph 29 of Part 4 of Schedule 8 to the 2003 Act which provides that prior to making its first statement of policy, the authority must consult bodies representing current licence holders before determining their statement.

Fundamental principles

- 4.8 All statements of policy should also begin by stating the four licensing objectives, which the policy will promote. In determining its statement of policy, a licensing authority must have regard to this Guidance and give proper weight to the views of those it has consulted. Having regard to this Guidance is important for consistency, particularly where licensing authority boundaries meet.
- 4.9 While statements of policy may set out a general approach to the making of licensing decisions, they must not ignore 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 Act for a variety of permissions and to have any such application considered on its individual merits.
- 4.10 Similarly, no Statement of Policy should override the right of any person to make representations on an application or seek a review of a licence or certificate where provision has been made for them to do so in the Act.
- 4.11 Statements of policies should make clear that licensing is about the control of licensed premises, qualifying clubs and temporary events within the terms of the 2003 Act, and that the terms and conditions attached to various permissions will be focused on matters which are within the control of individual licensees and others granted relevant permissions. Accordingly, these matters will centre on the premises and places being used for licensable activities and the vicinity of those premises and places. Whether or not incidents can be regarded as being “in the vicinity” of licensed premises or places is ultimately a matter of fact to be decided by the courts in cases of dispute. 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 public living, working or engaged in normal activity in the area concerned. A statement of policy should also make clear that licensing law is not a mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the licence, certificate or permission concerned.

Cumulative Impact

- 4.12 There can be confusion about the difference between “need” and the cumulative impact of premises on the licensing objectives. “Need” concerns

the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority or its statement of policy. “Need” is a matter for planning committees and for the market. On the other hand, the cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing committee.

- 4.13 Conditions may only relate to matters which the licensee can be expected to control, and these are likely to relate the premises themselves and the immediate vicinity. In a small number of city centre areas, where the number, type and density of premises selling alcohol are unusual, serious problems of nuisance and disorder have sometimes arisen or have begun to arise outside or some distance from licensed premises. This has been described as the cumulative effect of the increasing capacity of all premises taken together. It is possible that the impact on surrounding areas of those the behaviour of customers taken together is greater in these cases than the usual impact from customers of individual premises. In these circumstances a licensing authority may receive representations from a responsible authority or interested party that the cumulative effect of new licences is leading to an area becoming saturated with premises making it a focal point for large groups of people to gather and circulate away from the licensed premises themselves. This might be creating exceptional problems of disorder and nuisance over and above the impact from the individual premises. This might lead the licensing authority in turn to consider the question of whether the grant of any further premises licences or club premises certificate would undermine one of the licensing objectives. The Licensing Act 2003 allows for this, so long as cumulative impact is addressed in the context of the individual merits of any application.
- 4.14 Accordingly, where policies are addressing either the general impact of a number of licensed premises on an area, they should not impose quotas that restrict the consideration of any application on its individual merits or which seek to impose limitations on trading hours in particular areas.
- 4.15 In these circumstances, and as imposing conditions is unlikely to address the point, it may be necessary for the licensing authority to adopt a special policy of refusing new licences because the area is already saturated with licensed premises. Such a policy should never be absolute, however. They should allow for the circumstances of each application to be considered properly and for licences which are unlikely to add significantly to saturation to be approved.
- 4.16 The steps to be followed in considering whether to adopt a special saturation policy are:
- Identification of serious and chronic concern from a responsible authority or representatives of residents about nuisance and disorder
 - Assessment of the causes
 - Where it can be demonstrated that disorder and nuisance is arising as a result of customer of licensed premises, identifying the area from which problems are arising and the boundaries of that area

- Adopting a policy about future licence applications from that area.

- 4.17 Statements of policy may underline the licensing authority's duties under section 17 of the Crime and Disorder Act 1998 in respect of crime and disorder and to the licensing objectives in the 2003 Act. They may also indicate that they will consider representations based on the impact on the promotion of the licensing objectives in the licensing authority's area generally of the grant of the particular application before them. But statements of policy should also stress that the onus would be on the objector to lay an evidentiary base for the assertion that the addition of the premises in question would produce the cumulative impact claimed. The impact can be expected to be different for premises with different styles and characteristics. Special saturation policies should be reviewed every three years to assess whether they have had the effect intended, and whether they are needed any longer. They should never be used as a grounds for removing a licence when representations are received about problems with an existing licensed premises. Nor can they justify rejecting modifications to a licence except where those modifications are directly relevant to the policy (as would be the case with an amendment significantly to increase the capacity limits of a premises).
- 4.18 Quotas which pre-determine the individual merits of any application – even in respect of premises selling alcohol for consumption on those premises - should be avoided because they have no regard to these individual characteristics of the premises concerned. Public houses, nightclubs, restaurants, hotels, theatres, concert halls and cinemas all 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 local community.
- 4.19 Once away from these 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 set out the other mechanisms that are available for addressing such issues. For example:
- 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
 - 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 normal law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices

- the prosecution 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 events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises
- the power of the police, other responsible authority or a local resident or business to seek a review of the licence or certificate in question

These should be supplemented by other local initiatives that similarly address these problems.

Licensing hours

- 4.20 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 strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance.
- 4.21 Zoning is used in this guidance to refer to the setting of fixed trading hours within a designated area. It should not be used, as experience in Scotland suggests that zoning leads to the significant movement of people across boundaries in search of premises opening later and puts greater pressure on town and city centres than is necessary. This can result in greater disturbance in the streets at particular times and concentrations of disturbance and noise. Zoning also assumes that residents in one area should be treated less well than others simply because they live in busy central areas of towns and cities or because residential housing is less dense than in other areas. It also undermines a principle on which the 2003 Act is based: the avoidance of fixed and artificially early closing times which produce peaks of disorder and disturbance on the streets when a majority of customers emerge simultaneously. It is acceptable for a statement of policy to make clear that stricter conditions with regard to noise control will be demanded in areas which have denser residential accommodation, but this should not limit opening hours without regard for to the individual merits of any application.
- 4.22 With regard to shops, stores and supermarkets, the Government strongly recommends that they should 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 very good reasons for restricting those hours. For example, a limitation may be appropriate following police representations in the case of isolated shops known to be a focus of disorder and disturbance because

youths gather there. Statements of licensing policy should therefore reflect this general approach.

- 4.23 Section 7 of this Guidance provides further advice on the issue of licensing hours.

Children

- 4.24 Subject to the licensee's discretion and any conditions included in a premises licence or club premises certificate, the 2003 Act does not prohibit children having free access to licensed premises of all kinds, including those selling alcohol for consumption on those premises. Statements of policy should recognise the great variety of premises for which licences may be sought. These include theatres, cinemas, restaurants, concert halls, cafes, take-aways and fast food outlets as well as public houses and nightclubs.
- 4.25 Nothing in a statement of licensing policy should limit the access of children to such premises unless it is necessary for the prevention of harm to children. No statement of policy can properly anticipate every issue of concern that could arise in respect of children with regard 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.
- 4.26 A statement of policy may highlight areas which will give rise to particular concern in respect of children. For example, these might include premises:
- Where there have been convictions for serving alcohol to minors or with a reputation for underage drinking
 - with a known association with drug taking or dealing
 - where there is a strong element of gambling on the premises
 - where entertainment of an adult or sexual nature is commonly provided
- 4.27 A statement of policy should make clear the options available for limiting the access of children where that is necessary for the prevention of harm to children. In doing so, it should stress that complete bans will be rare. The options include:
- Limitations on the hours when children may be present
 - Age limitations (below 18)
 - Limitations or exclusions when certain activities are taking place
 - Requirements for accompanying adult

- Full exclusion of people under 18 from the premises when any licensable activities are taking place
- 4.31 Statements of policy should also make clear that they will not impose conditions requiring the admission of children to any premises. Where no licensing restriction is necessary, this should remain a matter for the discretion of the individual licensee or club.
- 4.32 Statements of policy should also make clear that they will not impose conditions requiring the admission of children to any premises. Where no licensing restriction is necessary, this should remain a matter for the discretion of the individual licensee or club.

Children and cinemas

- 4.33 The statement of policy should make clear that in the case of premises giving film exhibitions, the licensing authority expects licensees to impose conditions that children will be restricted from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the local authority itself. Where a local 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 and the general public.

Children and public entertainments

- 4.34 A statement of policy should include any requirement the licensing authority would expect to be imposed concerning the presence of adult staff at places of public entertainment to control the access and egress of children and to assure their safety. For example, where 100 children or more are expected to attend regulated entertainment, the presence of an appropriate number of adult staff would be required, which the statement should specify, preferably by formula.

Integrating strategies

- 4.35 Statements of policy should provide clear indications of how the licensing authority will secure the proper integration with local crime prevention, planning, transport, tourism and cultural strategies.
- 4.36 Conditions attached to premises licences and club premises certificates should reflect local crime prevention strategies. For example, the provision of closed circuit television cameras in certain premises.
- 4.37 Protocols agreed between the local police and other licensing enforcement officers should provide 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 to avoid concentrations which produce disorder and disturbance.

- 4.38 Licensing authorities should also arrange that their licensing committees receive reports on the needs of the local tourist economy and the cultural strategy for the area to ensure that these are reflected in their considerations.
- 4.39 Licensing authorities should also ensure that their licensing committees keep abreast of the employment situation in the area and the need for new investment and employment where appropriate.
- 4.40 A statement of policy should also provide for a proper separation of the planning and licensing regimes to avoid duplication and inefficiency. 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. This should be reflected in the statement. Proper integration should be assured by licensing committees 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.

Duplication

- 4.41 Statements of policy on licensing should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation governing health and safety at work and fire safety will place a range of general duties on employers and operators of venues both in respect of employees and of the general public when on the premises in question. Conditions should only be attached to premises licences and club premises certificates that are “necessary” for the promotion of the licensing objectives and if already provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with entertainment. Indeed, certain safety legislation includes exemptions because it is assumed that licensing controls will provide the necessary coverage.

Standardised conditions

- 4.42 Statements of policy should make clear that a key concept underscoring the 2003 Act is for conditions to be attached to licences and certificates which are 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 therefore 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. However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions from which appropriate and proportionate conditions may be drawn in particular circumstances. Section 6 of this Guidance provides further details.

Enforcement

- 4.43 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 on enforcement issues. This should provide for a more efficient deployment of local authority staff and police officers who are commonly engaged in enforcing licensing law and the inspection of licensed premises.
- 4.44 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 in respect of low risk premises which are well run. 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 such inspections are 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.

Live music, dancing and theatre

- 4.45 Statements of 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 live music, dancing and theatre for the wider cultural benefit of communities generally. The potential for limited disturbance in neighbourhoods should always be carefully balanced with these wider benefits, particularly for children. 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 substantial nature. Licensing authorities should be aware that the views of vocal minorities should not be allowed to predominate over the general interests of the community that the committee represents.

Administration, Exercise and Delegation of Functions

- 4.46 The 2003 Act provides that decisions and functions may be taken or carried out by licensing committees or delegated to sub-committees or in appropriate cases, to officials supporting the licensing authority. 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 the Statement should underline the principle of delegation in the interests of speed, efficiency and cost-effectiveness.
- 4.47 If under the terms of the Act, there is a presumption of grant for non contentious applications, (for example, no representations to the grant of a premises licence) these matters should be dealt with by officers in order to speed matters through the system. Any such matters passed in this way should then be listed for comment at the next Committee meeting, but there should be no opportunity to reverse officers' decisions. Although essentially a matter for licensing authority's to determine themselves, the Secretary of State recommends that delegation should be approached in the following way:

Recommended delegation of functions

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a representation made	If no representation made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a representation made	If no representation made
Application for provisional statement		If a representation made	If no representation made
Application to vary premises licence/club premises certificate		If a representation made	If no representation made
Application to vary designated personal licence holder	If a police representation		All other cases,
Request to be removed as designated personal licence holder			All cases
Application for transfer of premises licence	If a police representation		All other cases
Applications for Interim Authorities	If police representation		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 lead authority			All cases
Determination of a police representation to a temporary event notice		All cases	

5 Personal Licences

General

5.1 This section provides advice about best practice in administering the process for issuing personal licences to sell alcohol. In particular, the Government stresses that the “fit and proper” test associated with the old alcohol licensing regime is abolished and the tests established by the 2003 Act are the only ones which may be applied. Moreover, in this context, it must also be stressed that a personal licence is not a qualification associated with business competency.

5.2 In summary, the qualifications are in the case of an individual seeking a licence under the terms of Schedule 8 of the 2003 Act (transitional provisions) that:

- the person is the holder of a justices’ licence issued under the terms of the Licensing Act 1964 at the time of his application;
- the person has provided the justices’ licence or a certified copy and a photograph endorsed to the effect that it is a true likeness;
- the police have received a copy of the application; and
- the police have made no representation about the grant of a personal licence; or
- the police have made a representation because of a conviction for a relevant offence or a foreign offence, but the licensing committee has not upheld that representation; and
- the applicant has paid the appropriate fee to the licensing authority.

5.3 In the case of an application under Part 6 of the 2003 Act, the qualifications are that the applicant:

- must be aged 18 or over;
- possess a licensing qualification accredited by the Secretary of State or is a person of a description prescribed by the Secretary of State by statutory instrument (Nb. Any such secondary legislation may be viewed on the DCMS website);
- must not have had forfeited a personal licence within five years of his or her application; and
- the police have made no representation about the grant of a personal licence following notification of a relevant offence or foreign offence; or

- the police have made a representation because of a conviction for a relevant offence or a foreign offence, but the licensing committee has not upheld that representation; and
- the applicant has paid the appropriate fee to the licensing authority.

5.4 Personal licences may be sought by any individual whether or not they have current employment or business interests associated with the use of the licence. The issues which arise when the holder of a personal licence becomes associated directly with particular premises covered by a premises licence by being made the “designated premises supervisor” for those premises are dealt with below. Licensing authorities may not therefore consider such matters when considering an application for a personal licence.

Criminal record

- 5.5 In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, applicants should normally be required to produce a Criminal Record Bureau certificate, which should have been copied to the local police with the application. Applicants from foreign jurisdictions should be 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 offence. 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 the making of any false statement is a criminal offence.
- 5.6 Licensing authorities should liaise closely with the police when an applicant is found to have an unspent conviction for a relevant offence defined in the Act.
- 5.7 Where an applicant is found to have 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 committee or one of its sub-committees.
- 5.8 The Secretary of State recommends that refusal of the application should be the normal course unless there are, in the opinion of the licensing committee, exceptional and compelling circumstances which justify granting the application.
- 5.9 If an application is refused for any reason, the applicant will be entitled to appeal against the decision. Similarly, if the application is granted despite a police representation, the chief officer of police is entitled to appeal against the licensing authority’s determination. Licensing authorities should therefore record full reasons for any decision that they make.

Licensing Qualifications

- 5.10 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.
- 5.11 From time to time, licensing authorities may also be concerned that documents and certificates produced as evidence of the possession of a 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.
- 5.12 For the purposes of transition, Schedule 8 of the 2003 Act provides that existing holders of justices' licences do not need to hold a licensing qualification before being granted a personal licence. This is because the licensing justices, following a hearing, have already declared the individual concerned to be "fit and proper" to sell alcohol. Licensing authorities are not empowered to require such an individual to obtain a licensing qualification during the transitional period.
- 5.13 The Secretary of State intends to accredit admission to the Hon Company of the Vintners of the City of London as an approved licensing qualification. Proof of admission to the Company will be required by licensing authorities receiving such applications.

Relevant licensing authority

- 5.14 Personal licences are valid for ten years unless surrendered or declared suspended or forfeit by the courts. Once granted, the licensing authority which issued the licence remains the relevant licensing authority for it, 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. The holder of the licence is required by the Act to notify the licensing authority of all changes of name or address. These changes should be recorded by the licensing authority. The holder is also required 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. These measures ensure that a single record will be held of the holder's history in terms of licensing matters. Licensing authorities should maintain easily accessible records and maintain a service enabling the police in any area and other licensing authorities to be promptly advised of any details they require about the individual concerned. The 2003 Act authorises the provision and receipt of such personal information to such agencies for the purposes of the Act.

Renewal

- 5.15 Renewal of the licence every ten years provides an opportunity to ensure that despite the provision of arrangements to ensure that all convictions for relevant offences have been properly notified to the relevant licensing authority, nothing has been missed and that all such convictions have been properly endorsed upon the licence. It also provides an opportunity to ensure that the photograph on the personal licence is updated to aid identification.

Designated Premises Supervisors

- 5.16 The sale of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than that associated with the provision of entertainment and late night refreshment. This is why a personal licence is required by individuals who may be engaged in making such sales. However, any premises at which alcohol is sold may employ one or more personal licence holders. For example, there may be one owner or senior manager possessing a personal licence and several junior managers similarly qualified. The main purpose of the “designated premises supervisor” as described in the Licensing Act 2003 is to ensure that there is always one specified individual, among these personal licence holders, who can be readily identified at the premises. That person would normally have been given day to day responsibility for running the premises by the premises licence holder.
- 5.17 The designated premises supervisor will therefore occupy a pivotal position. In the case of public houses, the trend is increasingly towards managed houses, whereby a large pub-operating company would hold the premises licence and a manager would be installed to look after the pub itself. The business could be in London, and the pub in Newcastle. Management supervision will usually be directly provided by the designated premises supervisor.
- 5.18 By designating the premises supervisor in the premises licence it will usually in practice be clear who is in day to day charge of the premises. The Government considers it to be essential that police officers, fire officers or officers of the licensing authority can identify immediately the person at any premises selling alcohol in a position of authority. They can do that at the premises because a copy of the licence must be held there and a summary displayed and the licence would specify the name of the designated personal licence holder. This should ensure that any problems can be dealt with swiftly by engaging with this key individual.
- 5.19 In addition, it is essential that the police are able to object to the designation of a new premises supervisor where in exceptional circumstances, they believe the appointment would undermine the crime prevention objective set out in the 2003 Act. Police intervention is permitted under the Act where a particular designated premises supervisor is first appointed or transfers into particular premises and this combination gives rise to exceptional concerns. For example, this could occur where a personal licence holder has been allowed by the courts to retain his licence despite convictions for selling alcohol to minors transfers into premises which have a degree of notoriety for underage drinking. Another example might be where an individual with convictions for possession of drugs intends to be specified as the designated premises supervisor at premises with a history of drugs problems.
- 5.20 Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties may put their arguments. The Government stresses that such hearings should be given priority. The Act provides that the applicant may apply for the individual to take up his post

immediately and in such cases, the issue would be whether the individual should be removed. The licensing committee considering the matter must confine their consideration to the issue of crime and disorder. They should give comprehensive reasons for their decision and either party would be entitled to appeal if their argument is rejected.

- 5.21 The portability of personal licences is an important concept within the 2003 Act. It is important that such representations arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely making representations on un-exceptional grounds, they should raise the matter with the chief officer of police. The Act provides for the suspension and forfeiture of personal licences by the courts following convictions for relevant offences, including breaches of licensing law and conditions attached to premises licences. This should generally ensure that undesirable individuals are not permitted to become designated premises supervisors. In addition, 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 such a supervisor. The portability of personal licences is also important to business because of the frequency with which modern companies move managers from premises to premises. Neither licensing authorities nor the police should therefore 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 intends that such hearings should be rare and genuinely exceptional.
- 5.22 Where a designated premises supervisor is to be newly specified, the normal course should be for the premises licence holder – perhaps a supermarket chain or a pub operating company – to apply to the licensing authority (including an application for immediate effect) and show that the individual concerned consents to taking on this responsible role; and to notify the police of the application. The whole licence does not have to be sent in for amendment. The Act provides that a part of the licence may be submitted. Ideally, this will require submission of a schedule to the main licence giving personal details of key individuals. This should be amended and returned following receipt.

Convictions and liaison with the courts

- 5.23 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 licence be 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. On receipt of such a notification, the licensing authority should immediately contact the holder and request his licence so that the necessary action can be taken. The chief officer of police for the area in which the holder resides should be advised if he or she does not respond promptly. On receipt of the licence, the details of the conviction should be recorded in the authority's records and endorsed on the licence, as should any period of suspension if so ordered. The licence should then be returned to the holder. If the licence is declared forfeit, it should be retained by the licensing authority.

Relevant offences

- 5.24 Relevant offences are set out in Schedule 4 of the 2003 Act and the Schedule is reproduced at Annex [].

6 Premises Licences

Licensable Activities

6.1 A premises licence authorises the use of any premises, which includes any place or part of a premises, for licensable activities described in section 1(1) and Schedules 1 and 2 of the 2003 Act. The licensable activities are:

- the sale of alcohol by retail;
- 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.

6.2 Schedule 1 which is reproduced for convenience at [Annex] sets out the definition of regulated entertainment and identifies those activities which are exempt from the licensing regime. Schedule 2 which is reproduced at [Annex] sets out the definition of late night refreshment and identifies those activities which are exempt from the licensing regime.

6.3 It is for licensing authorities, in consultation with their legal advisers, to implement the provisions of the Act. But licensing authorities may seek advice from the DCMS about the Act and this Guidance by contacting the Alcohol and Entertainment Licensing Branch:

[Telephone contact points]

[E-mail contact points]

Wholesale of alcohol

6.4 The wholesale of alcohol was not licensable prior to the coming into force of the 2003 Act. Licensing authorities should have particular regard to the definition of “sale by retail” given in section 187 of the Act. Sales which are made to traders for the purpose of their trade or holders of club premises certificates, premises licences, personal licences or premises users who have given temporary event notices for the purpose of making sales authorised by those permissions or notices, are not licensable. But a sale otherwise made to a member of the public in wholesale quantities is a licensable activity.

Internet and mail order sales

- 6.5 In considering applications for premises licences involving internet or mail order sales, if this is different to the place from which the alcohol is assigned to the particular purchaser, licensing authorities should have regard to section 185 which concerns the location of a sale of alcohol. For the purposes of the Act, a sale of alcohol is not to be regarded as having been made when payment is made, for example, on the internet or direct to a call centre handling such sales. The sale is treated as being made at the premises from which the alcohol is assigned to the purchaser. This would mean, for example, that a call centre would not be the premises for which an appropriate licence is required, but the warehouse from the alcohol was delivered would be.

Regulated Entertainment

- 6.6 Regulated entertainment as defined in Schedule 1 includes both entertainment and entertainment facilities. Subject to the qualifying conditions, definitions and the exemptions in Schedule 1, regulated entertainment is:

- a performance of a play
- an exhibition of a film
- an indoor sporting event
- a boxing or wrestling entertainment (indoors and outdoors)
- 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 for the purpose (or for purposes which include the purpose) of entertaining that audience.

- 6.7 Subject to the qualifying conditions, definitions and the exemptions in Schedule 1, entertainment facilities include facilities for enabling persons to take part in entertainment for the purpose of, or for the purposes which include the purpose, of being entertained:

- Making music
- Dancing
- Entertainment of a similar description to making music or for dancing.

It is important to note that this is a more limited list. It covers, for example, a karaoke machine provided for the entertainment of customers in a public house or a dance floor provided for use by the public in a nightclub.

- 6.8 In carrying out their functions, licensing authorities will first and foremost need to consider the word “entertainment”. It carries its ordinary and natural meaning and the provisions of Schedule 1 to the Act must be interpreted accordingly. Activities which do not involve entertaining people are not licensable under the Act. For example, education – teaching students to perform music or to dance – is not entertainment and will be outside the regime. Similarly, activities which involve participation as acts of worship in a religious context are also not entertainment. The demonstration of a product – a guitar – in a music shop is not entertainment. A rehearsal of a play or a rehearsal of a performance of music to which the public are not admitted is not an entertainment. Much of this involves the simple application of common sense and this Guidance cannot cover every eventuality or possible activity. It is only when a licensing authority is satisfied that activities amount to entertainment or the provision of entertainment facilities that it should go on to consider the qualifying conditions, exemptions and other definitions in the Schedule.

Pub games

- 6.9 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 are not 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 the Schedule. It is only when such games are staged for spectators, for example, a darts championship competition that the activity would become licensable.

Private events

- 6.10 Licensing authorities should note that some private events can involve licensable activities, but only in prescribed circumstances. Entertainment at a private event to which the public are not admitted only becomes licensable if it is provided for a consideration and with a view to profit. Accordingly, a mere charge to those attending a private event to cover the costs of the entertainment would not make the entertainment licensable as there would be clearly no intention to make a profit. Furthermore, Schedule 1 makes it clear that before an activity becomes a licensable regulated entertainment a charge has to be made by a person concerned with the organisation or the management of the entertainment or the entertainment facilities to be paid by or on behalf of some or all the people for whom the entertainment or the entertainment facilities are provided. This means that, for example, a wedding reception for invited guests (and for which no charge capable of generating a profit is made to those guests) at which a live band plays and dancing takes place is not a licensable activity. Similarly, for example, a party organised in a private house by friends at which music and dancing is provided and a charge or contribution is made solely to cover the costs of the entertainment is not a licensable event. Furthermore, any charge made by

musicians or their agents to the organiser of the event does not make an entertainment licensable unless the guests attending the private event are charged themselves for the entertainment by the organiser with a view to achieving a profit as described above.

Late night refreshment

6.11 Schedule 2 of the Act deliberately tightens the definition of late night refreshment which has previously governed licensing in Greater London, and extends the reformed regime to the whole of England and Wales. Licensing authorities, in Greater London, should particularly note the differences. For example, shops, stores and supermarkets selling food that is immediately consumable after 11.00pm will not be licensable unless they are selling hot food or hot drink. The purpose of the legislation is to cover primarily night cafes and take away food outlets where people may gather after 11.00pm and until 5.00am giving rise to the possibility of disorder and disturbance. It is not the purpose of the licensing regime to catch premises selling, for example, bread or milk or sandwiches in all night grocers' shops which do not attract these problems.

Premises

6.12 In determining whether any premises falls to be licensed, regard should also be had to the following parts of the Act:

- Part 4 which outlines arrangements for qualifying clubs;
- Section 170 which describes exempt premises;
- Section 171 which provides for premises to be exempted on grounds of national security;
- Section 172 which provides for minor raffles and tombolas involving prizes of alcohol to be exempt;
- Section 173 which prohibits the sale of alcohol at motorway service areas; and restricts the circumstances in which alcohol may be sold at garages;
- Section 184 which makes special provision regarding the licensing of vessels, vehicles and moveable structures;
- Section 186 which defines alcohol for the purposes of the Act; and
- Section 188 which defines among other things “premises”, “vehicle”, “vessel”, and “wine”.

6.13 Licensing authorities should publish contact points where members of public can obtain advice about whether or not activities fall to be licensed. Advice on these

and Safety at Work etc Act 1974; the local authority with responsibility for environmental health; and any licensing authority, other than the relevant licensing authority, in whose area part of the premises are situated. In relation to vessels only, 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 at a time when it is used for licensable activities; the Environmental Agency; the British Waterways Board; or the Secretary of State. The last of these refers to consultation with the Maritime and Coastguard Agency, which being an Executive Agency of Government, has no statutory existence and acts for the Secretary of State for Transport. The Secretary of State for Culture, Media and Sport may prescribe other responsible authorities by means of statutory instrument. Any such instruments may be viewed at the DCMS website.

Applications for premises licences

- 6.19 Any person aged 18 or over who is carrying on or who intends to carry on a business which involves the use of premises (which includes any place) for licensable activities (including any taking place wholly or mainly in the open-air) may apply for a premises licence either on a permanent basis or for a time-limited period. “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. It is not for the licensing authority to decide who the most appropriate person to hold the licence should be. For example, in respect of some public houses, a tenant may run or intends running the business at the premises in agreement with a pub operating company. Both would qualify to apply for the appropriate licence and it is for these businesses to agree contractually which should do so. It is not for the licensing authority to interfere in that decision. However, in the case of a managed public house, the pub operating company should apply for the licence and the manager (an employee) would not be entitled to do so.
- 6.20 A wide range of other individuals and bodies set out in section 16 of the 2003 Act may seek 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 statutory instrument other bodies that may so apply and any such instruments may be viewed on the DCMS website.
- 6.21 An application for a premises licences must be made on the prescribed form to the relevant licensing authority and be copied to the appropriate responsible authorities (non-vessels are not, for example, required to copy applications 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 to which the application relates; 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.

The operating schedule

6.22 The operating schedule should ideally include a general description of the style and character of the business to be conducted on the premises (for example, a supermarket, or a cinema with six screens and a bar, or a restaurant, or a public house with two bars, a dining area and a garden open to customers) and must set out the following details:

- the licensable activities to be conducted on the premises;
- the times during which it is proposed that the relevant licensable activities are to take place;
- any other times when the premises are to be open to the public or to members of a club;
- where the licence is required only for a limited period, that period;
- where the licensable activities include the supply of alcohol, the name and address of the individual to be specified as the designated premises supervisor and a copy of his or her personal licence;
- where the licensable activities include the supply of alcohol, whether the alcohol will be supplied for consumption on or off the premises or both; and
- the steps which the applicant proposes to take to promote the licensing objectives.

6.23 The Secretary of State may prescribe by statutory instrument other matters that must be included in an operating schedule and any such instruments may be viewed on the DCMS website.

Steps to promote the licensing objectives

6.24 In preparing an operating schedule, it is important that applicants should have a good idea of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. All parties should be working together in partnership to ensure that the licensing objectives are promoted collectively. Licensing authorities and responsible authorities should therefore ensure that applicants can readily access advice about these matters and so far as possible publish material about them. To minimise the burden on licensing authorities and themselves, it is sensible for applicants, having completed their own risk assessments, to seek the views of the key responsible authorities. For example, on matters relating to crime and

disorder or the presence of children, the police should be consulted and on matters relating to noise, local environmental health officers should be consulted. Co-operative effort should minimise the number of disputes which arise in respect of operating schedules. Where there are no disputes, the steps 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.

- 6.25 The steps to be taken should be realistic and within the control of the management of the premises. If a licence is granted with these conditions attached, the conditions will be enforceable at law and it will be a criminal offence to fail to comply with them. As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises.
- 6.26 Further advice on the steps needed to promote the licensing objectives is given below.

Advertising applications

- 6.27 Regulations governing the advertising of applications for the grant or variation of premises licences are contained in secondary legislation made by the Secretary of State and can be viewed on the DCMS website. Briefly, a short summary of the application setting out the location of the premises, the proposed licensable activities, the proposed access for children and the proposed hours of opening must be advertised by the applicant for 28 days in two local newspapers, together with details of where the full details of the application may be viewed. So far as possible, licensing authorities should also include these details on their websites and arrangements should be in place for interested parties to view a record of the application in the Licensing Register as described in Schedule 3 of the 2003 Act. Charges made for copies of the applications should not exceed the cost of preparing such copies.

Designated Sports Grounds, Designated Sports Events and Major Outdoor Sports Stadia

- 6.28 Outdoor sports stadia are the subject of separate legislation with regard to health and safety and fire safety. The licensing of licensable activities described in the 2003 Act should not therefore duplicate any conditions relating to such legislation. The sports events taking place at such stadia are not licensable except for boxing and wrestling matches. No premises licence should therefore seek to impose times when such events may take place. Premises licences in respect of such premises should therefore focus only on the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
- 6.29 The Secretary of State (for the Home Department) is empowered under the Sporting Events (Control of Alcohol Etc) Act 1985 to designate by order certain sports grounds and certain sports events for the purposes of the 1985 Act. The purpose of designation is to bring into effect certain measures to assure safety and prevent crime and disorder. Designations mainly concern sports grounds at which FA Premiership, Football League and international football games are played and designated events generally involve matches between Premiership,

Football League and international sides. Licensing authorities should familiarise themselves with such designations in their areas and should not seek to duplicate these powers using premises licences.

- 6.30 Major stadia will often have several bars and restaurants, including bars generally open to all spectators and 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. It may also designate areas where alcohol may not be consumed at all at particular times. History demonstrates that certain sports are more likely than others to give rise to concerns about the safety of and disorder among spectators. Premises licences can and should make different provision for such grounds and for such sports events because of that history. Further details are provided in Section 7 of this Guidance. Because of the issues of crowd control that arise in and around such grounds, licensing authorities should give considerable weight to the views of the local chief officer of police when representations or complaints are made concerning licensable activities.
- 6.31 Major sports grounds with roofs that open and close, such as the Millennium Stadium in Cardiff, are treated under the terms of the 2003 Act as outdoor premises and sports taking place there are therefore not categorised as “indoor sports”.

Vessels

- 6.32 Where a premises licence is sought in connection with a boat or ship which will be navigated when licensable activities take place, the licensing authority should be primarily concerned with the promotion of the licensing objectives on board. It should not focus on matters relating to the safe navigation of the vessel through the relevant waters, which is the subject of separate legislation. The vessels' safety for the carriage of passengers will also have been considered under separate legislation, but the inspectors involved may not have anticipated the use of the vessel for the supply of alcohol to passengers or the provision of regulated entertainment. Both may give rise to new and additional safety concerns. It is therefore important that licensing authorities should give particular weight to the views of the Maritime and Coastguard Agency in respect of these matters.

International Airports and International Ports

- 6.33 Under the 2003 Act, the Secretary of State may designate certain airports and seaports for the purposes of the Act and the Act also preserved existing designations. Details of the ports so designated may be viewed on the DCMS website.
- 6.34 Where a port has been designated by the Secretary of State the areas at the ports which are “airside” or “wharfside” are exempted by the Act from the licensing regime. These are areas to which the non-travelling public do not have access and are subject to stringent bye-laws, and the exemption is to enable the provision of refreshment of all kinds to travellers at all times of the day and

night. Other parts of designated airports and seaports are subject to the normal licensing controls.

Vehicles

- 6.35 Under the 2003 Act, alcohol may not be sold on a moving vehicle and it may not be licensed for that purpose. However, licensing authorities may consider applications in respect of a vehicle for the sale of alcohol when it is parked or stationary. For example, mobile bars do sell alcohol at special events. Any permission granted would relate solely to the place where the sales are to take place.

Trains and aircraft

- 6.36 Under the 2003 Act, 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 are used as restaurants and bars, remaining in a fixed position. Licensing authorities may consider applications made in respect of such premises which are subject to normal licensing law. It should also be noted that under the 2003 Act, the sale of alcohol to a minor anywhere in England and Wales has been made a criminal offence. Until the 2003 Act came into force, such sales were only offences if they took place on licensed premises. This is no longer the case. Accordingly, the sale of alcohol aboard a train or aircraft to a minor is now a criminal offence.

Considering applications for new and major variations of premises licences

- 6.37 Four fundamental principles underpin the 2003 Act. The first is that applicants for premises licences or for major variations of such licences are expected to conduct a thorough risk assessment with regard to the licensing objectives when preparing their applications. The second is that operating schedules should be reviewed by professional bodies expert in the areas concerned. The third is that local residents should be free to raise reasonable and relevant representations about the proposals. The fourth is that the role of licensing authority is primarily to resolve disputes when they arise. When considering applications, licensing authorities should seek to uphold these principles.
- 6.38 If no responsible authority (for example, the police or an environmental health officer) raises a representation about an application and no interested party seeks to do so, no hearing would be required and the application must be granted in the terms sought. This should be undertaken as a simple administrative process undertaken by the licensing authority's officials by which the proposals contained in the operating schedule are translated into clear and understandable conditions. In these circumstances, it is particularly important that licensing authorities should not attempt to second-guess the views of the professional and expert consultees, for example, those of the police, the fire authority and environmental health officers. Accordingly, if operating schedules are prepared efficiently in consultation with responsible authorities, representations and hearings should rarely be necessary.

6.39 Where a representation is lodged by a responsible authority about a proposed operating schedule, the local authority's discretion is engaged. It is also engaged if an interested party makes relevant representations to the licensing authority which are not frivolous or vexatious (see paragraph 6.42). A hearing will be required at which the disputing parties should be invited to present argument. The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website. 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 dispute and avoid straying into undisputed areas. In determining the application the licensing authority must give appropriate weight to:

- the argument and evidence presented by all parties to the dispute;
- this Guidance;
- its Statement of Policy;
- steps that are necessary to promote the licensing objectives.

6.40 The determination should be given forthwith and reasons provided in anticipation of an appeal by any of the parties. After considering all the relevant issues, it would be open to the licensing authority to grant the application either in the terms sought or subject to modifications of the operating schedule which would be translated into conditions attached to the premises licence. Any conditions so 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: it must be necessary. Furthermore, conditions may not be attached which do not relate to the licensing objectives. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Alternatively, the licensing authority may refuse the application on the grounds that refusal is necessary for the promotion of the licensing objectives.

6.41 Where a representation is made under the terms of the Act by an interested party (for example, a local business or a resident living in the vicinity of the premises), there is a preliminary stage at which the licensing authority must determine whether the representation is relevant, vexatious or frivolous. This is dealt with in more detail below. If the licensing authority so determine, no hearing is required and the application must be granted in the absence of representations from any responsible authority or interested party. The aggrieved interested party may appeal the licensing authority's determination. If the representation is relevant and not frivolous or vexatious, a hearing must be arranged to consider the disputed matters. This would follow the lines of the hearing described above.

Irrelevant, Vexatious and Frivolous Representations

6.42 A representation from an interested party would be "irrelevant" if it does not directly relate to the application and importantly, to the promotion of the licensing objectives in the context of the application. It is not intended, for example, that the consideration of the application should be a re-run of the

planning application which would have considered a wider range of matters. Premises licences license the activities described in the Act that it is proposed should take place on the premises and the hours at which they should be allowed to take place. For example, a representation from a local business which argued that that business would be commercially damaged by the new business would be irrelevant. On the other hand, a representation to the effect that nuisance caused by the new business would deter customers from entering the local area and the proposed steps to control that nuisance are inadequate would not be irrelevant and should be heard. A complaint relating to a general (crime and disorder) situation in a town centre should be deemed irrelevant if it cannot be positively tied or linked to particular premises allowing a proper review of its licence.

- 6.43 It is for the licensing authority to determine on its merits whether any application is frivolous or vexatious. The individual objecting may not consider the matter to be vexatious or frivolous, but the test is an objective one. The licensing authority must determine whether any ordinary and reasonable person would consider the issues raised to be vexatious or frivolous. Vexation 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. However a trivial complaint may not be frivolous, but ought not to be considered for a hearing or review without an initial investigation by officers to determine relevance. An interested party aggrieved by a rejection of his representations on these grounds may challenge the authority's decision by way of judicial review.
- 6.44 Decisions as to whether representations are irrelevant, frivolous or vexatious must be made objectively and not on the basis of any political judgement. This will be difficult for ward councillors receiving complaints from residents within their own wards. Accordingly, the advice of officials on such complaints should always be sought and if the consideration is not to be delegated as recommended in this Guidance, an assessment by officials prepared for consideration by the sub-committee before it is declared valid and therefore justifying a review hearing.

Transfers of premises licences

- 6.45 The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for the transfer of a premises licence to him or her. Notice of the application has to be given to the chief officer of police. The applicant must be 18 years old or over. This would often arise when a business involving the licensable activities is sold to a new owner. A transfer of the licence only changes the identity of the holder of the licence and does not alter the licence in any other way.
- 6.46 In the vast majority of cases, transfer should be a very simple administrative process and section 42 of the Act provides a mechanism whereby the transfer can be given immediate effect on the making of an application until it is formally determined. This is to ensure that there should be no interruption to normal business at the premises. If the police raise no representation 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.

- 6.47 In exceptional circumstances in which the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. Such representations should be rare and arise because the police believe that the business or individuals seeking control of the licence are involved in crime. For example, the police would rightly seek to prevent a company taking control of licensed premises if they believed that the premises would be used to launder money obtained from drugs crime. Where a representation is made, the licensing authority must hold a hearing at which both parties may put their arguments to a licensing committee. The committee'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 committee that there were, on balance of probability, 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.
- 6.48 It is stressed that such representations (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, they should raise the matter immediately with the chief officer of police.

Applications to change the designated premises supervisors

- 6.49 Licensing authorities should carefully note the content of paragraphs 5.15 to 5.21 above concerning designated premises supervisors and applications to vary a premises licence covering sales of alcohol by specifying a new designated premises supervisor.

Provisional statements

- 6.50 Where premises are being constructed or extended or substantially changed structurally, the necessary investment may not be committed unless investors are assured not only that the project has appropriate planning permission but that they have some additional security that a premises licence would be granted for the premises when the building work is completed.
- 6.51 The 2003 Act therefore provides for a person, aged 18 or over, who has an interest in the premises to apply for a "provisional statement". "Person" in this context includes a business. The applicant could be a firm of architects or a construction company or a financier. The application would describe the work to be done and the licensable activities that it is planned would take place at the completed premises. The application must be advertised and copied to responsible authorities in a similar way to the arrangements for applications for premises licences. Responsible authorities and interested parties may make representations. Where no representations are made, a provisional statement

must be issued which states that fact. Where relevant representations are made, a hearing must be arranged by the licensing authority at which the parties may put their arguments.

- 6.52 In determining the application, the licensing authority may reject the application if that is necessary for the promotion of the licensing objectives or grant the application subject to steps being taken, on satisfactory completion of the work, that are necessary for the promotion of those objectives. The licensing authority should give full and comprehensive reasons for its decision in anticipation of an appeal by any aggrieved party.
- 6.53 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 applicant is able to show to the satisfaction of the licensing authority that the work has been completed in a manner which substantially complies with the schedule of works;
 - 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 then but failed to do so without reasonable excuse; and
 - there has been no material change of circumstances relating either to the premises or to the area in the vicinity of those premises since the provisional statement was made.
- 6.54 Licensing authorities should be firm about excluding representations in these circumstances. It will be important for investment and employment opportunities in their areas for provisional statements to function properly as a limited assurance. But it should be recognised that a great deal of time may pass between the grant of a provisional statement and the completion of a schedule of works. Genuine and material changes in circumstances may arise during the intervening years.

Interim Authorities

- 6.55 The Act provides special arrangements for the continuation of a business when the holder of a premises licence dies suddenly or becomes bankrupt or incapacitated in some way. In the normal course of events, the licence would lapse in such circumstances. 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 other interests in the property such as an owner or lessor and for employees working at the premises in question. The Act therefore provides for the licence to be reactivated in certain circumstances.

- 6.56 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 seven days beginning the day after the licence lapsed. Such a 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 a statutory instrument 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 a spouse or other relative).
- 6.57 The effect of giving the notice is to reinstate the premises 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 may have effect is two months.
- 6.58 The interim authority would also cease to have effect unless by the end of the initial 7 day period a copy of the notice has been given to the chief officer of police. Within 48 hours, 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 arguments of the parties involved and cancel the interim authority notice if it determines that it is necessary to do so for the promotion the crime objective.
- 6.59 In respect of these matters, it is important that licensing authorities are alert to the urgency of the circumstances and the need to resolve any dispute quickly.

Reviews

- 6.60 The proceedings set out in the Act for reviewing premises licences represent a key protection for the community where problems associated with disorder, public safety or disturbance are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant of premises licences and to variations.
- 6.61 At any stage, following the grant of a premises licence, a responsible authority, such as the police or the fire authority, or interested party, such as a resident living in the vicinity of the premises, may ask the licensing the authority to review the licence because of problems arising at the premises in connection with any of the four licensing objectives. 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 public nuisance. Licensing authorities may not initiate their own reviews of premises licences. It would be improper for the authority to lay allegations of its own and then determine the outcome of a hearing to consider them. Officers of the local authority such as environmental health officers, who are specified as responsible authorities under the Act, may however request reviews.
- 6.62 Where the request originates with an interested party – a local resident, resident association, local business or trade association – the licensing authority must first

consider whether the complaint made is irrelevant, vexatious, frivolous or repetitious. Relevance, vexation and frivolousness were dealt with in paragraphs 6.42 – 6.43 above. A repetitious representation is one that is identical or substantially similar to:

- a ground for review specified in an earlier application for review specified in an earlier application for review made in respect of the same premises licence which has already been determined; or
- representations considered by the licensing authority when the premises licence was first granted; or
- identical or substantially similar to representations made when the application for the premises licence was first made and which were excluded then on grounds of being irrelevant, vexatious or frivolous; and
- in addition, to the above grounds a reasonable interval has not elapsed since that earlier review or the grant of the licence.

6.63 Licensing authorities should therefore 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 considers that more than one review originating from interested parties should not be permitted within a period of twelve months on similar grounds save in exceptional and compelling circumstances.

6.64 Following receipt of a request for review from a responsible authority or a qualifying request made by an interested party or in accordance with the closure procedures described in Part 8 of the Act, the licensing authority must arrange a hearing. The arrangements for the hearing must follow the regulations set out by the Secretary of State in a statutory instrument. The details may be viewed on the DCMS website. It is particularly important that the premises licence holder is fully aware of the allegations made against the premises, any evidence supporting the allegation and that he or his legal representatives has therefore been free to prepare a rebuttal.

Powers of a licensing authority following determination of a review.

6.65 The 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. It is also open to the licensing authority to take some actions not set out in the Act.

6.66 The licensing authority may decide that no action is necessary if it finds, on the balance of probability, that the allegations made are unsubstantiated or untrue or irrelevant. It may also conclude that the problem described is not sufficiently serious to warrant using its statutory powers. There is also nothing to prevent a

licensing authority issuing a warning to the licence holder and/or to require improvement within a particular period of time. In doing so, it may also ask the responsible authority which initiated the review to monitor that improvement by regular inspection and invite it to seek to a further review if the problems persist.

6.67 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 condition 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 playing of live music after 11.00pm;
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management competency;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

6.68 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period up to three months. Accordingly temporary changes or suspension of the licence completely for one day to three months may be imposed. This could impact on the business holding the licence financially and may only be pursued as a necessary means of promoting the licensing objectives. Accordingly, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems which gave rise to the review to happen again.

6.69 Licensing authorities should regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and the warnings should be issued in writing to the holder the licence.

Reviews arising in connection with crime

6.70 A number of reviews may arise in connection with crime that is not directly connected with licensing law. 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 should not assume the role of a criminal court. The responsible authorities making such serious allegations must not be allowed to use the licensing system as a means of avoiding the more difficult tests associated with criminal prosecutions and it is important that licensing authorities do not allow the review system to be utilised in that way. Similarly, licensing authorities must be conscious of attempts to bring issues before them when criminal prosecutions have failed.

- 6.71 The role of the licensing authority in such a review is not to determine the guilt or innocence of any individual. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In either case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises. Where a review follows convictions or the failure of a prosecution in the criminal courts, it is not for the licensing authority to attempt to go behind the finding of the courts, which should be treated as a matter of undisputed evidence before them.
- 6.72 Where the licensing authority finds that the premises have been used for criminal purposes, its role is solely to determine what steps are necessary to 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 resolve the problems. In such circumstances, the licensing authority's duty is to the promotion of the licensing objectives in the interests of the wider community and not to the holder of the premises licence.
- 6.73 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;
 - the use of licensed premises for the sale and distribution of illegal firearms;
 - the evasion of copyright in respect of pirated films and music, which does considerable damage to the industries affected;
 - the underage purchase and consumption of alcohol which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - the use of licensed premises for prostitution or the sale of unlawful pornography;
 - the use of licensed premises by organised groups of paedophiles to groom children;
 - the use of licensed premises, including night cafes, as the base for the organisation of criminal activity, particularly by gangs;
 - the use of licensed premises for the organisation of racist activity or the promotion of racist attacks;

- the use of licensed premises for unlawful gaming and gambling; and
- the use of the premises for the sale of smuggled tobacco and alcohol, which activity costs the taxpayer more than £3 billion annually.

6.74 Licensing authorities, the police and other law enforcement agencies should use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority find, on balance of probability, that premises are being used to further such crimes, revocation of the licence – even in the first instance - should be seriously considered.

Temporary events requiring premises licences

6.75 Licensing authorities should note that a premises licence may be sought for a temporary period. The Act provides for the giving of temporary event notices. These are dealt with later in this guidance. Temporary event notices are subject to various limitations. These concern:

- duration - they are limited to events lasting for up to 72 hours;
- scale – they cannot involve the presence of more than 499 people at any one time;
- use of the same premises – the same premises cannot be used more than 5 times in a single period of 12 months;
- the number of notices given by one individual within a given period of time – a personal licence holder is limited to 50 notices in one year, and an ordinary person to five notices in a similar period.

6.76 In any other circumstances, a temporary event at which licensable activities are to take place would require a premises licence if the premises or place at which the event is to take place is currently unlicensed for the activity or activities involved. The procedures for applying for and granting such a licence are identical to those for a permanent licence. Licensing authorities should note that they should clearly specify on such a licence when it comes into force and when the permission ends. Where the sale of alcohol is involved, there will need to be a designated premises supervisor specified who is a personal licence holder.

6.77 Temporary events may range from relatively small local events, like fairs, which last for four or five days, to major pop festivals lasting only one day. Despite the temporary duration of such major events, they can attract huge crowds of more than 100,000 and the risks to public safety and to crime and disorder may be considerable. Licensing authorities should make clear in local publicity that they should be given early notice of such major events to allow responsible authorities to discuss operating schedules with the organisers well before a formal application is submitted.

7 Hours of Trading

- 7.1 This section provides guidance on best practice in respect of hours of trading as a condition of a premises licence.

Shops, stores and supermarkets

- 7.2 It is recommended that shops, stores and supermarkets selling alcohol should generally be permitted to match their normal trading hours with the hours during which other sales take place, unless there are exceptional reasons relating to disorder or disturbance. Accordingly, if the law permits the shop to open for 24 hours or limits such opening, for example, on Sundays, the licensing authority should generally permit the sale of alcohol during those hours unless there are very good reasons not to do so.
- 7.3 Some isolated shops – for example, on residential estates - may however be known to be a focus for disturbance because youths congregate there and engage in anti-social behaviour, including pressurising shop staff to make unlawful sales of alcohol. Where representations are made by the police about such applicants for premises licences or in connection with existing licences, licensing authorities should consider a restriction on opening hours as one mechanism of combating such problems.

Workers' rights

- 7.4 In determining an application for a premises licence and the hours at which the premises might provide licensable activities to the public, 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. Existing protections under the Working Time Regulations, and under the normal laws of contract, make it unlawful for one party to a contract of employment to vary its terms and conditions without the other's consent. This means that nobody whose current contract of employment, whether in its explicit terms or as a matter of custom or practice, does not provide for them to work for extended hours and/or at unsocial times, can have different terms imposed on them. The existing protections can therefore be expected to provide adequate protection against abuse. Against this background, the impact on workers of any extended hours permitted by a premises licence is a contractual matter to be resolved between the employer and the employees, and licensing authorities should not seek to intervene in these matters.

Principle of Flexibility

- 7.5 The Government strongly believes that fixed and artificially-early closing times promote, in the case of sales of alcohol, rapid binge drinking close to closing

times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast food is sold or public or private transport is provided. This in turn produces friction, particularly between young men, and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems which addressing issues such as the hours at which premises should be free to provide licensable activities to the public.

- 7.6 The aim should be to reduce the concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided.

Zoning

- 7.7 Zoning is used in this guidance to refer to the setting of fixed trading hours within a designated area. Experience in Scotland has demonstrated that zoning leads to the significant movement of people across boundaries in search of premises opening later and puts greater pressure on town and city centres than is necessary. Zoning was attempted in Edinburgh for a period of eighteen months in the early 1990s when five zones were created. This had to be abandoned in 1993 because of the problems created for the police and significant improvements in terms of disorder and disturbance were noted following its removal. The Government also considers that zoning risks treating residents in one area preferentially over others simply because they have chosen to live in busy central areas of towns and cities. Under the Act all residents living in the vicinity of licensed premises have equal rights to make representations concerning applications for premises licences and hours of trading and to have those representations given equal weight regardless of where they live.
- 7.8 In each individual case that arises following representations, the role of the licensing authority should be to consider the potential for nuisance associated with the style, characteristics and activities of the business involved, to examine the potential steps which could be taken to reduce the risk of nuisance, particularly in areas of dense residential accommodation, and to consider restricting the hours of trading only as a last resort because of the potential impact on disorder and anti-social behaviour from fixed and artificially-early closing times.
- 7.9 Above all, licensing authorities should not fix predetermined closing times for particular areas.

Staggered closing times

- 7.10 Licensing authorities should also not seek to engineer “staggered closing times” by setting quotas for particular closing times. For example, by allocating closing times of 11.00pm, 12 midnight, 1.00am, 2.00am, 3.00am etc to particular premises. In the Government’s view, this would only serve to replace the current peaks of disorder and disturbance after 11.00pm and after 2.00am with a series of smaller peaks, minimising any potential improvement in crime and disorder. The

general principle should be to promote later opening so that customers leave for natural reasons slowly over a much longer period. This prevents any unnatural concentrations.

8 Conditions Attached to Premises Licences

General

- 8.1 This part of the guidance provides advice and recommendations concerning best practice in respect of attaching conditions to premises licences and club premises certificates. Conditions may only be attached to licences where they are necessary for the achievement of one or more of the four licensing objectives. Conditions may not be attached to licences for other purposes. For example, conditions relating to night café and take away outlets operating after 11.00pm must relate to the night time operation of the premises, and must not be used to impose conditions which relate to day time operation and cannot imposed on day time operators.
- 8.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps the holder of the premises licence or the club premises certificate will be required to take at all times when licensable activities are taking place at the premises in question. Failure to comply with the conditions could amount to a criminal offence, which on conviction would be punishable by a fine up to £20,000 or up to six months imprisonment or both. Further details of these offences are given in Section 12 of this Guidance.

Duplication with other statutory provisions

- 8.3 The only conditions which should be attached to a premises licence or club premises certificate are those which are necessary for the promotion of the licensing objectives. Accordingly, if the existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose similar duties or the same duty on the premises licence holder or club. For example, employers and self-employed persons are required by the Management of the Health and Safety at Work Regulations 1992 to assess the risks to their workers and any others (for example, members of public visiting the premises) who may be affected by their business so as to identify what measures are needed to avoid or control risks. These general duties will not always adequately cover specific issues that arise on the premises in connection with certain entertainments. It is only where additional and supplementary measures are required to promote the licensing objectives that conditions will need to be attached to a licence.
- 8.4 Similarly, licensing authorities and responsible authorities should note the terms of section 31 of the Fire Precautions Act 1971. Section 31 suspends the terms and conditions attached to a premises licence or a club premises certificate so long as there is in force a fire certificate covering the use of the premises for licensable activities insofar as they relate to matters which are dealt with in the fire certificate or could have been dealt with in it. Accordingly, where a fire

certificate is in force and deals with or could have dealt with matters relating to fire safety and the fire certificate was issued for the use of the premises for licensable activities (for example, if it was issued to a public house as place of public resort where alcohol would be sold for consumption on the premises), no similar conditions can be regarded as necessary when granting or varying a premises licence or a club premises certificate. Conversely, where the fire certificate was issued at a time when the use of the premises for a particular licensable activity was not anticipated, additional conditions relating to fire safety may be necessary. The licensing authority should look to the fire authority as its main source of advice on these matters.

Consistency with steps described in operating schedule

- 8.5 The Act provides that where an 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 operating schedule accompanying the application and any mandatory conditions required by the Act itself.
- 8.6 Consistency means that the effect of the condition should be substantially similar to that intended by the terms of the operating schedule. Some applicants for licences supported by legal representatives or trade associations can be expected to express steps necessary to promote the licensable objectives in clear and readily translatable terms. However, it must be recognised that some applicants will express the terms of their operating schedules less precisely. Ensuring that conditions are consistent with the operating schedule will then be more difficult. It must be remembered that conditions may give rise to criminal prosecution or be the subject of review proceedings and it is extremely important therefore that they should be expressed on the licence in unequivocal and unambiguous terms. It must be clear both to the holder of the licence, to enforcement officers and to the courts what duty has been placed on the holder and his agents in terms of compliance. For example, a condition relating to the safe capacity of premises following representations by the fire authority should be expressed in clear and simple terms:

“The maximum occupancy of the building will be restricted in respect of the ground floor to 300 persons and in respect of the first floor to 100 persons.”

Where of course representations have been made by either a responsible authority or an interested party and following a hearing and the licensing authority has determined that the steps needed to promote the licensing objectives proposed by the applicant should be modified, the licensing authority will be free to express the conditions in terms that it considers appropriate.

Proportionality

- 8.7 The Act envisages that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. As has been

said earlier, this effectively rules out standardised conditions which would 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 hosting smaller events and festivals will not be pursuing these events commercially with a view to profit and will inevitably operate within limited resources. While the Secretary of State will set fees centrally for licences, 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 the holding of events that are valuable to the community or for the funding of good and important causes. Such bodies will be loath to pursue appeals against any disproportionate conditions because of the costs involved. Licensing authorities and responsible authorities should therefore ensure that any conditions they impose are the minimum necessary for the purposes of the licensing objectives. Public safety concerns should not of course be ignored and in considering a proportionate response to the licensing needs for such events, the physical safety and well-being of those attending such events should be remain a primary objective.

- 8.8 Licensing authorities and responsible authorities should also have proper regard for the history of certain events and activities. If over a significant period of time, regular events of a particular kind have not given rise to problems of disorder and disturbance or concerns about safety or children, this should stand in favour of the applicant for a premises licence in respect of the activities involved. For example, for many years events involving up to two live musicians in premises licensed for the sale of alcohol have been exempt from the requirements for a public entertainment licence. Local authorities will be aware of premises where this freedom has caused local disturbance for residents and where it has not. This local knowledge is important. Where premises have not caused such problems, the provision of small-scale live music should not normally give rise to the need to attach any substantial conditions to the main premises licence. On the other hand, where in the minority of cases problems have occurred, the new premises licence will afford an opportunity to attach conditions addressing any nuisance previously caused. The views of local residents will be important in establishing the extent of any history of problems.

People with disabilities

- 8.9 Licensing authorities and responsible authorities should guard against well meaning conditions which are attended to provide for the safety of people with disabilities, but actively deter operators from admitting such people. It is important that proper steps should be taken to provide for the safety of people with disabilities, but conditions should be avoided which would enable an operator to justify their exclusion by reference to the condition. It is the policy of the Government that facilities for people with disabilities should be provided at places of entertainment and the Secretary of State encourages licence holders to provide facilities enabling their admission and reminds them of the duties imposed by the Disability Discrimination Act 1995. Licensing authorities should 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. Conditions should therefore be positively worded and assume the presence of people with disabilities.

Crime and disorder

8.10 Annex [] provides example conditions which relate to the prevention of crime and disorder on licensed premises. This should be treated as a potential pool of conditions which should be used to tailor appropriate and necessary conditions for premises licences and club premises certificates. It is important that they should not be treated as standard conditions.

8.11 The steps any licensed premises might take to prevent crime and disorder are as varied as the premises that may apply for a licence. The example pool of conditions in Annex [] cannot therefore cover every possible scenario. Licensing authorities should therefore look to the police as the main source of advice on these matters. The police will have a key role in undertaking the following tasks:

- Developing a constructive working relationship with local authority licensing officers
- Developing a constructive working relationship with designated premises supervisors and other managers of premises
- Advising, where necessary, on the development of a venue drug policy
- Where appropriate, agreeing the protocols for actions taken by door supervisors in relation to illegal drugs or violent behaviour, in particular 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 nightclubs
- Advising on the installation and monitoring of CCTV
- Advising on the provision of safe transport home in consultation with community safety colleagues
- Working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and anti-social behaviour

- 8.12 The essential purpose of the licence in this context is to control behaviour on premises and access to them. As has been said above, conditions attached to licences cannot seek to control the behaviour of customers once they are beyond the control of the licence holder and his staff or agents, but can directly impact on the behaviour of those under the licensee's direction when on his property.
- 8.13 Licence conditions should not replicate licensing offences that are set out in the 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.
- 8.14 Conditions are best targeted on deterrence and preventing crime and disorder. For example, the presence of close circuit television cameras both inside and immediately outside the premises can actively deter disorder, anti-social behaviour and crime generally. Many licensees may wish to have such cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself. 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 enable certain areas are properly covered and to ensure that there is no subsequent dispute over the terms of the condition. In addition, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or underage (if access for children is restricted) do not enter the premises reducing the potential for crime and disorder.
- 8.15 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 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 damage done to victims when such assaults take place (for example, facial injuries resulting from broken glass).
- 8.16 In the context of crime and disorder, the preservation of order on premises where alcohol is supplied for consumption and to which very large numbers of people are admitted may give rise to genuine concerns about the competency of the management team charged with the maintenance of order on those premises. The designated premises supervisor is the key person who will usually be charged with day to day management of the premises and therefore with preventing disorder there. No conditions relating to the qualifications of designated premises supervisors should be attached to premises licences. This is important to ensure the portability of the personal licence and the offences set out in the Bill ensure that the prevention of disorder is in sharp focus for all such managers.
- 8.17 In the context of crime and disorder, communications between the managers of the premises and the police can be of great importance. 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 mandatory communication links between the police and all licensed premises. However, while this may be necessary and effective in certain licensing authority areas, it may be less effective in others. Police views on such matters should be given considerable weight.

8.18 Conditions should, where necessary, reflect the possibility that certain licensable activities may incite crime. For example, a condition in respect of a cinema could require that no film be exhibited at the premises which is likely to:

- Lead to disorder; or
- Stir up hatred or incite violence toward against any section of the public on grounds of colour, race or ethnic or national origin, disability, religious beliefs, sexual orientation or gender.

And that if the licence holder is notified by the licensing authority that a particular film in the opinion of licensing authority falls into that category and may not be shown, their decision shall be final.

8.19 The Indecent Displays Act 1981 makes provision prohibiting indecent displays in places to which the public have access in certain circumstances and provides appropriate exemptions. It should not therefore be necessary for any conditions to be attached to licences concerning such displays.

8.20 Standardised conditions should also be avoided. For example, conditions which prohibit the presence on the premises of dart boards or pool tables cannot be justified unless in the context of the individual premises, it can be shown that they are necessary for the prevention of crime and disorder.

Public safety

8.21 Annex [] provides example conditions which relate to public safety and fire safety. This should be treated as a potential pool of conditions which should be used to tailor appropriate and necessary conditions for premises licences and club premises certificates. It is important that they should not be treated as standard conditions.

8.22 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 or place and not with public health which is adequately 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 primary purpose of the condition. Accordingly, conditions should not be imposed under a premises licence or club premises certificate which relate to cleanliness or hygiene. These are matters for other legislation and duplication should be avoided.

- 8.23 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, if necessary, checks on such equipment to be conducted at specified intervals and for evidence of such checks to be retained by the premises licence holder. Similarly, it would be permissible for licensing authorities to attach conditions which required equipment of particular standards to be maintained on the premises. For example, a condition might specify that temporary electrical installations shall comply with the requirement of British Standard 7671, but where such standards are already required by regulations applying to those premises (for example, the IEE Wiring Regulations) it may not be necessary to specify the standard in the licence condition.
- 8.24 “Safe capacities” should only be imposed where necessary for public safety on the relevant premises. For example, if a fire certificate for certain premises includes certain conditions, it would be unnecessary to reproduce them in a premises licence. Indeed, it would be wrong to lay down conditions which produce conflict with other legal requirements. However, if the fire certificate has been granted for premises when their future use for a licensable activity was not known, the licensing authority and fire authority may wish to impose a new capacity which would apply at any material time when the licensable activities are taking place. Capacities attached to premises licences may in certain circumstances also be beneficial in preventing crime and disorder, as overcrowded venues can increase the risks of disorder as crowds become frustrated and hostile.
- 8.25 The 2003 Act repealed the Cinematograph (Safety) Regulations 1955 which contained a significant number of regulations in respect of fire safety provision at cinemas. Applicants, licensing authorities and responsible authorities should therefore recognise the need to reproduce similar provisions as steps to be taken to assure public safety at such premises. Annex [] separately sets out relevant conditions which should normally be attached to such a premises licence to ensure necessary fire safety provision.

Public nuisance

- 8.26 Annex [] provides example conditions which relate to the prevention of public nuisance. This should be treated as a potential pool of conditions which should be used to tailor appropriate and necessary conditions for premises licences and club premises certificates. It is important that they should not be treated as standard conditions.
- 8.27 The 2003 Act requires licensing authorities and responsible authorities to make objective judgements about what constitutes nuisance and what is needed, in terms of conditions attached to premises licences and club premises certificates to prevent it. These will not be easy judgements as one man’s enjoyable music is another man’s irritating noise. It is therefore important that in applying the relevant objective tests, licensing authorities and responsible authorities focus on

impacts of the licensable activities at the relevant premises on people living, working and sleeping in the vicinity that are unreasonable. The issues will mainly concern noise nuisance, light pollution and possibly noxious smells.

8.28 Conditions relating to noise will normally concern steps necessary to control the levels of noise emanating from premises from simple mechanisms like ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated mechanisms like sound level inhibitors on amplification equipment or sound proofing. These should be tailored to the style and characteristics of premises and the type of activities expected to take place there. According to the Institute of Acoustics, the principal sources of potential noise disturbance from pubs, nightclubs and other similar premises are:

- amplified and non-amplified music, singing and speech sourced from inside the premises;
- amplified and non-amplified music, singing and speech sourced from outside the premises;
- the use of gardens and play areas;
- the operation of plant and machinery;
- rowdy behaviour;
- the use of car parks and access roads; and
- delivery and collection activities.

8.29 Some of the reasons which give rise to complaints offer solutions. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent property may be attempting to go to sleep or are sleeping. Accordingly, conditions could focus on these sensitive periods. Conditions relating to noise may also address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.

8.30 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 such issues.

8.31 In the context of preventing public nuisance, it is again essential that conditions are focused on measures with the direct control of the licence holder. Public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the premises management cannot be justified and are of no value. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who disturbs the peace is accountable in his own right. However, it is perfectly reasonable for a licensing authority or responsible authority to impose a condition that requires the licence holder 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 near-by to a peaceful night.

The protection of children from harm

- 8.32 Annex [] provides example conditions which relate to the protection of children from harm. This should be treated as a potential pool of conditions which should be used to tailor appropriate and necessary conditions for premises licences and club premises certificates. It is important that they should not be treated as standard conditions.
- 8.33 The protection of children from harm includes the protection of children from moral, psychological and physical harm, and this would include, for example in the context of film exhibitions, the protection of children from too early an exposure to strong language and sexual expletives.
- 8.34 The Secretary of State intends that the admission of children under the age of eighteen to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions unless there are very good reasons to restrict entry or to exclude children completely. The Government does not want the promotion of child-friendly and family-friendly premises to be frustrated by overly restrictive licence conditions. The changes in the 2003 Act to the law concerning consumption of alcohol by minors on licensed premises now mean the focus for licensing authorities, the police and other authorised persons should be on the enforcement of those laws and not on restrictions which may be unnecessary.
- 8.32 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 Section 4 of this Guidance, issues will arise about the access of children in connection with premises:
- with a history of offences relating to underage drinking
 - with a known association with drug taking or dealing
 - where there is a strong element of gambling on the premises
 - where entertainment of an adult or sexual nature is commonly provided
 - showing films of with age restricted classifications
- 8.33 It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not on others. For example, premises may operate as café bar during the day providing meals for families and provide entertainment with a sexual content after 8.00pm. Similarly, sophisticated 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 holders. But in the exceptional circumstances described above, conditions restricting access or excluding children completely may need to be attached to a premises licence or club premises certificate.

- 8.34 Such conditions can include:
- Limitations on the hours when children may be present
 - Age limitations (below 18)
 - Limitations or exclusions when certain activities are taking place
 - Restrictions or exclusions in respect of parts of premises
 - Requirements for adult supervision
 - Full exclusion of people under 18 from the premises when any licensable activities are taking place
- 8.35 The Secretary of State considers that representations made by the police in respect of individual applications should be given considerable weight when they address issues regarding the admission of children.
- 8.36 Conditions restricting the admission of children to film exhibitions should include the requirement to adhere to either the age-restriction recommendations of the British Board of Film Classification or to similar classifications imposed by local authorities. A condition which adopts the approach of the local authority classifying films should be expressed in terms which require the cinema or venue operator to submit any film that it intends to exhibit 28 days before it is proposed to show it. This is to allow the authority to classify it and to adhere to any age restrictions then imposed.
- 8.37 Films would normally be classified by the British Board of Film Classification or the local authority should be classified in the following way:
- U Universal – suitable for all
 - PG – Parental Guidance. Some scenes may be unsuitable for young children.
 - 12A – Passed only for viewing by unaccompanied persons aged 12 years or older or younger persons accompanied by an adult.
 - 12 – Passed only for viewing by persons aged 12 years or older.
 - 15 – Passed only for viewing by persons aged 15 years and over.
 - 18 – Passed only for viewing by persons aged 18 years and over.
 - Restricted 18 – Passed only for viewing by persons aged 18 years or over who are members of a properly constituted club or their guests aged 18 or over.
- 8.38 Against the background of such classifications, licensing authorities and responsible authorities would need to consider what conditions are necessary to restrict access accordingly. For example, a condition might be expressed in the following terms:

“Where a programme includes a film in the 12, 15 or 18 category no person appearing to be under the age of 12, 15 or 18 as appropriate shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position at each entrance to the premises a notice in the following terms –

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 provided that the prior written consent of the person’s parents or legal guardian has first been obtained.”

- 8.39 Moreover, in connection with a film exhibition, conditions should normally specify that immediately before each exhibition at the premises of a film (other than a current news-reel) passed by the British Board of Film Classification there shall be exhibited on screen for at least ten 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 category of the film. For a film passed by the local authority conditions should require notices to be displayed both inside and outside the premises so that persons entering can readily read them and be aware of the category attached to any film or trailer.
- 8.40 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 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 and appropriate. 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 licences 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.

Safer clubbing – drugs policy

- 8.41 Nightclubs are an inherent part of social life for young people in Britain today. Clubbing provides an opportunity for an estimated 3.8 million people every week to meet up, socialise and dance. One of the objectives of the national 10 year drug strategy ‘Tackling Drugs to Build a Better Britain’, is to tackle drugs in clubs. In 1996 the London Drug Policy Forum produced guidance for clubs called ‘Dance Till Dawn Safely’ which proved to be an extremely useful document for licensing officers, club managers and promoters. Fashions and patterns in clubbing change constantly, and an updated edition of the guidance was

produced recently entitled “Safer Clubbing”. It may be viewed in its complete form at www.doh.gov.uk/drugs/polguide.htm. The Home Office has worked in partnership with the London Drug Policy Forum to produce this update. The consultation process has been thorough and lengthy and it provides practical guidance which is achievable. The purpose of this revised guidance is to improve safety for all club goers and in particular to reduce the range of harms associated with drug use and clubbing. It will be for Drug Action Teams to ensure that the spirit of this guidance is implemented at a local level. Drug use by young people in a club environment poses many challenges to all those responsible for the regulation of nightclubs and other dance venues.

- 8.42 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. A check-list of the most important measures described in “Safer Clubbing” are reproduced in Annex []. 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.
- 8.43 The work of licensing authorities in this connection will go beyond their statutory functions 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 service, club owners and promoters, licensing 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. Attention may need to be paid to dance events which are unlicensed where the safety of clubbers may be particularly at risk. This guidance also recommends that licensees of dance event venues, who have not already done so, should consider developing a drug policy. Such a policy would cover all the issues discussed in “Safer Clubbing” which are relevant to an individual licensee. The development of a drug policy gives licensees the chance to consider carefully all the key issues which affect the safety of their customers who take drugs. It can operate as an effective checklist. However, the development of a drug policy is not a legal requirement.
- 8.44 “Safer Clubbing” is designed to cover dance events taking place at a variety of venues including small and large night clubs, student union bars, arenas and in tents and marquees outdoors. It will be obvious if certain elements of the guidance and advice in “Safer Clubbing” do not apply to some venues. Where the issue is the steps to be taken on premises to promote the licensing objectives, it remains essential that conditions are tailored to the venue and that conditions are only attached where considered necessary.
- 8.45 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. Approximately 80-100 people have died after taking ecstasy 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
- Taking alcohol or other drugs with ecstasy can further cause the body to overheat

8.46 Licensing conditions can directly impact on all these factors. In addition, licensing authorities should 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 apply for a premises licence or club premises certificate
- Providing induction training to councillors serving on licensing panels
- 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
- Ensuring that sufficient medical staff are always present 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 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 are properly trained

Mandatory conditions where a premises licence authorises supply of alcohol

8.47 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 his or her licence has been suspended. 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 does not mean that the condition should require the presence on the premises at all material times of the designated premises supervisor. Such a condition could only be justified if it was necessary for the promotion of one of the licensing objectives. 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 such 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 during the course of an evening, but may be absent from the point of sale. However, the personal licence holder will not be able to escape responsibility for the actions of those he authorises to make such sales.

The performance of plays

8.48 The 2003 Act provides that conditions must not be attached to premises licences of club premises certificates covering the performance of a play as a licensable activity which attempt in anyway to censor or modify the content of plays in any way. Any such condition would be ultra vires the Act.

Censorship

8.49 In general, 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 as defined in the Act. This is not a proper function of licensing law and is 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. But no other limitation should normally be imposed.

Door supervision

8.50 Under the terms of the Act, whenever a condition is included in a premises licence or club premises certificate that at any time individuals must be present at the premises to carry out a security activity (for example, door supervisors), the licence or certificate must include a condition requiring that each such person

must be licensed by the Security Industry Authority. Further details can be found in the Private Security Industry Act 2001 (as amended by the Licensing Act 2003). The 2003 Act also sets out a number of exemptions primarily relating to premises staging plays or exhibiting films.

- 8.51 It is therefore important that conditions are clear and unambiguous about the requirements being included in a licence or certificate. For example, a licence may include a requirement for staff at the premises to be present to undertake a certain activity (for example, in a safety context) or for stewards to organise, advise and direct members of the public. If the licensing authority intends that certain individuals (for example, door supervisors) should carry out security activities as defined in the 2001 Act, this should be explicit and therefore give rise to the need for the mandatory condition. It should be equally clear where such arrangements (and the mandatory condition) are not required.

Copyright and Royalties

- 8.52 Conditions should not require adherence to requirements in the general law that the use of copyright material must be authorised. Copyright law is intended to safeguard the livelihood of authors, composers, arrangers, playwrights, film-makers, publishers and makers of recordings and is extremely important. However, because the existing law protects these rights, a condition included in a premises licence or club premises certificate could not be considered necessary for the promotion of one of the licensing objectives. Licensing authorities should however strongly remind applicants of the need to obtain Performing Right Society Licences and Phonographic Performances Ltd Licences and to observe other copyright arrangements; and that failure to observe the law in this area could lead to the review of the premises licence or the club premises certificate.

Major art and pop festivals, carnivals, fairs and circuses

- 8.53 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 the licensing of those activities falling under the 2003 Act. In respect of some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations within a general area. 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 that will eventually be consulted formally about the proposal.
- 8.54 In 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 such 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.

Discounting and Sales promotions

- 8.55 Because of local concerns about the potential for drunkenness and disorder, licensing authorities may be minded to agree local voluntary Codes of Practice in respect of the discounting of the costs of alcoholic drinks, “happy hours” and sales promotions whereby drinks are offered free in certain circumstances; or to consider adding conditions to premises licences to that end. There will sometimes be fine lines between responsible and irresponsible sales promotions. However, there are strict rules surrounding competition and would be dangers of creating an unlawful cartel. These rules are important for the protection of consumers. Licensing authorities should neither promote local voluntary schemes or include licensing conditions relating to discounting without consulting the Office of Fair Trading to ensure that any proposal is lawful and acceptable. Certain voluntary schemes are considered to be lawful, but expert advice will be needed to judge these matters. Licensing authorities should also note that it is an offence to sell alcohol to a drunken person or to permit disorder on licensed premises and that where the Office of Fair Trading finds a proposed voluntary scheme to be potentially unlawful, consideration should be given to strong enforcement of these offence provisions.

9 Temporary Event Notices

General

- 9.1 This section describes best practice in respect of the system for administering the arrangements in the Act for the temporary sale of alcohol or provision of regulated entertainment or late night refreshment at premises not authorised by a premises licence or club premises certificate.
- 9.2 The most important aspects of the system of temporary event notices are that no permission is required for these events from the licensing authority. In general, only the police may intervene to prevent such an event or modify the arrangements for such an event; and it is characterised by an exceptionally light touch bureaucracy. The licensing authority may only ever intervene itself if the limits on the number of notices that may be given in various circumstances would be exceeded.
- 9.3 Such a light touch is possible because of the limitations directly imposed by the Act itself. The limitations apply to:
- the number of times a person 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 in respect of any particular premises (5 times in a calendar year);
 - the length of time a temporary event may last for these purposes (72 hours); and
 - the scale of the event in terms of the maximum number of people attending at any one time (less than 500).
- 9.4 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 if they do not wish to take advantage of the light touch arrangements.
- 9.5 Many premises users giving temporary event notices will not have commercial backgrounds or ready access to legal advice. They will include, for example, people acting on behalf of charities, community and voluntary groups, schools, churches and hospitals all of which may stage public events to raise funding at which licensable activities will take place. Licensing authorities should therefore ensure that local publicity about the temporary permitted activities is clear and

understandable and should strive to keep the arrangements manageable and user-friendly for these groups.

Where there is a personal licence holder involved

- 9.6 A personal licence holder will be able to sell alcohol at normally unlicensed premises on 50 occasions in each year for up to three days on each occasion, subject to informing the licensing authority and the police for the area in which the event is to take place of relevant details. These details are:
- The licensable activities to take place during the event;
 - The period during which it is proposed to use the premises for licensable activities;
 - the times during the event period that the premises user proposes that the licensable activities shall take place;
 - the maximum number of persons which it is proposed should, during those times, be allowed on the premises at the same time;
 - where the licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises or both; and
 - any other matters prescribed by the Secretary of State.
- 9.7 The Secretary of State does not currently intend to prescribe any further requirements, but any relevant statutory instrument made by the Secretary of State will be notified to the licensing authorities and the police, and may be viewed on the DCMS website.
- 9.8 On each occasion at least 10 working days notice must be given, but there is nothing to prevent simultaneous notification of multiple events at a single time so long as the final 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).
- 9.9 Ten working days is the minimum possible notice that may be given. Licensing authorities should publicise locally their preferences in terms of proper 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.

- 9.10 Licensing authorities may not seek to attach any terms, limitations or restrictions on such events other than those set down in the legislation. 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. Local publicity should also remind notice givers of relevant offences under licensing law including the laws governing sales of alcohol to minors or to any person who is drunk, and of the police powers to close down events with no notice on grounds of disorder, the likelihood of disorder or the because of public nuisance, including noise emanating from the premises.
- 9.11 A purpose of the notification requirement is to enable the licensing authority to check that the limitations set down in the Act are being observed and to intervene if they are not. Where the application is not within the parameters described above, the licensing authority will issue a counter notice to the person giving the notice. Where the 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, the licensing authority will record the notice in its register and send an acknowledgement to the premises user.

Police intervention

- 9.12 The second and more important purpose is to afford the police the opportunity to consider whether, exceptionally, they should prevent the event taking place for reasons of preventing crime and disorder or insist on certain conditions. Such exceptional cases might arise because of concerns about the scale, location or timing of the event. The general run of cases where alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder (eg at weddings or small social, community, charitable or sporting events) should not give rise to the use of the exceptional police powers. The Act provides that in exceptional circumstances, the police may issue an objection notice because they believe the event would undermine the crime prevention objective set out in the Act. The police must issue any objection notice within 48 hours of being notified, but they can subsequently withdraw their counter notice. If the police do not intervene, they will still be able to rely on their powers of closure should disorder or disturbance subsequently arise. The issuing of such an objection notice requires the consideration of the objection by the licensing authority at a hearing. Consideration by the licensing authority is confined to the crime prevention objective. They may not, for example, uphold a police objection notice on grounds of public nuisance. At the hearing, the police and the premises user may put argument to the relevant licensing committee. A hearing would not be necessary if the objection notice is withdrawn by the police.
- 9.13 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.

- 9.14 The police may withdraw their counter notice at any stage if the proposed premises user agrees to modify his proposal to meet their concerns. For example, if the premises user agrees to modify the period during which alcohol may be sold.

Where no personal licence holder is involved

- 9.15 The Act provides that any person 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 these tests and qualifications, the Act limits the number of notices that may be given by any non-personal licence holder. In every other respect, the Guidance and information set out in paragraphs 9.5 to 9.12 above applies.
- 9.16 The police will be alive to notifications given by individuals in the area known to have a criminal background. They will also give particular attention to events staged primarily for children and will be able to intervene, for example, if they have exceptional concerns about any premises user with a known background in paedophilia.

Additional limitations

- 9.17 Licensing authorities on receiving temporary event notices will also need to check that other requirements of the Act are met. For example, a temporary event notice would be void unless there is a minimum of 24 hours between events notified by the premises user in respect of the same premises. This to prevent evasion of the 72 hour limit on such events and the need to obtain a full premises licence for more major 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 Act defines an associate as being:

- the spouse of that person;
- a child, parent, grandchild, grandparent, brother or sister of that person or their spouse; or
- an agent or employee of that person or their spouse;

A person living with another person as his or her husband or wife is treated for these purposes as his or her spouse.

Closures of temporary events by the police

- 9.18 In October 2001, the Government issued non-statutory Guidance to police officers in respect of section 17 of the Criminal Justice and Police Act 2001, which concerned their powers to close without notice for up to 24 hours certain licensed premises that were disorderly, likely to become disorderly or causing noise nuisance. The 2003 Act extended these powers to cover events covered by temporary event notices. The original Guidance has been replaced to reflect the

terms of Part 8 of the 2003 Act and the details are set out in Section 12 of this Guidance. [*Current Guidance viewable on the DCMS website*].

10 Club Premises Certificates

General

- 10.1 The 2003 Act recognises that private premises, to which public access is restricted and where alcohol is supplied other than for profit, give rise to different issues for licensing law than those presented by commercial enterprises selling direct to the public. For this reason, it preserves aspects of earlier alcohol licensing law as it applied to “registered members clubs”. These clubs are organisations where members have joined together for particular social or political purposes and then combined to buy alcohol in bulk. 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.
- 10.2 There are technically no sales of alcohol at such premises except to guests. Where members are involved, 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 Act often refers to the supply of alcohol and not just to the sale.
- 10.3 Clubs have traditionally not been “licensed” because “sales” do not take place there. They have registered with the courts having established that they qualify to be treated exceptionally. The Act preserves this special treatment and requires the club to “qualify” to be outside the normal premises licence arrangements. The grant of a club premises certificates means that a qualifying club is entitled to certain benefits. These include:
- the authority to supply alcohol to members and sell it to guests without the need for any member or employee to hold a personal licence;
 - the absence of a requirement to specify a designated premises supervisor;
 - more limited rights of entry for the police and authorised persons because the premises are private and not generally open to the public;
 - not being subject to police powers of instant closure on grounds of disorder and nuisance because they operate under their codes of discipline and rules which are rigorously enforced; and
 - not being subject to potential orders of the magistrates’ court for the closure of all licensed premises in an area when disorder is happening or expected.

- 10.4 Such qualifying clubs should not be confused with proprietary clubs, which are clubs run commercially by individuals or businesses for the purposes of profit and which require normal premises licences.
- 10.5 Any qualifying club may choose to obtain a full premises licence if it decides that it wishes to offer its facilities commercially for use by the general public.
- 10.6 Previously, registered members clubs also enjoyed another privilege of being outside the normal licensing regime: the freedom to sell alcohol to minors and allow them to consume it on the club premises. Although in recent years most clubs have operated voluntary rules which prohibit sales and supply to those under 18 years old, the Act has removed this privilege and the sale or supply of alcohol to children in such clubs is now unlawful.
- 10.7 The new authority for the supply of alcohol and provision of other licensable activities on qualifying club premises will be a club premises certificate and this will be issued by the licensing authority.

Qualifying conditions

- 10.8 Section 61 of the 2003 Act sets out five general qualifying conditions which a relevant club must meet. Section 62 also provides advice to licensing authorities to enable them to determine whether a club is established and conducted in good faith – the third qualifying condition. Section 63 sets out additional qualifying conditions which apply solely to clubs intending to supply alcohol to members and guests. The full details in respect of these sections of the Act are reproduced in Annex [].

Associate members and guests

- 10.9 As well as their own members and guests, qualifying clubs are also able to admit associate members and their guests without compromising their club premises certificate. This reflects traditional arrangements where such clubs make their facilities open to members of other clubs who operate reciprocal arrangements.

Applications for the Grant or Variation of Club Premises Certificates

- 10.10 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those in respect of a premises licence. Licensing authorities should therefore look to Section 6 of this Guidance for advice and guidance on the handling of such applications and to Section 7 in respect of hours of opening.

Steps needed to promote the licensing objectives

- 10.11 Operating schedules prepared by clubs, as with 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 representations by responsible authorities or interested parties and a hearing at which the parties

have had an opportunity to present argument. Advice and guidance on these conditions is given in Section 8 of this guidance.

- 10.12 The Secretary of State wishes to emphasise that non-profit making clubs have made 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 private premises and they operate under codes of discipline applying to members and their families. In determining what conditions should be included in certificates, licensing authorities should bear these matters in mind and conditions should not be attached 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 as would be the case for commercial enterprises.

Sex equality

- 10.13 Notwithstanding its importance to society generally, equal treatment for people of different gender is not a licensing objective. Conditions should not therefore be imposed which interfere with the arrangements for granting membership or voting within the club. While 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, this a matter for the general law governing equality. Club premises certificates are not an appropriate vehicle for securing equality. 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.

11 Appeals

General

- 11.1 Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 of the 2003 Act. Full details concerning the interpretation of the Schedule are given in Section 3 of this Guidance.
- 11.2 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 area in which the licensing authority (or any part of it) is situated.
- 11.3 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 appealed against.
- 11.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant against the representations of a responsible authority or an interested party, the holder of the premises licence or club premises certificate will also be entitled to act as a respondent.
- 11.5 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.
- 11.6 The court may make such order as to costs as it thinks fit.
- 11.7 Any appeal may therefore review the merits of the decision on the facts and consider points of law or address both.

Giving reasons for decisions

- 11.8 In anticipation of such appeals, it is therefore important that licensing authorities should give comprehensive reasons for its decisions. Failure to give adequate reasons could itself give rise to grounds for an appeal. On making findings of fact in its reasons, licensing authorities should also ensure that they address the

standard of proof and the burden of proof that they have adopted. 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 the Guidance issued by the Secretary of State under section 177.

Implementing the determination of the magistrates' courts

- 11.9 As soon as the determination of the magistrates' courts has been promulgated, licensing authorities should not delay its implementation. Any attempt to delay such implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the determination, necessary action should be taken forthwith unless ordered by a higher court to suspend such action (for example, as a result of an on-going judicial review). The Act provides for no further appeal against the determination of the magistrates' courts.

12 Police Powers to Close Premises

General

- 12.1 Part 8 of the Licensing Act 2003 significantly extends the existing powers of the police (a) to seek court orders closing licensed premises in a geographical area that is experiencing or likely to experience disorder; and (b) to close down instantly individual licensed premises that are disorderly, likely to become disorderly or are causing nuisance as a result of noise from the premises by making these powers available in relation to premises licensed for the provision of regulated entertainment and late night refreshment. Ministers have previously given undertakings to Parliament that guidance would be issued to police officers about the operation of those powers. Section 12 of this Guidance therefore constitutes that guidance.
- 12.2 This guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. The guidance is provided to support and assist police officers in interpreting and implementing Part 8 of the 2003 Act in the interests of public safety, the prevention of crime and disorder and the reduction of anti-social and noise nuisance behaviour.
- 12.3 It is recognised that this guidance cannot cater for every circumstance and that instances may arise where officers will determine the need to operate in ways which will not wholly conform to this guidance. However, at all times, senior police officers deploying the powers in question should seek to ensure that their actions are appropriate, proportionate and necessary in all the circumstances obtaining.
- 12.4 Police officers reading this guidance may also find it beneficial to familiarise themselves with the terms of:
- Section 3 of this Guidance which aids the interpretation of the relevant sections of the 2003 Act
 - Part 3 of the Environmental Protection Act 1990; and
 - The Noise Act 1996
- 12.5 Since 1872, the right of licensees to sell and supply alcohol to the general public has co-existed alongside a number of offences which may be committed in the course of exercising that right, and the licensed trade has long understood these social responsibilities. Part 7 of the 2003 Act provides that licensees and managers of licensed premises commit offences if they allow disorderly conduct on licensed premises or if they sell alcohol to a person who is intoxicated. These offences may also be committed by licensees and managers not necessarily selling alcohol but providing other licensable activities under the Act, as well as the

premises user who has given a temporary event notice under Part 5 of the Act. Running alongside these offences, however, are powers afforded to licensees and managers to expel from premises those who are drunk and disorderly.

- 12.6 The extended police powers in Part 8 of the 2003 Act underline the social responsibilities and requirement to maintain order at their premises which fall on the hospitality, leisure and entertainment industry; and the need to enforce the new provisions will usually arise where there has been a failure to comply with the duties referred to above.
- 12.7 The arrangements in section 157 (orders to close premises in an area experiencing or expected to experience disorder) will generally be used by the police, with the sanction of the courts, where contingency planning is possible, though may be used in emergency too. The arrangements in sections 158 – 167 will generally be used only where unanticipated events arise and emergency action proves necessary.
- 12.8 The Government intend that the extended police powers contained in sections 158 - 167 of the 2003 Act should place licensees, those giving temporary event notices and managers of premises under pressure to maintain order and minimise anti-social behaviour on licensed premises, and thereby to deter disorder and nuisance behaviour often caused by excessive consumption of alcohol. The powers are intended to make these individuals more alive to their responsibilities to the wider community. As such the potential as well as the actual use by the police of these powers should itself be beneficial in terms of preventing disorder on and excessive noise nuisance from the relevant premises. The powers therefore have significant deterrent value. In addition, an effective police licensing policy, promoting good crime prevention strategies and professional practice among holders of premises licences and designated premises supervisors, should result in the extended powers being used minimally. Good practice should involve an effective working liaison and system of communication between the police and managers of licensed premises. It is recognised that a great deal will depend on the willingness of licensees to involve themselves in a partnership approach, but those licensees who fail to take a socially responsible attitude will place themselves at greater risk of police action under these powers than other licensees who actively co-operate.

Orders to close premises in area experiencing disorder

- 12.9 Section 157 replaces and extends the longstanding powers of section 188 of the Licensing Act 1964. Under section 157 a senior police officer of the rank of superintendent or above may ask a magistrates' court to make an order requiring all premises holding premises licences or subject to a temporary event notice which are situated at or near the place of the disorder or anticipated disorder to be closed for a period up to 24 hours. The court may not make such an order unless it is satisfied that it is necessary to prevent disorder. A constable may use necessary force to the close any premises covered by such an order.
- 12.10 Such orders should therefore normally be sought where public order problems are anticipated, as a result of intelligence or publicly available information, which may very often be fuelled by the ready availability of alcohol. Examples of future

events which might justify action by the police under section 157 could include football fixtures with a history of public order problems; and political demonstrations which are thought likely to be hi-jacked by extreme and violent groups. Accordingly, if a football match is taking place on Saturday, and intelligence is received on the preceding Thursday, which indicates that fans may cause disorder, a senior police officer should not rely on the powers in sections 158 – 167 of the 2003 Act (instant closure without court involvement) on that Thursday specifying closure of premises near the football ground during the following Saturday. This is because the orders under sections 158 - 167 must be made and served at the time senior police officer forms his or her reasonable belief, and such orders will come into force as soon as they are served. Where it is possible to anticipate disorder in this way, the courts should be involved and make the final decision as to whether widespread closure is justified.

- 12.11 When seeking an order under section 157, the burden of proof will fall on the police to satisfy the court on the balance of probability that their intelligence or evidence is sufficient to demonstrate that such action is necessary. Senior police officers should recognise that such action may do serious damage to the businesses affected and disrupt the activities of consumers and other law-abiding citizens. It is therefore essential that orders are sought only where absolutely necessary for the protection of the public and the community.
- 12.12 Where serious disorder is anticipated, many holders of premises licences and premises users who have given temporary event notices will want to co-operate with the police, not least for the protection of their premises and customers. So far as possible, and where time is available, police officers should initially seek voluntary agreement to closure in an area for a particular period of time. The courts should therefore only be involved where other alternatives are not available.

Closure orders for identified premises

- 12.13 Disorder and noise disturbance will more commonly arise in circumstances that cannot readily be anticipated. Section 158 provides that a senior police officer of the rank of inspector or above may make an order closing individual premises covered by premises licences or a temporary event notice for up to 24 hours where disorder is taking place, or is likely to take place or a nuisance is being caused by noise emanating from the premises. Such orders may only be made where it is necessary in the interests of public safety or to prevent the nuisance caused by noise coming from the premises.

Conduct of the premises licence holder

- 12.14 Section 158 of the 2003 Act also provides that the senior police officer must consider the licensee's conduct and that of the manager or designated premises supervisor before making a closure order. This means that if the licensee or manager or designated premises supervisor has acted incompetently, inadequately or has actually provoked or caused the problems, the officer may take that into account when deciding if to make a closure order. On the other side of the coin, if the licensee, manager or designated premises supervisor has called the police in promptly and acted sensibly in his or her attempts to prevent disorder or excessive noise, that good conduct should also be taken into account.

- 12.15 In this context, it must be understood that the powers to close licensed premises are not a penalty to be imposed on the licensee. Part 7 of the 2003 Act contains offences of allowing disorderly conduct on licensed premises for which, on conviction, a court may impose an appropriate penalty on a licensee. Similarly, the Environmental Protection Act 1990 and the Noise Act 1996 provide for penalties to be imposed by the courts on those who are convicted of causing noise nuisance. The powers in sections 158 - 167 are, first and foremost, designed to protect the public whether a licensee or manager or any other person is at fault or not. This means that even if the licensee has done all he or she can to prevent the disorder or excessive noise, a senior police officer may on occasions, still believe that closure is necessary to safeguard the public or to prevent the public nuisance. These will be fine judgements, appropriately pitched at a senior police rank. But the police's overriding consideration should always be the public interest.
- 12.16 However, police officers should bear in mind that decisions to close licensed premises will almost always have a seriously damaging commercial impact on the business involved, and possibly on the livelihoods of licensees, managers and members of staff or disrupt a community or charitable event that has been planned for a considerable period of time. It should be noted in this context that premises holding premises licences will normally be legitimate commercial outlets authorised by the licensing authority to sell and supply alcohol, provide regulated entertainment or late night refreshment. The Act therefore requires the senior police officer to consider whether good or bad practice on the part of the licensee/manager/designated premises supervisor has been exhibited in the context of the problem being investigated. It is therefore important that not only bad practice is considered; good practice, conduct and intentions should normally weigh in favour of a decision not to proceed by compulsory closure of the premises under a police order. On many occasions, other options will be available to the police, some of which are discussed below.

“In the vicinity” of licensed premises

- 12.17 A closure order may be made on grounds of disorder, related to the premises, on or in the vicinity of the premises. A question therefore arises as to how far from the premises incidents can take place and still fall within the term “in the vicinity of”. Whether or not an incident is “in the vicinity of” and “related to” the licensed premises are ultimately matters of fact to be decided by the courts. However, it is important to note that the provisions require a causal connection between any disorder or likely disorder and the licensed premises themselves. The senior police officer cannot close the premises unless “closure is necessary in the interests of public safety.” Accordingly, closure of those particular premises must directly impact on the danger to the public being caused by the disorder, or likely disorder, taking place or expected to take place in the vicinity of the premises. The disorder and the premises must therefore be connected. This issue also arises in the context of any extension of a closure order.
- 12.18 Some licensees and managers of licensed premises may consider it unfair that they should be held accountable for incidents taking place outside their control.

However, as explained elsewhere, closure orders were not designed as penalties but as a means of ensuring public safety and the prevention of public nuisance.

- 12.19 It should also be noted that the interpretation of “in the vicinity” does not arise in the context of “nuisance caused by noise coming from premises” because section 158 requires that the noise is emanating from the premises rather than any other source. In other words, noise from the premises itself and from the curtilage of the premises is relevant: noise from customers in the street beyond the curtilage of the premises cannot be taken into account.

“Likely” disorder

- 12.20 A further question arises as to when any future disorder is likely to take place to justify a closure order being made. The Act requires that the disorder should be likely to be imminent. As said in the geographical context, there also has to be a causal connection between the likely disorder and the particular licensed premises involved, which makes closure of those particular premises necessary in the interests of public safety. This means that the expected incident must be imminent and closure of the licensed premises should actively diminish the probability that disorder will take place in the immediate future.

“Nuisance caused by noise coming from the premises”

- 12.21 The Act does not define the term “nuisance”. Parliament has decided not to constrain the police by providing a more restrictive definition. This means that senior police officers are required to judge reasonably whether the noise is causing a nuisance. Such judgements will inevitably have a subjective quality and officers will need to bring their experience to bear in making them. However, it is important to note that the “noise” in question must be “emitted” from the licensed premises. Noise disturbance arising solely from people in the street outside licensed premises would not be sufficient to justify the use of these powers. In addition, the power should only be used where the senior police officer reasonably believes that a disturbance is being caused to the public. Accordingly, the senior police officer should normally have cause to believe that particular individuals in the vicinity are being annoyed by the noise from the licensed premises. Liaison with local government enforcement officers with existing powers for controlling noise nuisance would therefore be beneficial. It will ultimately be for senior police officers to decide, in the circumstances of any case, whether it is appropriate for them to deploy these powers, which could ultimately lead to the revocation of the premises licence for the premises affected, or to refer complaints from local residents to the local authority for action to be taken in the normal way.

Enforcing a Closure Order

- 12.22 The Act does not require the licensee or the police to clear the premises of customers following the service of a closure order. It is assumed that normally premises would empty, there being no purpose to the presence of customers if items, licensable activities or facilities normally sold, supplied or provided on the

premises may no longer be sold, supplied or provided. However, a customer commits no offence if he is not asked to leave and remains on the premises. The licensee or manager of the premises similarly commit no offence arising from the mere presence of such an individual. However, if an individual who is drunk or disorderly is asked to leave by the licensee or manager and then refuses to leave, he or she does become liable to prosecution. Where a licensee or manager asks a police officer for assistance to remove such a customer, the officer is under a statutory duty to afford that assistance.

- 12.23 The lack of any duty on customers to leave the premises automatically following the service of a closure order is important. The police have existing powers to clear an area if disorder is taking place, and need no additional powers under the new Act to do so. However, it would be equally open to the police to propose a phased emptying of larger premises for the purpose of dispersing, for example, disorderly gangs separately or because it is in the interests of public safety to keep law-abiding customers inside for a temporary period while troublemakers outside are dispersed by the police.
- 12.24 It should also be noted that “premises” for the purposes of the Act includes any place. Some premises licences and temporary event notices relate to places wholly or mainly in the open air, like a park or recreation ground. If the police consider it necessary to clear such an area, they will need to consider carefully the resource implications of enforcement, particularly where there are a large number of ways of accessing the area.
- 12.25 The police officers involved should also recognise that closing premises will sometimes involve putting a potentially volatile and disgruntled group of customers onto the streets. In this context, if possible, it is good practice to ensure that other licensed premises nearby are warned so far as possible of the action being taken and of licensees’ obligation not to admit disorderly customers. Under the Act, police officers are under a duty, when requested by a licensee or manager of licensed premises, to assist in ensuring that drunken or disorderly persons are expelled from licensed premises, and police officers should therefore offer assistance when necessary in preventing the entry of troublemakers to other licensed premises who might be seeking to cause new problems elsewhere.
- 12.26 Police officers are also reminded that, particularly where large capacity venues are involved, they may need additional police assistance to clear the resulting crowd and the availability of that assistance should be considered before any decision is made to make a closure order.

Length of Police Closure Order

- 12.27 The duration of the order cannot exceed 24 hours. However, it is important to note that this does not mean that the length of the closure should automatically be set for 24 hours on every occasion. The criteria for making a closure order, places an obligation on the senior police officer to close the premises for the period he/she estimates it would take to end the threat to public safety, or as the case may be, the disturbance to local residents. In practice, therefore, closure orders could last between 30 minutes and 24 hours depending on the

circumstances of each case. The same obligation to limit the closure also exists in respect of any extension of the closure order.

- 12.28 If, for example, a closure is made at 9pm on a Monday evening because of disorder caused by gangs fighting in a public house, closure might only be appropriate for up to the time when the premises licence requires the premises to close, perhaps midnight. This could be because the senior police officer reasonably believes that there is a threat of gang members (those not arrested) returning to the premises before closing time but after the police have left. However, if the threat is expected to have subsided by closing time, it would probably not be appropriate to impose a closure for a period extending into the following day.

The “manager” of the premises

- 12.29 The Act refers to the “manager of the premises” who is defined as any person who works in the relevant premises in a capacity, whether paid or unpaid, which gives him authority to close the premises. This is particularly relevant to the arrangements for serving a closure order. It is not therefore relevant whether or not the individual has the expression “manager” in his or her job title or description. If the holder of a premises licence or the designated premises supervisor or premises user has left any member of staff in charge of the premises, with responsibility at that time for compliance with the licensing laws, that person will normally have been given the authority to close the premises in compliance that law. Accordingly, the individual would have the delegated authority to close the premises and could therefore be served with notice of a closure order in respect of the premises.

Service of closure orders when a decision has been made remotely

- 12.30 Where a senior police officer makes a decision to close licensed premises in accordance with the Act, notice of the closure order, providing the required written details, may be served by any constable on the holder of the premises licence, the designated premises supervisor, premises user or the manager of the relevant premises. In this context, it should be noted that the senior police officer does not have to be present at the premises to authorise service of an order. He may make his decision on the basis on information supplied to him by other police officers. The decision remains his and he remains accountable for that decision. This is particularly important in rural areas where an inspector might otherwise need to make a seventy mile round trip to consider making an order allowing an unreasonable period to pass during which public safety might be at risk. A specimen of a closure order is attached to this guidance at Annex [].
- 12.31 Senior police officers should, as a matter of good practice, attempt to attend wherever possible in order to make a full and personal assessment. Parliament considered that only officers of these ranks and experience should make these decisions because of the serious potential consequences of the decision made. As explained above, it is of course recognised that it will be difficult for officers, particularly in rural force areas, to attend on every occasion. Where the relevant

senior officer cannot attend, it will be important that the information passed to the relevant senior officer is comprehensive and contemporaneously recorded, so that he or she can be clear about the reasons which gave rise to his or her decision under the terms of the Act when required to present them to the relevant magistrates' court.

Service of closure orders generally

12.32 Notice of a closure order must always be given in writing. "Given", in this context, should normally involve personal service and means therefore that the notice should normally be handed by the police officer to the holder of the premises licence, designated premises supervisor, premises user or the manager of the premises. If a licensee or manager of the premises refuses to accept the written notice of a closure order, the fact should be noted so that it might be made known to the relevant magistrates' court at the hearing that will follow. The written notice should then be left in plain sight of the relevant person on whom it is being served. He or she should also be advised orally that the notice contains details of his rights and duties under the Act.

Relationship with local licensees and managers

12.33 It is important that the closure powers should not in any way be allowed to drive a wedge between the police and local licensees and managers. It would be damaging to the police's capacity to control public order and drunkenness, if licensees or managers, when appropriate, were reluctant to call the police to attend when incidents are taking place because they feared that the police would close their premises. Licensees should be encouraged to give the police early warning of developing problems, where appropriate allowing police intervention before an incident is allowed to get out of hand. The Government fully supports initiatives like Pubwatch, and wishes to see them develop and thrive.

12.34 It is recognised that the role of the police in enforcing licensing law will vary between force areas. For all police forces, resources will be a key issue and senior officers will have to make difficult decisions about prioritisation according to the prevailing circumstances in any area. However, as a minimum, it is good practice to provide a support and advisory role for licensees and managers. Licensees should know what is expected of them by local police officers in terms of clear standards with regard to the prevention of crime and disorder, particularly with regard to alcohol-related crime and disorder and anti-social behaviour. Police officers should therefore always be willing to offer advice to licensees on problems associated with these matters.

Voluntary Co-operation

12.35 The police should therefore, whenever possible, seek the voluntary co-operation of licensees, premises users and managers in resolving incidents of disorder, potential disorder and noise nuisance.

12.36 Police officers should be aware that any decision to deploy the powers available to them under the 2003 Act will inevitably lead, after an initial hearing before the courts, to the licensing authority determining whether or not to exercise their

powers to revoke the licence in question. A decision by the licensing authority to proceed on that basis will therefore involve police attendance at the hearing and the preparation of material relating to the revocation proceedings. Senior police officers will only want to commit such resources if necessary and justified in the public interest.

- 12.37 If police officers are aware that any premises are showing signs of problematic behaviour relating to disorder, excessive drunkenness or noise which is disturbing local residents, it is sensible to provide early reminders and warnings to licensees, managers and designated premises supervisors of their responsibilities and duties under licensing law; and of the police powers of closure. It should also be underlined that if the police are obliged to deploy their powers, the ultimate consequences could include revocation of the premises licence, and closure of the premises until the conclusion of any appeal proceedings before the courts.
- 12.38 Similarly, where despite warnings, licensed premises exhibit problems over a period of time, but no single instance is sufficient in itself to justify closure action, it is open to the police to seek a review of the premises licence in the normal way.
- 12.39 Where the police attend an incident, following complaints about disorder or disturbance to local residents, or attend at the request of the licensee, and a senior police officer of inspector rank or above reasonably believes that closure is necessary under the terms of the Act, police officers should advise the licensee, premises user or manager of the premises immediately. Wherever possible, police officers should then give the licensee, manager or designated premises supervisor an opportunity to close the premises voluntarily, on police advice, until the following day. A closure order will normally only have to be made if police advice is disputed or rejected and it becomes necessary to take action to enforce closure. When giving advice to close voluntarily, police officers should make clear that they are not engaging in a negotiation. The view of the senior police officer will be final until a court decides otherwise.
- 12.40 However, even if the licensee or manager is willing to close voluntarily, it will remain open to the senior police officer to decide to serve a closure order, if he or she judges that to be the right course of action in all the circumstances. It is recognised that circumstances could arise which necessitate such action.
- 12.41 Against this background, police officers should also note that a decision not to make a closure order or to agree to voluntary closure will not prevent a later decision to seek a review of the premises licence by the licensing authority, if that course of action is judged appropriate.

Nearby licensed premises

- 12.42 Where disorder is taking place or is expected to take place imminently in the vicinity of several adjacent or closely situated premises, there are likely to be occasions when the responsible senior police officer reasonably concludes that the closure of all the closely situated licensed premises is necessary in the interests of public safety. However, the same course of action in the case of each of the premises should not necessarily be automatic. For example, if one of the

designated premises supervisors is prepared to close his premises voluntarily or has been more proactive than another in seeking to prevent disorder, the senior police officer may reasonably decide not to make a closure order in respect of those premises, while deciding to enforce the closure of others. Where several closures are pursued simultaneously, a separate closure order must be made in respect of each of the licensed premises, and each would be the subject of the court processes which automatically flow from such action

Noise nuisance and liaison with the local authority

- 12.43 The powers include the capacity to close licensed premises to prevent nuisance to the public which is the result of noise coming from the premises. The Act does not define what constitutes nuisance. Ultimately, nuisance will be a matter of fact to be decided by the courts in any case. However, senior police officers will need to use their own experience and common sense to decide when noise levels reaching outside the premises have become unacceptable.
- 12.44 The enforcement of the law relating to noise nuisance legislation is primarily a matter for local authority officers, some times working in tandem with police officers. Their powers to take quick action to resolve noise nuisance are however limited, particularly where the noise from commercial premises is caused by people rather than amplified electronic equipment. The new police powers offer a means of resolving noise nuisance problems from licensed premises quickly.
- 12.45 The Act anticipates that any noise coming from the premises should be disturbing members of public, for example, in the street or residing locally – otherwise it could not constitute a nuisance. In practice therefore, it is likely to be that the police will usually take action under their powers following complaints made by the general public. Such complaints may, in certain circumstances, be channelled to the police by local authority officers who may initially be the natural point of contact for a complainant. However, the decision as to whether the noise constitutes a nuisance is a matter for the senior police officer him- or herself to decide, and no formal complaint from any individual is necessary before the powers may be exercised. Given their experience of noise problems, the officer may find it helpful to consult local authority enforcement officers, if available, before making a decision about the level of noise involved. On occasions, such consultation in respect of an incident which is ongoing may prove impossible without an unacceptable delay.
- 12.46 There is therefore some advantage in police forces discussing these matters generally with the local authority to draw on their experience and establish guidelines for officers about noise issues. Chief officers of police may find it valuable and helpful to agree a protocol with the local authority for the handling of noise nuisance issues associated with premises licensed under the 2003 Act or in respect of premises operating under temporary event notices. This would enable a consistent approach to be taken by the police and other local authority enforcement officers.
- 12.47 Where problems are noise related, there should often be scope for resolving the problem without the need to impose a closure order. In this context, police officers should consider those parts of this guidance dealing with voluntary co-

operation. For example, noise problems can arise during summer months because of doors or windows left open or customers drinking or enjoying entertainment within the curtilage of the premises. It would be open to the police to request the designated premises supervisor or manager of the premises to close the doors and windows, or to require customers to remain inside. If the licensee or manager complies and the officer is then satisfied that these actions would prevent further disturbance to the public, there may be no need to make a closure order.

Stating the Effects of sections 159 to 165 of the 2003 Act

12.48 A closure order must contain details of the premises which are to be closed; the period for which the order is requiring them to be closed up to 24 hours; the grounds or reasons for the decision; and the effect of sections 159 to 165 of the 2003 Act. Annex [] to this guidance provides a specimen of what a closure order should look like, and provides a statement of the effect of sections 159 to 165 of the 2003 Act. It is open to the police forces to take their own legal advice as to what the statement should include. However, it is important that it covers the crucial areas shown in Annex [] and in particular, that licensees fully understand the consequences of committing the offences associated with failure to comply with a closure order made by the police and extended by the police or the courts.

13 Sale and Supply of Alcohol to Minors

General

- 13.1 Section 181 provides that proceedings for any offences in the 2003 Act may be instituted by a licensing authority as well as the DPP, and by trading standards officers in certain circumstances.
- 13.2 Full details of the offences are provided in Section 3 of this Guidance.
- 13.3 The purchase and consumption of alcohol by minors is matter of considerable concern to the Government. Research indicates that too early an exposure to alcohol can damage health, educational attainment, and job prospects and increase an individual's propensity for crime and other substance abuse. A good indicator of the extent of the problem is the Department of Health's annual, nationally representative school survey looking at smoking, drinking and drug use among young people in England. Questions were last asked about purchasing alcohol in the 2000 survey. In 2000, information was obtained from 7,000 pupils in 225 schools throughout England during the autumn term of 2000 using a confidential questionnaire. The survey found that 46% of 11-15 year olds reported never buying alcohol. Of those 11-15 year olds who did buy alcohol, 9% bought it from a pub or bar, 7% from a club or disco, 17% from an off-licence, 9% from a shop or supermarket, 17% from a friend or relative and 8% from somewhere else. The percentages total more than 100, because pupils are free to give more than one answer.
- 13.4 The Home Office also collects data relating to offences of selling intoxicating liquor to persons under 18 as well as persons under 18 buying intoxicating liquor. In 2000, 130 persons were proceeded against and 56 found guilty of 'Selling etc., intoxicating liquor to persons under 18 for consumption on the premises'. Twenty-four persons were proceeded against and 22 found guilty of 'Person under 18 buying or consuming intoxicating liquor in licensed premises'. These numbers do not provide an accurate measure of the number of incidents of minors buying alcohol as most cases will either not be identified or will not reach prosecution stage. Furthermore, a comparison of the two sets of data suggests that this area of the law has not been effectively enforced.
- 13.5 The introduction of the Licensing (Young Persons) Act 2000 made it an offence for any person (and not just licensees and their "servants") to sell alcohol to an under 18 on licensed premises, or knowingly allowing another person to do so. It also created the offence of buying, or attempting to buy, alcohol on licensed premises on behalf of a person under 18. The Criminal Justice and Police Act 2001 strengthened the positive duty on licensees and their staff not to sell alcohol to under 18's and for the first time, placed the test purchasing of alcohol on a statutory footing. The Government's intention behind the test purchasing

measure was to increase the risk of detection and therefore increase the deterrent effects of the law on retailers.

- 13.6 The 2003 Act builds on these developments by providing for the first time ever that a person commits an offence if he sells alcohol to an individual aged under 18 anywhere. It also, for the first time, makes it an offence to supply alcohol to a minor on premises where supplies of alcohol are authorised by a club premises certificate. These provisions remove a range of exemptions that previously existed. Licensing authorities will however be concerned primarily with the sale and consumption of alcohol on premises licensed under a premises licence or where it is authorised by the giving of a temporary event notice or where the supply of alcohol is authorised by a club premises certificate.
- 13.7 Licensing authorities should maintain close liaison with both the police and trading standards officers about the extent of unlawful sale and consumption of alcohol to minors and 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 in respect of offences prior to any decision to prosecute in respect of a further offence, it is important that each of the enforcement arms should be aware of the warnings each has given.
- 13.8 The Government primarily sees the development of these offences as having a deterrent effect on sales of alcohol to minors by raising the risk of detection and by making the consequences significant. The Government is not calling for an oppressive regime of constant test purchasing exercises in all licensed premises. The need for and extent of test purchasing operations in any area is a matter for the police and trading standards officers to judge on the basis of their local knowledge, which will establish priorities.

Defences

- 13.9 The 2003 Act provides a defence if the seller believed that the purchaser of the alcohol was 18 or over and either he took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from the purchaser's appearance that he was under 18. The second limb of that defence would cover a case where the purchaser who was under 18 looked exceptionally old for his age. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age. This reflects the Government's strong support for the existing voluntary proof of age card schemes. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence will fail.
- 13.10 A further defence is provided in circumstances where the sale or supply was made by someone other than the person charged with the offence (for example, where a barman makes a sale having been told by his manager that he knows the purchaser is 18 or over) if the person charged exercised all due diligence to avoid committing the offence.

Allowing sale of alcohol to children

- 13.11 It is an offence to knowingly allow the sale (or in, the case of clubs, the supply) of alcohol to a child, on relevant premises. The only people who can commit this offence are those who work at the premises in a capacity that gives them the authority to prevent the sale (or supply); and, in the case of a supply by or on behalf of a club, an officer or member of the club who is present at the time of the supply in a capacity that gives him authority to prevent that supply.

Sale of liqueur confectionery to children under 16

- 13.12 The definition of liqueur confectionery is given in section 186(2) of the Act. It is an offence to sell liqueur confectionery to a child under 16, or for a club or person on behalf of a club to supply it to or to the order of such a child. A defence is provided if the seller believed that the purchaser was 16 or over and if either he took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he was under 16. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age, and that evidence was such that it would have convinced a reasonable person. Section 145(5) provides a further defence in circumstances where the sale or supply was made by the accused for reason of the act or default of another, if the person charged exercised all due diligence to avoid committing the offence.
- 13.13 It is important to note that the exemption which permits children aged under 18 to buy alcohol in the form of liqueur chocolates does not extend to any other foodstuffs which contain alcohol.

Purchase of alcohol by or on behalf of children

- 13.14 The 2003 Act also makes it an offence for a child to buy or attempt to buy alcohol whether or not on licensed premises, or, if he is a member of a club, for him to have alcohol supplied to him by the club (in circumstances where he actively caused the supply) or attempts to do so. The offence will not be committed if the child was asked by a police constable or trading standards officer, acting in the course of their duty, to buy or attempt to buy alcohol in order to conduct test purchasing operations to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales. It is important for enforcement officers to have regard to the LACORS/TSI Code of Best Practice on test purchasing operations which includes advice on the protection of children engaged in such operations.
- 13.15 The Act also makes it an offence for a person to act as an agent for a child in purchasing or attempting to purchase alcohol, for example, if a child gives money to an adult to buy alcohol in an off-licence for consumption by the child. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.
- 13.16 A further offence occurs if a person buys or attempts to buy alcohol for consumption by a child on licensed premises, for example, where a father buys a drink for his son under eighteen in a pub. The offence also applies where a

member of a club has alcohol supplied to a child (in circumstances where he actively caused the supply) or attempts to do so. There is an exemption provided in respect of these offences so that they would not be committed if a person aged 18 or over buys beer, wine or cider for a person aged 16 or 17 to consume with a table meal on relevant premises, in circumstances where the 16 or 17 year old is accompanied by an adult. Licensing authorities should note that the exemption only applies while a table meal is being consumed. It would not be sufficient for a person to claim that bar snacks amounted to a table meal.

Consumption of alcohol by children

13.17 Under the Act it is an offence for a minor knowingly to consume alcohol on relevant premises, which are places licensed by a premises licence, or providing licensable activities under the authority of a temporary event notice or qualifying club activities under a club premises certificate. The offence is not committed if the child inadvertently consumes the alcohol, for example if his drink is spiked. It is also an offence knowingly to allow the consumption of alcohol by a child on relevant premises. Those who can commit this offence are any person who works at the premises in a capacity that gives him the authority to prevent the consumption and, in the case of a supply by a club, to any officer or member of a club who is present at the time of the consumption in a capacity which allows him to prevent it. An exemption is provided by which these offences are not committed where a 16 or 17-year-old consumes beer, wine or cider with a table meal in circumstances where he is accompanied by an adult. As mentioned above, the exemption only applies while a table meal is being consumed. It would not be sufficient for a person to claim that bar snacks amounted to a table meal.

Delivering alcohol to children

13.18 It is an offence for someone working on relevant premises knowingly to deliver to a child alcohol which is sold on the premises or supplied there by or on behalf of a club. The offence would cover, for example, circumstances where a child takes delivery of a consignment of alcohol ordered by an adult by telephone. It is also an offence for a person working on relevant premises and in a position which gives him authority to prevent it knowingly to allow another person to deliver alcohol to children. This offence would cover, for example, a person who authorises a delivery of the sort mentioned above in the knowledge that the recipient will be a child. The offence also applies in the case of a delivery by or on behalf of a club or to or to the order of a member of the club, where the delivery is allowed by a person working on the premises in a capacity which gives him authority to prevent it. The offences are not committed if the alcohol is delivered to the home or place of work of the purchaser or person who is supplied (for example, where a child answers the door and signs for the delivery of his father's order at his house), nor where the job of the minor who took delivery of the alcohol involves delivery of alcohol (for example, where a 16 year old office worker is sent to collect a delivery for his employer), nor where the alcohol is sold or supplied for consumption on the relevant premises.

Sending a child to obtain alcohol

13.19 Under the Act, it is an offence knowingly to send a child to obtain alcohol which is sold for consumption off the premises, or which is supplied by or on behalf of a club to or to the order of a member of the club for such consumption. This offence would cover, for example, circumstances where a parent sends their child to an off-licence to collect some alcohol which had been bought over the telephone. The offence is committed regardless of whether the child is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent. The offence will not be committed where the minor works at the premises in question and his job involves taking deliveries of alcohol. The offence is not committed if the child is sent by a police or trading standards officer, in the course of his duty, to obtain alcohol to test the compliance of the retailer or club with the prohibition on underage sales. It is important for enforcement officers to have regard to the LACORS/TSI Code of Best Practice on test purchasing operations which includes advice on the protection of children engaged in such operations.

Prohibition of unsupervised sales by children

13.20 It is an offence under the 2003 Act knowingly to allow an individual under the age of 18 to sell or, in the case of a club, to supply alcohol unless each such sale or supply has been specifically approved. The offence may be committed by:

- a premises licence holder, designated premises supervisor or someone over 18 authorised for that purpose, or
- in the case of a club, any member or officer of the club who is present on the premises in a capacity that enables him to prevent the supply, or
- in a case where the premises are used for a permitted temporary activity, the premises user or a person over 18 authorised by him.

13.21 The Act provides that the offence is not committed where the alcohol is sold for consumption with a table meal in a part of the premises used only for this purpose. The effect of this exception is that, for example, a minor working as a waiter or waitress in a restaurant is able to serve alcohol lawfully in a restaurant.

Confiscation of Sealed containers of Alcohol

13.22 The 2003 Act also amended the Criminal Justice and Police Act 2001 and the Confiscation of Alcohol (Young Persons) Act 1997 so that the police have the power to confiscate alcohol in sealed containers from anyone in an area which has been designated by the local authority for the purposes of curbing anti-social behaviour and from people under 18 in any public place. Police powers in relation to confiscation of alcohol currently apply only in relation to opened containers. Licensing authorities (in their capacity as local authorities) will therefore have a direct input which areas should be designated for these purposes.

14 Transitional Matters

General

- 14.1 This section of the Guidance deals with applications which will be made for personal licences, premises licences and club premises certificates (and any variation of premises licences and club premises certificates) 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 brought into force simultaneously. The details of the relevant statutory instruments made may be viewed on the DCMS website.
- 14.2 The licensing authority's aim should be to ensure as smooth, efficient and rapid transition as possible. During the first six months of transition, it will receive a very considerable 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 licences and certificates into premises. However, during the period of transition, the licensing authority will have no enforcement costs associated with their licensing functions under the Act as the licences and certificate will have no effect. This will therefore be an opportunity to developmental work on the arrangements for carrying out their licensing functions when they begin after transition.
- 14.3 Generally, 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. These preserved rights are subject to the possibility of police intervention in certain circumstances which are explained in more detail below.
- 14.4 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 register these licences and the conditions to which they are currently subject and have them converted into premises licences. The same applies to "registered members clubs" who may apply to convert their registration certificates into club premises certificates. This will allow these permissions 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 granted by the licensing justices. Such applications for conversion may be accompanied – on the same form – by an application to vary the hours, terms and conditions of the existing licences and permissions.

- 14.5 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 (special hours certificates, general orders of exemption, supper hour or extended hours orders etc), any public entertainment licence authorising the provision of public entertainment, any gaming permit, 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. But equally, as is the case now, any child of any age would be admissible to any other part of the premises at any time at the licensee's discretion.
- 14.6 In the absence of a variation (in accordance with Part 2 of the form), these registered details will be converted by the licensing authority into a premises licence, which would have effect from the second day appointed by the Secretary of State when all new licences would come into effect. The principle underlying this approach is that 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.
- 14.7 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.
- 14.8 Part two of the form would essentially be an application to vary any of the existing hours, terms and conditions set out in part one and would follow the procedures for variation which will be laid down in the Bill. This is where, for example, the applicant would set out in an operating schedule his or her proposed new hours, expand any public entertainment arrangements, and express its intention to admit children. The application to vary (Part 2 of the form) would have to be advertised and copied to the relevant authorities. Accordingly, responsible authorities and interested parties would only be able to address the proposed variations to the licence and not the licence itself or the guaranteed hours, terms and conditions. Licensing authorities are required to process the application in time for the date on which the Secretary of State would bring new licences into force simultaneously.
- 14.9 Prior to the second appointed day, all premises licences and variations granted during the transitional period would in effect be dummy licences lying dormant until brought into force. Existing licences and permissions would therefore continue to be in force throughout the transitional period. Responsibility for any variation, extension of hours or the renewal of any of these licences would therefore continue to 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 simultaneously. The new and old systems would therefore run in parallel until the transition is completed.
- 14.10 All justices' licences fall for renewal at the Brewster Sessions in February 2004. To avoid the need for the licensing justices to consider the need to renew

155,000 licences at that time, the Secretary of State is providing by statutory instrument that the validity of these licences shall, unless revoked or surrendered, continue until the second appointed day.

- 14.11 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.

Conversions to New Premises licences

- 14.12 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 a day appointed for the purposes of this Part of the Schedule, apply to the relevant licensing authority for the conversion of an existing licence, or existing licences, to a premises licence. For example, this means that the business owning a supermarket may apply for the conversion of the licence which might have been held under the old regime by one of its employees.
- 14.13 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 (eg extensions of permitted hours or children's certificate) and where the licence will concern the sale of alcohol must provide details of the individual to be specified in the new licence as the designated premises supervisor and proof of that person's consent. The Secretary of State may also specify other information and documents that would need to be supplied. The details of any relevant statutory instrument may be viewed on the DCMS website.
- 14.14 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.
- 14.15 To avoid unnecessary hearings, it is important that the police only give such notices in the circumstances dictated by the 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 without delay.
- 14.16 The giving of such a notice by the police would automatically trigger a hearing before a licensing committee at which the parties would have an opportunity to present argument and relevant evidence. In considering the police representation, 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. It would be for the licensing authority to determine what constitutes a material change of circumstances, but materiality must be directed

to the crime prevention objective. For example, the police may wish to present evidence relating to the development of a drugs problem at the premises in question since the 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

- 14.17 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.
- 14.18 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.
- 14.18 If the licensing authority fails to determine the application within 2 months of the receipt of the application, the application will be treated as granted.
- 14.19 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 representations.

Variations of New Premises Licences

- 14.20 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 33 and 36 of the 2003 Act as if that licence is in force. Section 33 concerns applications to vary premises licence applications and section 36 concerns applications to vary a licence to specify an individual as premises supervisor. When such applications are made the relevant licensing authority may discharge its functions in relation to them and the relevant provisions in Part 3 of the Act will apply. The guidance in sections 6 to 8 of this Guidance would therefore be relevant.
- 14.21 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 representation by either a responsible authority or an interested party, the application must be granted and there should be no hearing. If a valid and relevant representation is made, there must be a hearing at which the parties may present argument to the licensing authority. Following the hearing, the licensing authority would determine the application and refuse the variation only if it is 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 licence. So, for example, it could not reduce the hours of trading to less than the permitted hours under the Licensing Act 1964.
- 14.22 A right of appeal is provided for the “applicant” against a decision to amend the new licence.

Revocation of a New Premises Licence prior to the 2nd appointed day

- 14.23 If an old justices', public entertainment, theatre, cinema, late night refreshment or night cafe licence is revoked or declared forfeit before the second day appointed by the Secretary of State, the permission granted in respect of the licensable activities affected will lapse. In these circumstances, the licensing authority is obliged to amend the new premises licence to remove those activity or activities from it.

Licensing hours

- 14.24 As has been made clear above, in respect of a 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 Authority Act 1964. This includes any attempt to reduce the hours of premises that have been granted a special hours certificate, a supper hour certificate, a general order of exemption or an extended hours order.

Qualifying clubs

- 14.25 The 2003 Act makes similar transitional provisions both in respect of the conversion of existing registration certificates and for the variation of the existing permissions in relation to applications by qualifying clubs registered for the purposes of Part 2 of the Licensing Act 1964.

Personal licences

- 14.26 Personal licences concern only the sale of alcohol by retail. The 2003 Act makes transitional provisions in respect of personal licences for those holding current justices' licences. During an initial period of six months after the first appointed day, the holder of an existing justices' licence (granted under the Licensing Act 1964) will be 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 Act, provided that certain requirements are met. These are that he produces his current justices' licence, his photograph (in a form prescribed statutory instrument that may be viewed on the DCMS website) and a statement (if appropriate) relating to his convictions for relevant offences or foreign offences. These rights are provided because these licence holders have already satisfied the licensing justices at a hearing before them that they are fit and proper people to sell alcohol by retail.
- 14.27 Licensing authorities should note that some justices' licences may 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 Act.
- 14.28 The Act provides for the intervention of the police in certain circumstances. 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, having regard to the

applicant's conviction for any relevant offence or foreign offence, that the exceptional circumstances of the case are such that the grant of the licence would undermine the crime prevention objective. If no representation has been made by the police 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.

- 14.29 If the police have objected to the grant, the licensing authority must hold a hearing unless the applicant, police and the authority agree otherwise. At any hearing, the parties will be free to present argument before the licensing committee. 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.
- 14.30 Provisions in Part 6 of the 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.
- 14.31 If a licensing authority fails to determine an application for a personal licence within 3 months of its receipt, the application will be treated as granted.

“Denatured alcohol”

- 14.32 Section 186 of the Act, which concerns the meaning of “alcohol” for the purposes of the Act, excludes “denatured alcohol”. This is the term which, from the commencement of section 5(1) 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 186 has effect by virtue of paragraph 30 of Schedule 8 as if it referred to “methylated spirits”.

15 Other Offences

General

- 15.1 This section of the Guidance provides advice about a number of offences contained in the Act. It does not deal with those offences relating to children which is contained in section 13 of the Guidance or with offences relating to rights of entry and inspection or non-compliance with administrative requirements with which licensing authorities will be more familiar.
- 15.2 Section 181 provides that proceedings for any offences in the 2003 Act may be instituted by a licensing authority as well as the DPP, and by trading standards officers in certain circumstances. It is important that licensing authorities liaise closely with the police and should so far as possible agree protocols for instituting proceedings in connection with these proceedings and for exchanging information and intelligence about them. Section 180 of the Act provides for such exchanges of information.
- 15.3 Licensing authorities should consult their own legal advisers about such matters, who may at any time consult the Department for Culture, Media and Sport for further advice.

Unauthorised licensable activities

- 15.4 It is an offence to carry on or attempt to carry on a licensable activity without the authorisation provided by a premises licence, a club premises certificate or a temporary event notice meeting the conditions of section 96(2) – (4) of the Act.
- 15.5 It is also an offence knowingly to allow such an activity to be carried on.
- 15.6 These offences therefore cover premises that are entirely unlicensed, for example, an unlicensed drinking den; and premises that are licensed for one activity, for example, premises licensed for the sale of alcohol but not for music. In addition, the offence refers to activity carried on otherwise than in accordance with a premises licence, club premises certificate or temporary event notice meeting the conditions of section 96(2) – (4) of the Act. Accordingly, these offences relate to breaches of the terms and conditions included in such licences including any relating to hours during which the licensable activities may take place.
- 15.7 The maximum sentence available to a convicting court is high because at its worst these offences could involve circumstances in which the public have been placed in serious danger, for example, where fire exits have been deliberately blocked in breach of a licensing condition. However, the offence covers a very

wide spectrum of offences some of which will be considerably less serious than the example cited above. It will be for the convicting court to decide what is an appropriate and proportionate sentence within the maximum described in the Act in any individual circumstances.

- 15.8 Certain activities which would otherwise fall within the definition of “licensable activities” in respect of these offences are excluded from that definition by sections 170 to 172 of the Act. For example, aboard a vessel engaged on an international journey.
- 15.9 Licensing authority enforcement officers should also note section 137 which provides a due diligence defence. For example, in the case of a musician who has been assured by the manager of a venue that the premises were licensed for the provision of live music, the musician would have a defence that he had relied on false information given to him and had taken reasonable precautions and exercised all due diligence to avoid committing the offence.

Exposing alcohol for unauthorised sale

- 15.10 It would be an offence to expose alcohol for sale by retail in circumstances where the sale would be a licensable activity requiring the authority of a premises licence, a club premises certificate or temporary event notice. The effect of this provision is that an offence can be committed in a case where no sale or attempted sale is in fact made. This means that the licensing authority would not have to prove that a sale had been completed. The Act provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.
- 15.11 A due diligence defence is also provided in connection with this offence.

Keeping alcohol for unauthorised sale

- 15.12 It is also an offence to keep alcohol with the intention of selling it by retail or supplying it by or on behalf of a club or to the order of a member of the club where that sale or supply is an unauthorised licensable activity. The Act also provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.
- 15.13 A due diligence defence is also provided in connection with this offence.

Defence of due diligence

- 15.14 This Act provides that a person who is charged with the offence of carrying on an unauthorised licensable activity, exposing alcohol for unauthorised sale or keeping alcohol for unauthorised sale or supply has a defence if his act or omission was due to a mistake, or his reliance on information given to him, or was the fault of another person or was due to some cause beyond his control, and he had taken all reasonable precautions and had exercised all due diligence to

avoid committing the offence. It is therefore important that both elements of the defence must be in place before the defence would be effective. The burden of proof of invoking this defence falls on the individual making the defence.

Allowing disorderly conduct on licensed premises etc.

15.15 This is an extremely important offence and is central to the control of premises where alcohol is sold for consumption on those premises, though it applies equally to premises where other licensable activities are taking place. Its existence is central to the safety of law-abiding customers on the premises. It is an offence knowingly to allow disorderly conduct on relevant premises. The offence may be committed by any person who works at the premises in a capacity that gives him the authority to prevent the conduct, a premises licence holder or designated premises supervisor, an officer or member of a club (with a club premises certificate) who is present at the time of the disorder and who has authority to prevent it, and a premises user who has given a temporary event notice in respect of those premises. The licensing authority should draw the attention of any person, business or club granted a licence, club premises certificate or giving a temporary event notice to this offence and of the licensing authority's readiness to prosecute any individual who fails in his duty in this respect.

Sale of alcohol to a person who is drunk

15.16 It is an offence to sell or attempt to sell alcohol to a person who is drunk, or to allow alcohol to be sold to such a person, on relevant premises. The offence may be committed by any person who works at the premises in a capacity that gives him the authority to sell the alcohol, a premises licence holder or designated premises supervisor, an officer or member of a club (with a club premises certificate) who is present at the time of the sale and who has authority to prevent it, and a premises user who has given a temporary event notice in respect of those premises which meets the conditions laid down in the Act. The offence also covers supplies of alcohol by or on behalf of a club to or to the order of a member of the club.

15.17 Licensing authorities and the police should note that anti-social behaviour once customers are beyond the direct control of licensees and managers of licensed premises will sometimes (some drunkenness will arise through consumption at private parties) be a result of sales made earlier on licensed premises when an individual was drunk. It is therefore important that these offences are enforced effectively to ensure that there is a strong deterrent in respect of such sales. The control of excessive consumption and drunkenness on relevant premises should reduce the risk of anti-social behaviour occurring elsewhere after customers have left the premises.

Obtaining alcohol for a person who is drunk

15.18 It is also an offence knowingly to obtain or attempt to obtain on relevant premises alcohol for consumption on those premises by a person who is drunk.

Failure to leave licensed premises

- 15.19 The 2003 Act provides that a person who is drunk or disorderly commits an offence if he fails to leave relevant premises at the request of:
- a police constable or
 - any person who works at the premises in a capacity which authorises him to make such a request, or
 - the premises licence holder, or
 - the designated premises supervisor, or
 - in the case of a club, to any member or officer of the club who is there in a capacity which gives him authority to make such a request, or
 - in the case of premises used for permitted temporary activities, the premises user.

No offence is committed if the person has a reasonable excuse, for example, if he is ill, disabled or injured and so unable to leave the premises.

- 15.20 It is also an offence for a person to enter or attempt to enter such premises when asked not to by one of the people listed above.
- 15.21 A police constable must help to expel drunk or disorderly individuals from relevant premises, or help to prevent them entering as the case may be, if requested to do so by anyone listed above.

Keeping of smuggled goods

- 15.22 The sale of contraband cigarettes and alcohol is a matter of considerable concern to central Government. The cost in terms of revenue and therefore to individual taxpayers exceeds £3 billion annually. In addition, some of the goods sold have not been manufactured by responsible manufacturers but are fake products smuggled from Eastern European and China on behalf of organised criminal gangs and could therefore contain dangerous ingredients. The Act provides that it is an offence knowingly to keep or allow to be kept, on relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported. The Act sets out the categories of person who may commit the offence. These are:

- any person who works at the premises in a capacity that gives him the authority to prevent those goods from being kept on the premises,
- a premises licence holder or designated premises supervisor,
- an officer or member of a club who is present at the time when the goods are kept on the premises and who has authority to prevent them being so kept, and
- a premises user who has given a temporary event notice in respect of those premises which meets the conditions in section 96 of the Act.

- 15.23 The Act also provides that a court which convicts a person of this offence may order the confiscation of the goods in question and their containers, which may then be either destroyed or dealt with as the court orders. Licensing authorities

should liaise closely with Customs and Excise in respect of the investigation and prosecution of such offences.

LIST OF ANNEXES BEING PREPARED

- A** Schedule 1 of the Licensing Act 2003 (regulated entertainment – *from Bill*)
- B** Schedule 2 of the Licensing Act 2003 (late night refreshment – *from Bill*)
- C** Schedule 4 of the Licensing Act 2003 (relevant offences – *from Bill*)
- D** Model Pool of conditions relating to crime and disorder (*to be agreed with stakeholders*)
- E** Model pool of conditions relating to public safety (*to be agreed with stakeholders*)
- F** Model pool of conditions relating to cinemas and fire safety (*to be agreed with stakeholders*)
- G** Model pool of conditions relating to public nuisance (*to be agreed with stakeholders*)
- H** Model pool of conditions relating to the protection of children from harm (*to be agreed with stakeholders*)
- I** Statutory qualifying conditions for clubs (*to be agreed*)
- J** Safer Clubbing Checklist
- K** Key actions for licensing authorities in connection with Safer Clubbing
- L** Specimen closure order described in section 158 of the 2003 Act

Enquiries

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

[DCMS contact points – telephone and e-mail]