

5 Premises Licences

5.1 This Chapter provides advice about best practice for the administration of the processes for issuing, varying, transferring and reviewing premises licences and other associated procedures.

Licensable activities

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

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

5.3 Schedule 1 to the 2003 Act, which is reproduced for convenience at Annex A, sets out what constitutes the provision of regulated entertainment and identifies those activities which are not to be regarded as the provision of regulated entertainment and, as a consequence, are exempt from the regulated entertainment aspects of the licensing regime. Schedule 2, which is reproduced at Annex B, sets out what constitutes the provision of late night refreshment and identifies those activities which are not to be regarded as the provision of late night refreshment and, as a consequence, are exempt from the late night refreshment aspects of the licensing regime.

Small venues providing dancing and amplified or unamplified music

5.4 In addition, subsections (1) and (2) of section 177 of the 2003 Act provide that where

- a premises licence or club premises certificate authorises the supply of alcohol for consumption on the premises and the provision of “music entertainment” (live music or dancing or facilities enabling people to take part in those activities),
- the relevant premises are used primarily for the supply of alcohol for consumption on the premises, and
- the premises have a permitted capacity limit of not more than 200 persons any conditions relating to the provision of the music entertainment imposed on the premises licence or club premises certificate by the licensing authority, other than those set out by the licence or certificate which are consistent with the operating schedule, will be suspended except where they were imposed as being necessary for public safety or the prevention of crime and disorder or both.

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

- a premises licence or club premises certificate authorises the provision of music entertainment (live music and dancing), and

- the premises have a capacity limit of not more than 200 persons

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

- 5.6 Section 177 can be disapplied in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate. This means that conditions attached to the existing premises licence relating to the provision of music entertainment can be given effect at the relevant times or that new conditions may also be imposed as an outcome of the review process.
- 5.7 Accordingly, those seeking to take advantage of the exemption relating to both amplified and unamplified music entertainment need to be aware that they must hold a premises licence or club premises certificate covering the supply of alcohol for consumption on the premises and the type of regulated music entertainment involved. Examples of premises used “primarily” for the supply of alcohol for consumption on the premises would include public houses and some qualifying club premises, but would not normally include, for example, a restaurant. For the “unamplified” music exemption, any premises appropriately licensed are included, including restaurants. The area to which the 200 “capacity limit” applies concerns the area covered by the premises licence or club premises certificate and not just to part of those premises unless separately licensed.

Wholesale of alcohol

- 5.8 The wholesale of alcohol to the general public was not licensable prior to the coming into force of the 2003 Act. Licensing authorities will want to have particular regard to the definition of “sale by retail” given in section 192 of the 2003 Act. Sales which are made to traders for the purpose of their trade (including, for example, another wholesaler) 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 now a licensable activity and subject to the provisions of the 2003 Act.

Internet and mail order sales

- 5.9 In considering applications for premises licences involving internet or mail order sales, where the place where the sale of alcohol takes place is different to the place from which the alcohol is appropriated to the contract, i.e. specifically selected for the particular purchaser, section 190 provides that the sale of alcohol is to be treated as taking place at the place where the alcohol is appropriated to the contract. Thus, for the purposes of the 2003 Act, the sale is treated as being made at the premises from which the alcohol is appropriated to the contract and such premises will be the premises for which an authorisation under the

2003 Act is required for that licensable activity. This would mean, for example, that a call centre would not be the premises for which the appropriate licence is required, but the warehouse where the alcohol is stored and specifically selected for and despatched to the purchaser would be.

Regulated entertainment

5.10 Schedule 1 to the 2003 Act sets out what constitutes the provision of regulated entertainment and defines for these purposes both entertainment and entertainment facilities. Subject to the conditions, definitions and the exemptions in Schedule 1, descriptions of entertainment to be regulated by the 2003 Act are:

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

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

5.11 Subject to the conditions, definitions and the exemptions in Schedule 1, entertainment facilities means facilities for enabling persons to take part in entertainment consisting of:

- making music
- dancing
- entertainment of a similar description to making music or for dancing.

These facilities must be provided for the purpose of, or purposes including the purpose of, being entertained. It is important to note that this is a more limited list in the 2003 Act than all the descriptions of entertainment in the 2003 Act. Accordingly, the provision of a juke box where members of the public could self-select background music for their own enjoyment is not an entertainment facility. Entertainment facilities include, for example, a karaoke machine provided for the use of and entertainment of customers in a public house or a dance floor provided for use by the public in a nightclub. Musical instruments made available for use by the public at premises for the purpose of them being entertained would constitute an entertainment facility.

5.12 In carrying out their functions, licensing authorities will need to consider whether an activity constitutes the provision of regulated entertainment. Schedule 1 governs the assessment of this. Activities which do not involve the provision of entertainment to others are not licensable under the 2003 Act. For example, the following activities do not amount to regulated entertainment under the regime:

- education – teaching students to perform music or to dance;
- activities which involve participation as acts of worship in a religious context;
- the demonstration of a product – for example, a guitar – in a music shop; or
- the rehearsal of a play or rehearsal of a performance of music to which the public are not admitted.

Much of this involves the simple application of common sense and this Guidance cannot give examples of every eventuality or possible activity. It is only when a licensing authority is satisfied that activities amount to entertainment or the provision of entertainment facilities that it should go on to consider the qualifying conditions, definitions and exemptions in Schedule 1 to see if a provision of regulated entertainment is involved and, as a result, there is a licensable activity to be governed by the provisions of the 2003 Act.

- 5.13 There are a number of other entertainments, which are not themselves licensable activities, for which live or recorded music may be incidental to the main attraction or performance and therefore not licensable (see below). For example, stand-up comedy is not a licensable activity and musical accompaniment incidental to the main performance would not make it a licensable activity.
- 5.14 It should be noted that there is nothing in the legislation to prevent shops, stores and supermarkets proposing the inclusion of regulated entertainment in their premises licences. For example, many shops may decide to present a variety of entertainment at Christmas and other festive times or more generally in support of promotional events.

Pub games

- 5.15 Games commonly played in pubs and social and youth clubs like pool, darts, table tennis and billiards may fall within the definition of indoor sports in Schedule 1, but normally they would not be played for the entertainment of spectators but for the private enjoyment of the participants. As such, they would not normally constitute the provision of regulated entertainment, and the facilities provided (even if a pub provides them with a view to profit) do not fall within the limited list of entertainment facilities in that Schedule (see paragraph 5.11 above). It is only when such games take place in the presence of an audience and are provided to, at least in part, entertain that audience, for example, a darts championship competition, that the activity would become licensable.

Private events

- 5.16 Private events can involve licensable activities where certain conditions pertain. Entertainment at a private event to which the public are not admitted becomes regulated entertainment, and therefore licensable, only if it is provided for consideration **and** with a view to profit. Accordingly, a mere charge to those attending a private event to cover the costs of the entertainment, and for no other purpose, would not make the entertainment licensable as this would not be with a view to profit. The fact that a profit might inadvertently be made would be irrelevant as long as there had not been an intention to make a profit. Furthermore,

Schedule 1 to the 2003 Act makes it clear that in relation to entertainment facilities, before an activity becomes regarded as being provided for consideration, a charge has to be made by a person concerned with the organisation or the management of the entertainment or the entertainment facilities who is also concerned in the organisation or management of the entertainment in which those facilities enable persons to take part and it is paid by or on behalf of some or all of the persons for whom that entertainment is, or those facilities are, provided. This means that, for example, a wedding reception for invited guests (at which no charge intended to generate a profit is made to those guests) at which a live band plays and dancing takes place is not regulated entertainment where the organiser or manager of those facilities is not also concerned in the organisation or management of the entertainment and therefore not a licensable activity. Similarly, for example, a party organised in a private house by and for 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 other performers or their agents to the organiser of a private event does not make that entertainment licensable unless the guests attending are themselves charged for the entertainment with a view to achieving a profit as explained above.

- 5.17 A private event – for example, a wedding reception – held in a separate room of a public house or a hotel would normally be an event which needs to be covered by the premises licence held by the public house or hotel. For such events, the management of the premises would normally be making available entertainment facilities (for example, a dance floor) and the premises (the room) for the performance of music for the entertainment of those attending. This would unquestionably be done for a charge and with a view to profit.

Incidental music

- 5.18 The incidental performance of live music and incidental playing of recorded music may not be regarded as the provision of regulated entertainment activities under the 2003 Act in certain circumstances. This is where they are incidental to another activity which is not itself entertainment or the provision of entertainment facilities. This exemption does not extend to the provision of other forms of regulated entertainment. Whether or not music of this kind is “incidental” to other activities is expected to be judged on a case by case basis and there is no definition in the 2003 Act. It will ultimately be for the courts to decide whether music is “incidental” in the individual circumstances of any case. In the first instance, the operator of the premises concerned must decide whether or not he considers that he needs a premises licence. One factor that is expected to be relevant is “volume”. Common sense dictates that live or recorded music played at volumes which predominate over other activities at a venue could rarely be regarded as incidental to those activities. So, for example, a juke box played in a public house at moderate levels would normally be regarded as incidental to the other activities there, but one played at high volume would not benefit from this exemption. Stand-up comedy is not regulated entertainment and musical accompaniment incidental to the main performance would not make it a licensable activity. But there are likely to be some circumstances which occupy a greyer area. In cases of doubt, operators should seek the advice of the licensing authority, particularly with regard to their policy on enforcement.

Spontaneous music, singing and dancing

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

Late night refreshment

- 5.20 Schedule 2 to the 2003 Act provides a more precise definition of what constitutes the provision of late night refreshment than that which has existed in earlier legislation. Licensing authorities, in Greater London particularly, should note the differences. For example, shops, stores and supermarkets selling food that is immediately consumable from 11.00pm will not be licensable as providing late night refreshment unless they are selling hot food or hot drink. The legislation will impact on those premises such as night cafés and take away food outlets where people may gather at any time from 11.00pm and until 5.00am giving rise to the possibility of disorder and disturbance. The licensing regime will not catch premises only selling immediately consumable food, such as, bread, milk or cold sandwiches in all night grocers’ shops and which do not tend to attract these problems.
- 5.21 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines established on the premises for that purpose. The supply of hot drink by a vending machine will not be a licensable activity and is exempt under the 2003 Act so long as the machine is one to which the public have access and it is operated by members of the public without any involvement of the staff on the premises with the payment being inserted in the machine. However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine will be licensable when the food has been heated for the purposes of supply, even though no staff on the premises may have been involved in the transaction.
- 5.22 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions. The Secretary of State considers that the key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and public nuisance, and it is expected that both will normally have been adequately covered in the conditions relating to the other licensable activities on such premises.
- 5.23 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is caught by the provisions relating to the sale or supply of alcohol.

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

Premises

- 5.26 In determining whether any premises falls to be licensed, the following parts of the 2003 Act are relevant:
- section 1 which outlines the licensable activities;
 - Part 3 which outlines provisions relating to premises licences;
 - Part 4 which outlines provisions for qualifying clubs;
 - section 173 which provides that activities in certain locations are not licensable;
 - section 174 which provides that premises may be exempted on grounds of national security;
 - section 175 which provides that minor raffles and tombolas involving prizes of alcohol are not to be treated as licensable if certain conditions are fulfilled;
 - section 176 which prohibits the sale of alcohol at motorway service areas; and restricts the circumstances in which alcohol may be sold at garages;
 - section 189 which makes special provision regarding the licensing of vessels, vehicles and moveable structures;
 - section 190 which provides that where the place where a contract for the sale of alcohol is made is different from the place where the alcohol is appropriated to the contract then for the purposes of the Act the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract;
 - section 191 which defines “alcohol” for the purposes of the Act;
 - section 192 which defines the meaning of “sale by retail” for the purposes of the Act;
 - section 193 which defines among other things “premises”, “vehicle”, “vessel” and “wine”; and

- Schedules 1 and 2 which define provision of regulated entertainment and late night refreshment.

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

Garages

5.28 Section 176 of the 2003 Act provides that no authority (premises licence, club premises certificate or temporary event notice) under the Act will have effect to authorise the sale or supply of alcohol on or from certain premises. This section of the Act has the effect of restricting the ability to use premises for the sale or supply of alcohol, among other things, if they are used **primarily** as a garage or form part of premises which are **primarily** so used. Premises are used as a garage if they are used for one or more of the following:

- the retailing of petrol;
- the retailing of derv;
- the sale of motor vehicles; and
- the maintenance of motor vehicles.

The 2003 Act therefore largely maintains the position which existed under the Licensing Act 1964. It is for the licensing authority to decide in the light of the facts whether or not any premises is used primarily as a garage. Such decisions under the 1964 Act have most recently not been based on an examination of the gross or net turnover of income from non-qualifying products and other products. The approach to establishing primary use so far approved by the courts has been based on an examination of the intensity of use by customers of the premises. For example, if a garage shop in any rural area is used more intensely by customers purchasing other products than by customers purchasing non-qualifying products or services, it may be eligible to seek authority to sell or supply alcohol.

Relevant licensing authority

5.29 Premises licences are issued by the licensing authority in which the premises are situated or in the case of premises straddling an area boundary, the licensing authority in whose area the greater or greatest part of the premises is situated or where the premises is located equally in two or more areas, the applicant may choose. In the rare cases where such premises exist, it will be important that the licensing authorities concerned maintain close contact about the grant of the premises licence, inspection, enforcement and other licensing functions in respect of these premises.

Authorised persons, interested parties and responsible authorities

5.30 In section 13, the 2003 Act defines three key groups that have important roles in the context of applications, inspection, enforcement and reviews of premises licences.

5.31 The first group – “authorised persons” – are bodies empowered by the Act to carry out inspection and enforcement roles. The police are not included because they are separately empowered by the Act to carry out their duties. In respect of all premises, the authorised persons include officers of the licensing authority, fire authority inspectors, inspectors locally responsible for the enforcement of the Health and Safety at Work etc. Act 1974, and environmental health officers. Local authority officers will most commonly have responsibility for the enforcement of health and safety legislation. But in connection with certain premises, the Health and Safety Executive have this responsibility. In respect of vessels, authorised persons also include an inspector or a surveyor of ships appointed under section 256 of the Merchant Shipping Act 1995. These would normally be officers acting on behalf of the Maritime and Coastguard Agency. The Secretary of State may also prescribe other authorised persons by means of regulations. Details of any such secondary legislation may be viewed on the DCMS website.

5.32 The second group – “interested parties” – are the bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:

- a person living in the vicinity of the premises in question;
- a body representing persons living in that vicinity, for example, a residents’ association;
- a person involved in a business in the vicinity of the premises in question; and
- a body representing persons involved in such businesses, for example, a trade association.

Any of these individuals or groups may specifically request a representative to make his, her or its representation on his, her or its behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward councillor could all act in such a capacity. In the case of the last of these, it would be expected that any councillor who is also a member of the licensing committee and who is making such representations on behalf of the interested party would disqualify him or herself from any involvement in the decision-making process affecting the premises licence in question. In addition, it is expected that “individuals involved in business” will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.

5.33 It is for the licensing authority to determine in the first instance whether or not representations are relevant representations. This may involve determining whether they have, as a matter of fact, been made by an interested party and whether or not, for example, an individual making a representation resides or is involved in business “in the vicinity” of the premises concerned. However, licensing authorities should be aware that their initial decision on this issue could be subject to legal challenge in the courts. Whether or not an individual

resides “in the vicinity of” the licensed premises is ultimately a matter of fact to be decided by the courts, but initially licensing authorities must decide if the individual or body making a representation qualifies as an interested party. In making their initial decision, licensing authorities should consider, for example, whether the individual’s residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises. Where a representation concerns “cumulative impact”, the licensing authority may be unable to consider this factor and would probably need to examine issues such as the proximity of the residence or business. In essence, it is expected that the decision will be approached with common sense and individuals living and working in the neighbourhood or area immediately surrounding the premises will be able to make representations.

- 5.34 Licensing authorities should consider providing advice on their websites about how any interested party can make representations to them.
- 5.35 The third group – “responsible authorities” – includes public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. All representations made by responsible authorities are relevant representations if they concern the effect of the application on the licensing objectives. For all premises, these include the chief officer of police; the local fire authority; the local enforcement agency for the Health and Safety at Work etc. Act 1974 (which may be the local authority in certain circumstances, and the Health and Safety Executive in others); the local authority with responsibility for environmental health; the local planning authority; any body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm and is recognised by the licensing authority for that area as being competent to advise it on such matters; and any licensing authority, other than the relevant licensing authority, in whose area part of the premises are situated.
- 5.36 In respect of the protection of children from harm, it is expected that the body recognised by the licensing authority to be competent to advise will have been indicated in the statement of licensing policy. This is important as applications for premises licences have to be copied to the responsible authorities by the applicant in order for them to make any representations they think are relevant. In many licensing authority areas, it is expected that the body recognised by the licensing authority to be competent in this regard will be the Area Child Protection Committee. However, in some areas, the Committee’s involvement may not be practical and in these circumstances the licensing authority is expected to nominate another body, for example, the local authority social services department.
- 5.37 In relation to a vessel, but no other premises, 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 Environment Agency; the British Waterways Board; and the Secretary of State. The provision of the Secretary of State as a responsible authority in this case means the Secretary of State for Transport who in practice acts through the Maritime and Coastguard Agency, an executive agency of central Government, which has no formal legal existence.

- 5.38 The Maritime and Coastguard Agency is the lead responsible authority for public safety, including fire safety, issues affecting passenger vessels. The safety regime for passenger vessels is enforced under the Merchant Shipping Acts by the Maritime and Coastguard Agency who operate a passenger ship certification scheme. Fire authorities, the Health and Safety Executive and local authority health and safety inspectors should normally be able to make “nil” returns in respect of passenger vessels and rely on the Maritime and Coastguard Agency to make any necessary representations in respect of this licensing objective. Merchant shipping legislation does not, however, apply to permanently moored vessels. So, for example, restaurant ships moored on the Thames Embankment, with permanent shore connections will require consideration by the other responsible authorities concerned with public safety, including fire safety.
- 5.39 The Secretary of State for Culture, Media and Sport may prescribe other responsible authorities by means of regulations. Any such secondary legislation may be viewed at the DCMS website. The Secretary of State expects to prescribe Crime and Disorder Reduction Partnerships in due course.

Applications for premises licences

- 5.40 Any person (if an individual aged 18 or over) who is carrying on or who proposes to carry on a business which involves the use of premises (which includes any place including one in the open air) for licensable activities may apply for a premises licence either on a permanent basis or for a time-limited period. “A person” in this context includes, for example, a business or a partnership. Licensing authorities should not require the nomination of an individual to hold the licence. It is not for the licensing authority to decide who is the most appropriate person to hold the licence. For example, in respect of most leased public houses, a tenant may run or propose to run the business at the premises in agreement with a pub owning company. Both would be eligible to apply for the appropriate licence and it is for these businesses or individuals to agree contractually amongst themselves who should do so. 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 as the manager (an employee) would not be entitled to do so. Similarly, with cinema chains, the normal holder of the premises licence would be the company owning the cinema and not the cinema manager (an employee of the main company).
- 5.41 In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(1)(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for licensable activities at the premises. In the case of public houses, this would be easier for a tenant to demonstrate than for a pub owning company that is not itself carrying on licensable activities. The Secretary of State recommends that where licences are to be held by businesses, it is desirable that this should be a single business to avoid any lack of clarity in terms of accountability.
- 5.42 Where a public house is owned or a tenancy is held jointly by a husband and wife or other partnerships of a similar nature and both actively involve themselves in the business of carrying on licensable activities at the premises, it is entirely possible for the husband and wife

or the partners to apply jointly as applicant for the premises licence, even if they are not formally partners in business terms. This is unlikely to lead to the same issues of clouded accountability that could arise where two separate businesses apply jointly for the licence. If the application is granted, the premises licence would identify the holder as comprising both names and any subsequent applications, for example for a variation of the licence, need to be made jointly. Applicants would need to consider whether, in these circumstances, a joint application provides sufficient flexibility for their business or whether a single application, coupled with the flexible provisions in the 2003 Act in respect of transfer and interim authorities, is a preferable course.

- 5.43 A wide range of other individuals and bodies set out in section 16 of the 2003 Act may apply for premises licences. They include, for example, Government Departments, local authorities, hospitals, schools, charities or police forces. In addition to the bodies listed in section 16, the Secretary of State may prescribe by regulations other bodies that may so apply and any such secondary legislation may be viewed on the DCMS website.
- 5.44 There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises for which a premises licence is already held. For example, a premises licence authorising the sale of alcohol may be held by one individual and another individual could apply for a premises licence in respect of the same premises or part of those premises which would authorise regulated entertainment. This also ensures that one business could not seek premises licences, for example, for all potential circus sites in England and Wales and thereby prevent other circuses from using those sites even though they had the permission of the landowner. Similarly, there is nothing to stop a temporary event notice being given for a premises in respect of which a premises licence is in force.
- 5.45 An application for a premises licence must be made in the prescribed form to the relevant licensing authority and be copied to each of the appropriate responsible authorities (applications for premises which are not vessels are not, for example, to be sent to the Maritime and Coastguard Agency). The application must be accompanied by:
- the required fee (details of fees may be viewed on the DCMS website);
 - an operating schedule (see below);
 - a plan of the premises in a prescribed form 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.

Regulations containing provisions on fees and the prescribed form of applications and plans may be viewed on the DCMS website.

The operating schedule

- 5.46 The operating schedule will form part of the completed application form for a premises licence. An operating schedule should include information which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory. For example, it should include a 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). Where alcohol is being sold for consumption on the premises in public houses, bars and nightclubs, it would also be valuable to know the extent to which seating is to be provided because research has shown that the amount of seating can be relevant to the prevention of crime and disorder. It should also indicate the type of activities available on the premises, whether licensable under the 2003 Act or not. While “a performance of dance” with the exception of morris dancing is a licensable activity, the type of dancing, which is unaffected by the licensing requirement, may give rise to issues concerning the steps needed to protect children from harm and more generally conditions which would be appropriate. An operating schedule should therefore describe the type of dancing in broad terms and disclose if the dancing involves striptease or lap-dancing. Similarly, if dancing is to take place, it should be clear whether this would involve dancing by members of the public or by professional performers or both and in what setting. If music is to be provided, it is important that clear indication is given of the type of music to be provided. In the case of passenger vessels, it will also be valuable for the area within any vessel where licensable activities will be taking place to be described. This type of information is essential so that responsible authorities and interested parties can form a proper view as to what measures may be necessary to ensure public safety and prevent public nuisance. An operating schedule must also set out the following details:

- the relevant licensable activities to be conducted on the premises;
- the times during which it is proposed that the relevant licensable activities are to take place (including the times during each day of the week, during particular holiday periods and during particular seasons, if it is likely that the times would be different during different parts of the year);
- any other times when the premises are to be open to the public;
- 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;
- where the licensable activities include the supply of alcohol, whether the alcohol will be supplied for consumption on or off the premises or both;
- the steps which the applicant proposes to take to promote the licensing objectives.

Examples of specimen operating schedules may be viewed on the DCMS website. Other details to be included in the operating schedule will be set out in regulations made from time to time by the Secretary of State which may be viewed on the DCMS website.

Steps to promote the licensing objectives

- 5.47 In preparing an operating schedule, the Secretary of State recommends that applicants should be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. This does not mean that applicants must check their operating schedules with responsible authorities before submitting them, but when uncertain, the responsible authorities can provide expert advice on matters relating to the licensing objectives. For example, the best source of advice on crime prevention

is the local police. In preparing operating schedules, applicants should have regard to statements of licensing policy published by the licensing authority for their area. All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Licensing authorities and responsible authorities are therefore expected so far as possible to publish material about the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. To minimise the burden on licensing authorities and applicants, it may be sensible for applicants to seek the views of the key responsible authorities before formally submitting applications and having completed drafts of their own operating schedules (after considering the effect on the four licensing objectives). For example, on matters relating to crime and disorder, the police and local authority community safety officers, and local community groups, might be consulted and on matters relating to noise, local environmental health officers might be consulted. Such co-operative effort should minimise the number of disputes which arise in respect of operating schedules. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives that they have 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.

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

Advertising applications

- 5.52 Regulations governing the advertising of applications for the grant or variation or review of premises licences will be contained in secondary legislation made by the Secretary of State and can be viewed on the DCMS website. They include the requirement that a brief summary of the application setting out matters such as the proposed licensable activities and the proposed hours of opening should be clearly displayed on an A3 size notice immediately on or outside the premises for the period during which representations may be made, together with

information about where the details of the application may be viewed. So far as possible, as well as putting in place arrangements for interested parties to view a record of the application in the licensing register as described in Schedule 3 to the 2003 Act, it is expected that licensing authorities will also include these details on their websites. Charges made for copies of the register should not exceed the cost of preparing such copies.

Casinos and bingo clubs

- 5.53 Casinos and bingo clubs are the subject of separate legislation with regard to the licensing of gaming – the Gaming Act 1968. When granting, varying or reviewing licences authorising the sale of alcohol for consumption on such premises and/or the provision of regulated entertainment and/or late night refreshment at such premises, licensing authorities should not duplicate any conditions imposed by virtue of such legislation. Where applicants wish to carry on activities licensable under the 2003 Act, they will need to prepare and submit an operating schedule, but in detailing the steps to be taken in promoting the four licensing objectives the applicant may refer to the statutory conditions in respect of his gaming licence where relevant. In addition, any conditions which are attached to premises licences should not prevent the holder from complying with the requirements of the 1968 Act and its supporting regulations.
- 5.54 In considering applications for premises licences, licensing authorities and responsible authorities should note:
- the licensing of such premises for gaming remains the responsibility of magistrates, meeting as gaming licensing committees, who have the power to impose such restrictions on the hours during which gaming will be permitted to take place on such premises as appear to them to be necessary for the purpose of preventing disturbance or annoyance to the occupiers of other premises in the vicinity and, in the case of casinos, restrictions limiting the purposes, other than gaming, for which such premises may be used.
 - licences under Part II of the Gaming Act 1968 fall to be renewed annually and renewal may be refused if, among other things, the holder of the licence applying for such renewal is not a fit and proper person to be the holder of a licence under the 1968 Act. Such a licence may also be cancelled, or a certificate of consent issued by the Gaming Board for Great Britain revoked, on similar grounds.
 - such premises are regulated by the Gaming Board for Great Britain which issues guidelines for the casino and bingo club industries, and failure to comply is taken into account in assessing whether holders of licences under Part II of the 1968 Act have acted in a fit and proper manner. The Gaming Board's current guidelines may be viewed on its website: **www.gbgb.org.uk**.
 - under the provisions of the 1968 Act, such premises may operate only as private clubs, with participation in the gaming (and in practice admission to the premises) restricted to members (and only then when at least 24 hours has elapsed since an application for membership) and their bona fide guests. The principal purpose of casinos and bingo clubs is gaming and the sale of alcohol is incidental to that purpose and similarly, sales may only be made to members and their bona fide guests.

- the provision of entertainment in such premises is incidental to gaming and in determining whether to permit casinos to provide entertainment of a type that constitutes regulated entertainment under the 2003 Act, gaming licensing committees should take into account guidance contained in the Gambling Circular 7 dated 5 August 2002 issued by the Gambling and National Lottery Division of the DCMS. The circular may be viewed on the DCMS website. The Secretary of State accordingly considers that the licensing objectives will have been or will be in the main adequately considered by gaming licensing committees in respect of an application for gaming licences and duplication of conditions should be avoided when considering applications under the 2003 Act where relevant representations have been made.

Designated sports grounds, designated sports events and major outdoor sports stadia

- 5.55 Outdoor sports stadia are the subject of separate legislation with regard to health and safety and fire safety. When granting, varying or reviewing premises licences, licensing authorities should not therefore duplicate any conditions relating to such legislation. The sports events taking place at such outdoor stadia do not fall within the definition of the provision of regulated entertainment under the 2003 Act; with the exception of boxing and wrestling matches. No premises licence should therefore seek to impose times when such events that are not licensable under the 2003 Act may take place. Consideration of applications for premises licences should be limited to those activities that are licensable under the 2003 Act; i.e. the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
- 5.56 Major stadia will often have several bars and restaurants, including bars generally open to all spectators as well as bars and restaurants to which members of the public do not have free access. Alcohol will also be supplied in private boxes and viewing areas. A premises licence may make separate arrangements for public and private areas or for restaurant areas on the same premises. It may also designate areas where alcohol may not be consumed at all or at particular times. History demonstrates that certain sports events 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 different sports events where licensable activities take place because of that history. Further details are provided in Chapter 6 of this Guidance. Because of the issues of crowd control that arise in and around such grounds, it is expected that licensing authorities will give considerable weight to the views of the local chief officer of police when representations are made concerning licensable activities, such as the sale of alcohol, taking place at such premises.

Sports stadia with roofs that open and close

- 5.57 Under the provisions of the 2003 Act, major sports grounds with roofs that open and close, such as the Millennium Stadium in Cardiff, are not within the definition of an “indoor sporting event” for the purposes of the Act. As a result events taking place in such stadia do not come within the descriptions of entertainment for the purposes of the provision of regulated entertainment and are not licensable for this purpose under the 2003 Act.

Vessels

- 5.58 The 2003 Act applies in relation to a vessel (which includes a ship or a boat) which is not permanently moored or berthed as if it were premises situated in a place where it is usually moored or berthed. The relevant licensing authority for considering an application for a premises licence in respect of a vessel is therefore the licensing authority for the area in which it is usually moored or berthed. However, an activity is not a licensable activity if it takes place aboard a vessel engaged on an international journey. An “international journey” means a journey from a place in the United Kingdom to an immediate destination outside the United Kingdom or a journey from outside the United Kingdom to an immediate destination in the United Kingdom. A vessel that is permanently moored or berthed is premises situated at that place.
- 5.59 Where a premises licence is sought in connection with a vessel which will be navigated whilst licensable activities take place, the licensing authority should be concerned, following the receipt of relevant representations, with the promotion of the licensing objectives on-board the vessel. It should not focus on matters relating to safe navigation or operation of the vessel, the general safety of passengers or emergency provision, all of which are subject to regulations which must be met before the vessel is issued with its Passenger Certificate and Safety Management Certificate. It is expected that, if the Maritime and Coastguard Agency is satisfied that the vessel complies with Merchant Shipping Standards for a passenger ship, the premises will normally be accepted as meeting the public safety objective of the regime. In respect of other public safety aspects of the application, representations made by the Maritime and Coastguard Agency on behalf of the Secretary of State should be given particular weight.

International airports and International ports

- 5.60 Under the 2003 Act, the Secretary of State may designate a port, hoverport or airport, if it appears to the Secretary of State that there is a substantial amount of international traffic, so that an activity is not a licensable activity if it is carried on at such designated locations. The Secretary of State may also preserve existing designations made under earlier legislation. Details of the ports, hoverports and airports so designated may be viewed on the DCMS website.
- 5.61 Where a port has been designated by the Secretary of State, the areas at the ports which are “airside” or “wharveside” are included in the exemption in the 2003 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 ports, hoverports and airports are subject to the normal licensing controls.

Vehicles

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

5.63 It should also be noted that the provision of any entertainment or entertainment facilities on premises consisting of or forming part of any vehicle while it is in motion and not permanently or temporarily parked is not to be regarded as a regulated entertainment for the purposes of the 2003 Act. For example, a band performing on a moving float in a parade would not require a premises licence if performances only take place while the vehicle is in motion.

Trains and aircraft

5.64 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 and they are subject to the provisions of the 2003 Act. 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

5.65 A major variation is one that does not relate simply to a change of the name or address of someone named in the licence or an application to vary the licence to specify a new individual as the designated premises supervisor. The approach taken in the 2003 Act to applications for new and major variations is based on five main policy aims. These are that:

- the main purpose of the licensing regime is to promote the licensing objectives;
- 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. This risk assessment will inform any necessary steps to be set out in an operating schedule to promote the four licensing objectives;
- operating schedules, which form part of an application, should be considered by professional experts in the areas concerned, such as the police and environmental health officers, when applications for premises licences and club premises certificates are copied to them by applicants;
- local residents and businesses are free to raise relevant representations, which relate to the promotion of the licensing objectives, about the proposals contained in an application; and
- the role of a licensing authority is primarily to regulate the carrying on of the licensable activity when there are differing specific interests in those activities to ensure that the licensing objectives are promoted in the wider interests of the community.

When considering applications, it is expected that licensing authorities will seek to uphold these policy aims.

5.66 When a licensing authority receives an application for a new or a major variation of a premises licence, it must determine whether the application has been made properly in accordance with

section 17 of the 2003 Act, and in accordance with regulations made by the Secretary of State under sections 17(4), 17(5), 54 and 55 of the Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with the regulations.

- 5.67 Where an application has been lawfully made and provided that no responsible authority (for example, the chief officer of police or an environmental health authority) makes a representation about an application and no interested party seeks to do so, then no hearing would be required and the application **must** be granted in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions in the Act. This should be undertaken as a simple administrative process by the licensing authority's officials by whom the proposals contained in the operating schedule to promote the licensing objectives should be translated into clear and understandable conditions consistent with the proposals in the operating schedule. In these circumstances, it is expected and particularly important that licensing authorities do 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 authority. Accordingly, if operating schedules are prepared efficiently, often in consultation with responsible authorities, it is expected that the likelihood of hearings being necessary following relevant representations would be significantly reduced.
- 5.68 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e. those which are not frivolous or vexatious and which relate to the licensing objectives (see paragraphs 5.70 – 5.77 below). A hearing will be required for the licensing authority to consider the representations, at which the parties should be invited to comment upon the representations made and if necessary, to provide clarification of their own representations. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations. 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 specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation which gave rise to the hearing. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation. In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - its own statement of licensing policy; and
 - the steps that are necessary to promote the licensing objectives.
- 5.69 The determination should be given forthwith and reasons provided to support the determination. This is important not least in anticipation of an appeal by any of the parties.

After considering all the relevant issues, it is open to the licensing authority to grant the application subject to such conditions that are consistent with the operating schedule, and these can be modified to such an extent that the licensing authority considers necessary for the promotion of the licensing objectives. 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. 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. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities.

- 5.70 Where a representation is made under the provisions of the 2003 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 consider whether the representation is relevant. This is dealt with in more detail below. If the licensing authority decides it is not relevant, a hearing would not be required in relation to that representation and in the absence of representations from other interested parties or responsible authorities, the application must be granted. The aggrieved interested party whose representation is not regarded as “relevant” may challenge the licensing authority’s decision by way of judicial review.
- 5.71 With regard to applications to vary the hours during which alcohol may be sold in shops, stores and supermarkets, the Secretary of State recommends that the norm should be for such premises to 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. Where representations are received from the police, for example, in the case of some shops known to be a focus of disorder and disturbance because youths gather there, a limitation may be necessary.
- 5.72 In the context of variations, which may involve structural alteration to or change of use of the building, it should be noted that the decision of the licensing authority will not exempt an applicant from the need to apply for building control where appropriate.

Relevant, vexatious and frivolous representations

- 5.73 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. A representation that fails to do this is not “relevant” for the purposes of the 2003 Act. 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 authorise the activities within the scope of the 2003 Act that it is proposed should take place on the premises. For example, a representation from a local businessman which argued that his business would be commercially damaged by the new business for which an application is being made under Part 3 of the 2003 Act would not be relevant. 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 steps proposed by the applicant to control that nuisance are inadequate would amount to

relevant representations and must be considered provided the other conditions necessary to be a relevant representation were fulfilled.

- 5.74 After a premises licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre would generally not be regarded as relevant if it cannot be positively tied or linked by a causal connection to particular premises which would allow for a proper review of its licence. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house. In this context, it should be noted that the “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may only give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered: it cannot give rise to a relevant representation after a licence has been granted or varied when a review of a licence may be sought. A review must relate specifically to a particular premises licence relating to an individual premises, and by its nature “cumulative impact” relates to the indirect effect of a concentration of many premises. Identifying one for a review by reason of cumulative impact on the licensing objectives would inevitably be arbitrary.
- 5.75 It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious. The interested party making representations may not consider the matter to be frivolous or vexatious, but the test is whether the licensing authority is of the opinion they are frivolous or vexatious. The licensing authority must determine this and make the decision on the basis of what might ordinarily be considered 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. A trivial complaint may not always be frivolous, but it would have to be pertinent in order to be relevant. An interested party aggrieved by a rejection of his representations on these grounds may challenge the authority’s decision by way of judicial review.
- 5.76 Decisions as to whether representations are relevant should not be made on the basis of any political judgement which would undermine a natural approach to the issue. This may be difficult for ward councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing; i.e. the decision would be that the representations are relevant. Any ward councillor who considers that his own interests are such that he is unable to consider the matter independently should disqualify himself.
- 5.77 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application for the grant or variation of a premises licence.

Transfers of premises licences

- 5.78 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, her or it. Notice of the application has to be given to the chief officer of police. Where an applicant is an individual he or she must be 18 years old or over. A transfer of a premises licence would often arise when a business involving 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.
- 5.79 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process and section 43 of the 2003 Act provides a mechanism whereby the transfer can be given immediate effect on the receiving of an application by the licensing authority until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.
- 5.80 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. Such objections are expected to be rare and arise because the police have evidence that the business or individuals seeking to hold the licence or business or individuals linked to such persons are involved in crime (or disorder). For example, the police would rightly seek to prevent a company having a licence transferred to it in respect of licensed premises if they had evidence that the premises may be used to launder money obtained from drugs crime. Where an objection is made, the licensing authority must hold a hearing at which the authority will consider the objection. The authority's consideration would be confined to the issue of the crime prevention objective and the hearing should not be permitted to stray into other extraneous matters. The burden would be on the police to demonstrate to the authority that there were good grounds for believing that the transfer of the licence would undermine the crime prevention objective. The licensing authority must give clear and comprehensive reasons for its eventual determination in anticipation of a possible appeal by either party.
- 5.81 It is stressed that such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, it is expected that they would raise the matter immediately with the chief officer of police.

Applications to change the designated premises supervisors

- 5.82 Paragraphs 4.18 to 4.23 above cover designated premises supervisors and applications to vary a premises licence covering sales of alcohol by specifying a new designated premises supervisor.

Provisional statements

- 5.83 Where premises are being or are about to be constructed for the purpose of being used for one or more licensable activities, or are being or about to be extended or otherwise altered for that purpose, the necessary investment may not be committed unless investors have some assurance not only that the project has appropriate planning permission but that they have some degree of assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed.
- 5.84 The 2003 Act does not define the words “otherwise altered”, but the alteration must relate to the purpose of being used for one or more licensable activities. For example, a premises licence should indicate the whole of or part of the premises which are licensed for one or more licensable activity. If the building is to be altered to allow a previously unlicensed area to be used for a licensable activity, a provisional statement may be sought in respect of the additional area.
- 5.85 It is open to any person falling within section 16 of the 2003 Act to apply for a premises licence before new premises are constructed or extended or changed. Nothing in the 2003 Act prevents such an application. This would be possible where clear plans of the proposed structure exist and an operating schedule is capable of being completed about the activities to take place there, the time at which such activities will take place, the proposed hours of opening, where the applicant wishes the licence to have effect for a limited period, that period, the steps to be taken to promote the licensing objectives, and where the sale of alcohol is involved, whether supplies are proposed to be for consumption on or off the premises (or both) and the name of the designated premises supervisor the applicant wishes to specify. On granting such an application, the authority of the licence would not have immediate effect but the licensing authority would include in the licence the date upon which it would have effect. A provisional statement will therefore normally only be required when the information described above is not available.
- 5.86 The 2003 Act therefore provides for a person, if an individual aged 18 or over, who has an interest in the premises to apply for a “provisional statement”. A provisional statement does not have limited duration but with the potential for there to be material changes over time, the longer there is a delay before a premises licence is applied for the greater potential for representations made in respect of an application for a premises licence not to be excluded. “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 include the particulars of the premises, describe the work to be done and the licensable activities that it is planned would take place at the completed premises. Plans would also be included. The application must be advertised and notified to responsible authorities in a similar way to the arrangements for applications for premises licences and as set out in regulations. Responsible authorities and interested parties may make representations. Where no representations are made, a provisional statement must be issued to that effect. Where relevant representations are made, a hearing must be arranged by the licensing authority to consider them. The need for a hearing can be dispensed with only by agreement of the licensing authority, the applicant for the provisional statement and all the parties who made relevant representations.

- 5.87 When a hearing is held, the licensing authority must decide whether, if the premises were constructed or altered in the way proposed in the schedule of works and if a premises licence was sought for those premises, it would consider it necessary for the promotion of the licensing objectives to attach conditions to the licence, to rule out any of the licensable activities applied for, to refuse to specify the person nominated as premises supervisor, or to reject the application. It will then issue the applicant with a provisional statement setting out the details of that decision together with its reasons. The licensing authority must copy the provisional statement to each person who made relevant representations and the chief officer of police for the area in which the premises is situated. The licensing authority should give full and comprehensive reasons for its decision. This is important in anticipation of an appeal by any aggrieved party.
- 5.88 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; and
 - the work in the schedule of works has been satisfactorily completed;
 - given the information provided in the application for a provisional statement, the responsible authority or interested party could have made the same, or substantially the same, representations about the application then but failed to do so without reasonable excuse; and
 - there has been no material change in the circumstances relating either to the premises or to the area in the vicinity of those premises since the provisional statement was made.
- 5.89 Licensing authorities should exclude representations in these circumstances. It will be important for investment and employment opportunities in their areas for provisional statements to function properly by providing a limited assurance. But it should be recognised that a great deal of time may pass between the issue of a provisional statement and the completion of a premises in accordance with a schedule of works. Genuine and material changes in circumstances may arise during the intervening years.
- 5.90 It should be noted that any decision of the licensing authority on an application for a provisional statement would not relieve an applicant of the need to apply for building control.
- 5.91 A provisional statement may not be sought or given for a vessel, a vehicle or a moveable structure (see section 189 of the 2003 Act).

Interim authorities

- 5.92 The 2003 Act provides special arrangements for the continuation of permissions under a premises licence when the holder of a licence dies suddenly or becomes bankrupt or mentally incapable. In the normal course of events, the licence would lapse in such circumstances. Because there may also be some time before, for example, the deceased person's estate can be dealt with or an administrative receiver appointed this could have a damaging effect on those

with interests in the premises, such as an owner or lessor, as well as for employees working at the premises in question; and could bring unnecessary disruption to customers' plans. The Act therefore provides for the licence to be capable of being reinstated in a discrete period of time in certain circumstances.

- 5.93 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. It should also be copied to the chief officer of police. The premises licence would lapse until such a notice is given and carrying on licensable activities in that time would be unlawful. Such activity will be an offence as an unauthorised licensable activity under section 136(1)(a) of the 2003 Act, to which there is a "defence of due diligence" provided in section 139. This may be relevant where, for example, the manager of particular premises is wholly unaware for a period of time that the premises licence holder has died. As soon as an interim authority notice is given within the seven day period, the business may continue to carry on any licensable activities permitted by the premises licence.
- 5.94 An interim notice may only be given either by a person with a prescribed interest in the premises as set out by the Secretary of State in regulations which may be viewed on the DCMS website; or by a person connected to the former holder of the licence (normally a personal representative of the former holder or a person with power of attorney or where someone has become insolvent that persons insolvency practitioner).
- 5.95 The effect of giving the notice is to reinstate the premises licence as if the person giving the notice is the holder of the licence and thereby allow licensable activities to continue to take place pending a formal application for transfer. The maximum period for which an interim authority notice may have effect is two months.
- 5.96 The interim authority notice ceases 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 of the giving of the copy of the notice, and if satisfied that in the exceptional circumstances of the case failure to cancel the interim authority would undermine the crime prevention objective, the police may give a notice to that effect to the licensing authority. In such circumstances, the licensing authority must hold a hearing to consider the objection notice and cancel the interim authority notice if it determines that it is necessary to do so for the promotion of the crime prevention objective.
- 5.97 In respect of these matters, it is expected that licensing authorities will be alert to the urgency of the circumstances and the need to consider the objection quickly.
- 5.98 It should also be noted that by virtue of section 50 of the 2003 Act where the premises licence lapses (because of death, incapacity or insolvency of the holder etc.) or by its surrender, but no interim authority notice has effect, a person who may apply for the grant of a premises licence under section 16(1) may apply within 7 days of the lapse for the transfer of the licence to him with immediate effect pending the determination of the application – causing the licence to be reinstated from the point at which the transfer application was received by the licensing authority. The person applying for the transfer must copy his application to the chief officer of police.

Reviews

- 5.99 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm 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 and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.
- 5.100 At any stage, following the grant of a premises licence, a responsible authority, such as the police or the fire authority, or an interested party, such as a resident living in the vicinity of the premises, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. In addition, a review of the licence will normally follow any action by the police to close down the premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a notice of magistrates' court's determination sent to the licensing authority. Licensing authorities may not initiate their own reviews of premises licences. Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may however request reviews on any matter which relates to the promotion of one or more of the licensing objectives.
- 5.101 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.
- 5.102 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.
- 5.103 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It would therefore be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review.
- 5.104 Where the request originates with an interested party – e.g. a local resident, residents' association, local business or trade association – the licensing authority must first consider whether the complaint made is not relevant, vexatious, frivolous or repetitious. Relevance, vexation and frivolousness were dealt with in paragraphs 5.73 – 5.77 above. A repetitious representation is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in 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
- representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and
- in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.

- 5.105 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a second bite of the cherry following the failure of representations to persuade the licensing authority on earlier occasions. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, the Secretary of State recommends that more than one review originating from an interested party should not be permitted within a period of twelve months on similar grounds save in compelling circumstances or where it arises following a closure order.
- 5.106 Following receipt of a request for a review from a responsible authority or an interested party or in accordance with the closure procedures described in Part 8 of the 2003 Act, the licensing authority must arrange a hearing. The arrangements for the hearing must follow the provisions set out by the Secretary of State in regulations. The details may be viewed on the DCMS website. The Secretary of State considers it particularly important that the premises licence holder is fully aware of the representations made in respect of the premises, any evidence supporting the representations and that he or his legal representatives has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 5.107 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.
- 5.108 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.
- 5.109 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:
- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;

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

5.110 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response. For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual. Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

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

Reviews arising in connection with crime

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

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

- 5.113 Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps 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 remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.
- 5.114 As explained above, it is not the role of a licensing authority to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. There is therefore no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. As stated above, at the conclusion of a review, it will be for the licensing authority to determine on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing objectives in respect of the licence in question, regardless of any subsequent judgment in the courts about the behaviour of individuals.
- 5.115 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;
 - for the organisation of racist activity or the promotion of racist attacks;
 - for unlawful gaming and gambling; and
 - for the sale of smuggled tobacco and alcohol.
- 5.116 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and

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

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

Right of freeholders etc. to be notified of licensing matters

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

AWP (Amusements with prizes) machines

- 5.119 Licensing authorities should note that Schedule 6 (minor and consequential amendments) to the 2003 Act amends the Gaming Act 1968 in respect of the grant of "section 34 permits" for AWP (amusements with prizes) machines in premises licensed for the sale of alcohol for consumption on the premises. On the bringing into force of this amendment, responsibility for the grant of these permits will transfer from the licensing justices to the relevant licensing authority. This is not a "licensing function" under the 2003 Act and the authority for the grant or refusal of such permits will continue to derive from Schedule 9 to the 1968 Act. Local authorities already have responsibility for the grant of permits for AWP machines on other premises and therefore will be aware of the issues that surround them. The following guidance under this sub-heading does not therefore form part of the Guidance issued under section 182 of the 2003 Act in this document but is provided merely to assist licensing authorities in understanding their new responsibility for AWP machines in connection with premises licensed for the sale of alcohol for consumption on those premises.

- 5.120 Permits last for a minimum period of three years but may be issued for longer periods. The current fee for the grant or renewal of a permit under section 34 of the 1968 Act is £32.
- 5.121 The Secretary of State recommends that applicants for permits be advised that they may make applications by post and that provided the fee has been paid, they need not attend a hearing unless notified to do so. Applicants to licensing authorities must be holders of premises licences authorising the sale of alcohol for consumption on the premises. It has been the practice for a number of years for companies who rent or lease machines to licence holders to make application for the grant and renewal of permits, and where such applications are made the company should make it clear that the application is made on behalf of, and with the agreement of, the premises licence holder. In the absence of such information, the application should be postponed for the premises licence holder's consent to be notified.
- 5.122 Licensing authorities are not permitted to attach conditions on the grant of a section 34 permit other than a condition limiting the number of machines authorised under it. The Secretary of State also recommends that licensing authorities should not require applicants to provide a plan of the premises indicating where the machines are to be sited.
- 5.123 It is recommended that licensing authorities should indicate that its licensing committee and sub-committees will be prepared to grant permits authorising up to two machines without a hearing. If licensing authorities consider it appropriate, they may choose, at their discretion, not to hold hearings in respect of applications concerning larger numbers of such machines.
- 5.124 There is no requirement under the 1968 Act for the police to be notified of an application.
- 5.125 Some licensing authorities may be concerned that children are able to play machines authorised under a permit in licensed premises. Parliament has, however, placed no restrictions on the age at which such machines may be played (other than those in amusement arcades). It is therefore a matter for the discretion of the premises licence holder and any adults accompanying the children concerned whether they are entitled to play such machines. In the case of premises used exclusively or primarily for the consumption of alcohol, all children under the age of 16 will only be lawfully permitted entry to the premises if accompanied by adults. The British Amusement Catering Trade Association (BACTA), the gaming machines trade representative body, have a code of practice in respect of children and gaming machines to which their members are expected to adhere.
- 5.126 Under paragraph 10A of Schedule 9 to the Gaming Act 1968, all such machines must be located in a bar of the premises. The 2003 Act amends this paragraph in respect of the meaning of "bar" and licensing authorities should note that "bar" in this context means any place which, by virtue of the premises licence, may be used for the supply of alcohol, and which is exclusively or mainly used for the supply and consumption of alcohol.

Large scale temporary events requiring premises licences

- 5.127 Licensing authorities should note that a premises licence may be sought for a short, discrete period. The 2003 Act also provides for the giving of temporary event notices. These are dealt with later in this Guidance. Temporary event notices are subject to various conditions and limitations. These concern:

- duration – they are limited to events lasting for up to 96 hours (this relates to the period during which licensable activities may be carried on, and does not relate to preparation and setting up time, packing away or clearing up time);
- 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 on more than 12 occasions in any calendar year, but are subject to the overall aggregate of 15 days irrespective of the number of occasions on which they have been used; and
- 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 any other person to five notices in the same period.

5.128 If these conditions are not fulfilled, a temporary event at which licensable activities are to take place may not be a permitted temporary activity carried on under the authority of a temporary event notice but 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 an unlimited duration premises licence except that it should be stated on the application that the period of the licence will be limited. 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 must be a personal licence holder.

5.129 Temporary events may range from relatively small local events, like fairs, which may 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 as well as public nuisance may be considerable. Licensing authorities are expected to 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. Many of these events will give rise to special considerations in respect of public safety. Operating schedules should therefore reflect an awareness of these matters and in particular, advice given in the following documents will be relevant:

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