



Supplementary Guidance issued under section 182 of the Licensing Act 2003

June 2006

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Summary of Amendments

The table below summarises the amendments made by the revised version of the Guidance issued under section 182 of the Licensing Act 2003 and Guidance to Police Officers on the Operation of Closure Powers in Part 8 of the Licensing Act 2003, laid before Parliament on 20 June 2006, to the original Guidance first issued by the Secretary of State for Culture, Media and Sport in July 2004.

Paragraph	Amendment
2.2	Change <p><i>“may be viewed on the HMSO website www.hmso.gov.uk”</i></p> <p>to</p> <p><i>“may be viewed on the OPSI website www.opsi.gov.uk”</i></p>
2.2	After final sentence add <p><i>“The relevant statutory instruments are:</i></p> <ul style="list-style-type: none"> • <i>The Licensing Act 2003 (Transitional provisions) Order 2005</i> • <i>The Licensing Act 2003 (Personal licences) Regulations 2005</i> • <i>The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005</i> • <i>The licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005</i> • <i>The Licensing Act 2003 (Hearings) Regulations 2005</i> • <i>The Licensing Act 2003 (Hearings) (Amendment) Regulations 2005</i> • <i>The Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005</i> • <i>The Licensing Act 2003 (Fees) Regulations 2005</i> • <i>The Licensing Act 2003 (Transitional conversions fees) Order 2005</i> • <i>The Licensing Act 2003 (Fees) (Amendment) Regulations 2005”</i>
2.17	Change <p><i>“www.uniquepubs.com/pubwatch”</i></p> <p>to</p> <p><i>“www.nationalpubwatch.org.uk”</i></p>
2.18	Change 2 nd sentence from <p><i>“The Home Office, in conjunction with the Department of Health and the DCMS, has also produced the Safer Clubbing Guide... England.”</i></p> <p>to</p> <p><i>“The Home Office, in conjunction with the Department of Health, the DCMS and key stakeholders, has also produced the Safer Clubbing Guide... England.”</i></p>
2.23	Change <p><i>“http://www.number10.gov.uk/output/Page4498.asp”</i></p>

	to <p><i>www.strategy.gov.uk/work_areas/alcohol_misuse/interim.asp</i></p>
2.24	Change <p><i>www.streetartsnetwork.org/pages/publications</i></p> to <p><i>www.streetartsnetwork.org.uk/pages/publications.htm</i></p>
3.41	Change <p><i>“In most cases, this may be the Area Child Protection Committee. However, in some areas, the Committee’s involvement may not be practical and the licensing authority should consider alternatives. For example, the local authority social services department.”</i></p> to <p><i>“This may be the local authority social services department, the Area Child Protection Committee, or another competent body.”</i></p>
3.47	After 1 st sentence <p><i>“In connection with cultural strategies, licensing policy statements should include clearly worded statements indicating that they will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing”</i></p> add <p><i>“for example, by considering whether premises that provide live music or culture are represented on licensing stakeholder forums, and ensuring that local cultural officers are regularly consulted about the impact on local culture. Where appropriate, town centre managers have an important role in coordinating live music events in town centres and can be an important source of information.”</i></p>
3.47	Move to a new paragraph (3.47A) the following existing text <p><i>“Care will be needed to ensure that only necessary, proportionate and reasonable licensing conditions impose any restrictions on such events. Where there is any indication that such events are being deterred by licensing requirements, statements of licensing policy should be re-visited with a view to investigating how the situation might be reversed. Broader cultural activities and entertainment may also be affected. In developing their statements of licensing policy, licensing authorities should also consider any views of the local authority’s arts committee where one exists.”</i></p>
3.50	After final sentence add <p><i>“They may also wish to consult licensees who are likely to have a good knowledge of customer expectation and behavioural patterns in relation to transport options.”</i></p>
3.51	After 3 rd bullet, add <p><i>“However, there are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.”</i></p>
3.52	Change <p><i>“Home Office guidance on how to prepare race impact assessments will be available from June</i></p>

	<p>2004 on www.raceimpact.homeoffice.gov.uk,”</p> <p>to</p> <p>“Guidance on how to prepare race impact assessments has been produced by the Commission for Racial Equality (CRE) in consultation with a Home Office cross-Whitehall user group and a CRE-led public authority advisory group. This guidance is available on http://www.cre.gov.uk/duty/reia/index.html,”</p>
3.61	<p>After paragraph 3.61 add new paragraph (3.61A)</p> <p>“The 2003 Act does not prevent the development by a licensing authority of collective working practices with other parts of the local authority or other licensing authorities for work of a purely administrative nature, e.g. mail-outs, but any matters regarding licensing decisions must be carried out by the licensing committee, its sub-committees or officers. In addition, such administrative tasks may be contracted out to private businesses.”</p>
4.5	<p>Change</p> <p>“In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, the Secretary of State would expect that all applicants (other than those exercising “grandfather rights” during the period of transition) be required to produce a Criminal Record Bureau certificate to the licensing authority.”</p> <p>to</p> <p>“In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, applicants are required to produce a criminal conviction certificate or a criminal record certificate or the results of a subject access search of the police national computer by the National Identification Service to the licensing authority.”</p>
4.18	<p>After last sentence add</p> <p>“A designated premises supervisor may supervise more than one premises so long as they are able to ensure that the four licensing objectives will be properly promoted on the premises and that licensing law and licence conditions will be complied with.”</p>
4.23	<p>After final sentence add</p> <p>“Where there are frequent changes of Designated Premises Supervisor, the premises licence holder may submit the form in advance specifying the date when the new individual will be in post and the change will take effect.”</p>
5.8	<p>Change</p> <p>“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.”</p> <p>to</p> <p>“This section makes clear that to be excluded from the meaning of “sale by retail” a sale must be:</p> <p style="padding-left: 40px;">made from premises owned by the person making the sale, or occupied under a lease with security of tenure, and for consumption off the premises.</p>

	<p><i>In addition, to be excluded, they must be sales which are made to:</i></p> <p><i>traders for the purpose of their trade (including, for example, another wholesaler), holders of club premises certificates, premises licences, or personal licences, or premises users who have given temporary event notices for the purpose of making sales authorised by those notices.”</i></p>
5.8	<p>Move to a new paragraph (5.8A) and change the following existing text from</p> <p><i>“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.”</i></p> <p>to</p> <p><i>“However, 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. This will affect many wholesale businesses, cash and carries and bonded warehouses across England and Wales. If an employee were buying alcohol as an “agent” for his employer and for the purposes of his employer’s trade (i.e. selling alcohol), this could be treated as a sale to a trader. If, however, an employee were buying for his own consumption, this would be a retail sale, and would require a licence.”</i></p>
5.9	<p>After paragraph 5.9 add new paragraph (5.9A)</p> <p><i>“In such circumstances a licensing authority will wish to carefully consider the distance selling supply chain in deciding where the alcohol is appropriated to the contract, as this will determine which premises will require a licence. Any premises where alcohol is supplied under a premises licence must have a designated premises supervisor. This will normally be the person in day to day running of the premises, and he or she will need to hold a ‘personal licence’. In addition to this, all sales of alcohol must be made or authorised by a personal licence holder. This does not necessarily mean a personal licence holder must be personally present at every transaction or that a separate authorisation must be given for each sale of alcohol.”</i></p>
5.32	<p>At the end of the 2nd bullet point, after</p> <p><i>“residents association”</i></p> <p>add</p> <p><i>“or a parish council”</i></p>
5.35	<p>After</p> <p><i>“recognised by the licensing authority for that area as being competent to advise it on such matters;”</i></p> <p>insert</p> <p><i>“the local weights and measures authority (trading standards);”</i></p>
5.36	<p>Change</p> <p><i>“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.”</i></p> <p>to</p> <p><i>“This may be the local authority social services department, the Area Child Protection</i></p>

	<i>Committee, or another competent body.”</i>
5.39	Delete <i>“The Secretary of State expects to prescribe Crime and Disorder Reduction Partnerships in due course.”</i>
5.45	After bullet points and before <i>“Regulations containing provisions on fees and the prescribed form of applications and plans may be viewed on the DCMS website.”</i> insert <i>“The Government recommends that forms should not be returned if they contain obvious and minor factual errors that can easily be amended.”</i>
5.45	After <i>“Regulations containing provisions on fees and the prescribed form of applications and plans may be viewed on the DCMS website.”</i> insert <i>“Plans should normally be drawn in standard scale (1:100), but an alternative scale may be used if the licensing authority has provided written consent. There is no requirement for plans to be professionally drawn as long as they clearly show all the prescribed information.”</i>
5.46	Delete <i>“Examples of specimen operating schedules may be viewed on the DCMS website.”</i>
5.52	Change <i>“should be clearly displayed on an A3 size notice”</i> to <i>“should be clearly displayed on an A4 size notice”</i>
5.52	After sentence ending <i>“...together with information about where the details of the application may be viewed.”</i> insert <i>“Notices of applications to vary a premises licence should include a brief description of the proposed variation, e.g. details of extra hours applied for, hours varied from/to.”</i>
5.52	After 5.52 add new paragraph (5.52A) <i>“In the case of applications for premises licences involving internet or mail order sales, notices should be conspicuously displayed at the place where the alcohol is appropriated to the contract in accordance with the relevant regulations.(see paragraph 5.9).”</i>
5.52	After 5.52 add new paragraph (5.52B) <i>“Licensing authorities may wish to conduct random and unannounced visits to premises to confirm that notices have been clearly displayed and include relevant and accurate information.”</i>
5.65	Change first sentence <i>“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.”</i>

	<p>to</p> <p><i>“For the purposes of this guidance, a ‘major’ variation is any variation that is not 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.”</i></p>
5.68	<p>After sentence</p> <p><i>“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.”</i></p> <p>add new paragraph (5.68A) to read</p> <p><i>“Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences’. The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of can application.”</i></p>
5.68	<p>After sentence</p> <p><i>“The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website.”</i></p> <p>add new paragraph (5.68B)</p> <p><i>“There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree.”</i></p>
5.68	<p>Move to a new paragraph (5.68C) the text from</p> <p><i>“As a matter of practice...”</i></p> <p>to</p> <p><i>“promote the licensing objectives.”</i></p>
5.69	<p>After last sentence add</p> <p><i>“In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that interested parties and others have the most current information.”</i></p>
5.73	<p>After last sentence add</p> <p><i>“There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises.”</i></p>
5.105	<p>After last sentence add</p> <p><i>“The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one request for a review of a premises within the 12 month period or other reasonable interval agreed by the licensing authority.”</i></p>
7.22	<p>At the end of 1st bullet after</p>

	<p><i>“Area Child Protection Committee”</i></p> <p>add</p> <p><i>“,or the local authority social services department.”</i></p>
7.22	<p>At the end of 6th bullet point change</p> <p><i>“local nightclubs”</i></p> <p>to</p> <p><i>“local venues.”</i></p>
7.67	<p>After 7.67 add new paragraph (7.67A)</p> <p><i>“Authorisation” does not imply direct supervision of each sale of alcohol by a personal licence holder. The question arises as to how sales can be authorised in circumstances where the personal licence holder is absent for longer periods, such as when taking a holiday. In the Government’s view it is not possible to state categorically how the requirement of authorisation is satisfied as the facts and circumstances in each case will differ. Whether or not an authorisation has been given within the meaning of Act or whether the frequency or length of absence meant that the personal licence holder could not, in fact, have authorised the sale would, ultimately, be a matter for a court to determine on the evidence before it when the issue arose.</i></p> <p><i>Nevertheless, it seems reasonable to expect that the courts would require the authorisation to be meaningful and properly carried out and not involve any abdication of responsibility. In our view, the following factors might be relevant in considering whether there was real authorisation :</i></p> <p><i>the person(s) authorised to sell alcohol should be clearly identified;</i></p> <p><i>the authorisation should have specified the acts which may be carried out by the person being authorised;</i></p> <p><i>there should be an overt act of authorisation, for example, a specific oral or written statement given to the individual(s) being authorised; and</i></p> <p><i>there should be in place sensible arrangements for monitoring by the personal licence holder of the activity authorised by him or her on a reasonably regular basis.”</i></p>
7.73	<p>Change</p> <p><i>“Performing Right Society licences and Phonographic Performances Ltd licences”</i></p> <p>to</p> <p><i>“Performing Right Society licences (PRS) and Phonographic Performances Ltd licences (PPL)”</i></p>
8.13	<p>Change</p> <p><i>“Local publicity should also remind premises users of relevant offences under licensing law including the laws governing sales of alcohol to minors or to any person who is drunk, and of the police powers to close down events with no notice on grounds of disorder, the likelihood of disorder or because of public nuisance caused by noise emanating from the premises.”</i></p> <p>to</p> <p><i>“Premises users are not required to be on the premises for the entire duration of the event, but they will remain liable to prosecution for certain offences that may be committed at the premises</i></p>

	<i>during the temporary event if the event is not adequately managed/supervised including the laws governing sales of alcohol to minors.”</i>
8.13	<p>After paragraph 8.13 add new paragraph (8.13A)</p> <p><i>“A temporary event notice may be given for part of a building such as a single room within a village hall, a plot within a larger area of land, or a discrete area within a marquee as long as it includes a clear description of the area in which it is proposed to carry on licensable activities and the premises user intends to restrict the number of people present in the notified area at any one time to less than 500. If the premises user fails to restrict the numbers to a maximum of 499, he or she would be liable to prosecution for carrying on unauthorised licensable activities.”</i></p>
8.22	<p>Change</p> <p><i>“For example, a temporary event notice would be void unless there is a minimum of 24 hours between events notified by the premises user in respect of the same premises.”</i></p> <p>to</p> <p><i>“For example, a temporary event notice would be void unless there is a minimum of 24 hours between events notified by the same premises user, or an associate, or someone who is in business with the relevant premises user, in respect of the same premises.”</i></p>
9.6	<p>After paragraph 9.6 add new paragraph (9.6A)</p> <p><i>“The 2003 Act does not prevent visitors to a qualifying club being supplied with alcohol as long as they are ‘guests’ of any member of the club or the club collectively, and nothing in the 2003 Act prevents the admission of such people as guests without prior notice. For the sake of flexibility, the Act does not define “guest” and whether or not somebody is a genuine guest would in all cases be a question of fact. The term can include a wide variety of people who are invited by the qualifying club or any individual member to use the club facilities. The manner in which they are admitted as ‘guests’ would be for the club to determine and to consider setting out in their own club rules.”</i></p>
9.6	<p>After paragraph 9.6A add new paragraph (9.6B)</p> <p><i>“There is no mandatory requirement under the 2003 Act for guests to be signed in by a member of the club. However, a point may be reached where a club is providing commercial services to the general public in a way that is contrary to its qualifying club status. It is at this point that the club would no longer be conducted in “good faith” and would no longer meet “general condition 3” for qualifying clubs in section 62 of the 2003 Act . The question of when this line is crossed and when a club ceases to be conducted in good faith will be a question of fact to be determined in all the circumstances. The 2003 Act provides for the licensing authority to decide when a club has ceased to operate in “good faith”. Where the licensing authority is so satisfied, it is required to give the club a notice withdrawing the club premises certificate. The club is entitled to appeal against such a decision to the magistrates’ courts. Unless such an appeal is successful, the club would need to apply for a full premises licence to cover any licensable activities taking place there.”</i></p>
9.9	<p>After last sentence add</p> <p><i>“Section 90 of the 2003 Act gives powers to the licensing authority to issue a notice to a club withdrawing its certificate where it appears that it has ceased to meet the qualifying conditions. There is a right of appeal against such a decision.”</i></p>
9.10	<p>Change</p> <p><i>“(i.e. members and guests from another qualifying club)”</i></p>

	<p>to</p> <p><i>“(i.e. members and guests from another ‘recognised club’ as defined by section 193 of the 2003 Act)”</i></p>
9.11	<p>After paragraph 9.11 add new paragraph (9.11A)</p> <p><i>“In addition to a plan of the premises and a club operating schedule, clubs must also include the rules of the club with their application. On notifying any alteration to these rules to the licensing authority, the club is required to pay a fee set down in regulations. Licensing authorities may wish to consider returning a certified copy of the rules to the applicant with the certificate’. Licensing authorities should bear in mind that they cannot require any changes to the rules to be made as a condition of receiving a licence unless relevant representations have been made. However, if a licensing authority is satisfied that the rules of a club indicate that it does not meet the qualifying conditions in the Act, a club premises certificate should not be granted.”</i></p>
10.4	<p>After paragraph 10.4 add new paragraph (10.4A)</p> <p><i>“Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as witnesses interested parties who made representations against the application, if it chooses to do so.”</i></p>
Annex C	<p>After</p> <p><i>“Extract from the Licensing Act 2003 : Relevant Offences”</i></p> <p>add the following paragraph</p> <p><i>“This reproduces Schedule 4 of the Licensing Act 2003 as amended by SI 2005/2366 The Licensing Act 2003 (Personal licence : relevant offences) (Amendment) Order 2005. NB. A violent offence under paragraph 19 is ‘any offence which leads, or is intended or likely to lead to a person’s death or to physical injury to a person’. This would include Actual Bodily Harm and, common assault where it leads to physical injury.”</i></p>
Annex C	<p>Change</p> <p><i>“18 A sexual offence, within the meaning of section 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).</i></p> <p><i>19 A violent offence, within the meaning of section 161(3) of that Act.”</i></p> <p>to</p> <p><i>“18 A sexual offence, being an offence —</i></p> <p><i>(a) listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003[2], other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));</i></p> <p><i>(b) an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);</i></p> <p><i>(c) an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).</i></p> <p><i>19 A violent offence, being any offence which leads, or is intended or likely to lead, to a person's</i></p>

	<i>death or to physical injury to a person, including an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition)."</i>
Annex D: Open containers	<p>After</p> <p><i>"However, consideration should be given to a condition preventing the taking of alcoholic and other drinks from the premises in open containers (eg glasses and opened bottles)"</i></p> <p>add</p> <p><i>"for example, by requiring the use of bottle bins on the premises."</i></p>
Annex G - Hours	<p>After 2nd paragraph</p> <p><i>"Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public as such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue."</i></p> <p>add</p> <p><i>" , or the playing of recorded music might only be permitted after a certain time where conditions have been attached to the licence or certificate to ensure that any potential nuisance is satisfactorily prevented."</i></p>
Annex G - Noise and vibration	<p>Change 1ST bullet point</p> <p><i>"noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by a simple requirement to keep doors and windows at the premises closed, or to use noise limiters on amplification equipment used at the premises;"</i></p> <p>to</p> <p><i>"noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by one or more of the following conditions:</i></p> <p><i>a simple requirement to keep doors and windows at the premises closed;</i></p> <p><i>limiting live music to a particular area of the building;</i></p> <p><i>moving the location and direction of speakers away from external walls or walls that abut private premises;</i></p> <p><i>installation of acoustic curtains;</i></p> <p><i>fitting of rubber seals to doorways;</i></p> <p><i>installation of rubber speaker mounts;</i></p> <p><i>requiring the licensee to take measure to ensure that music will not be audible above background level at the nearest noise sensitive location;</i></p> <p><i>require licensee to undertake routine monitoring to ensure external levels of music are not excessive and take appropriate action where necessary;</i></p> <p><i>noise limiters on amplification equipment used at the premises (if other measures have been unsuccessful).</i></p> <p><i>In determining which conditions are necessary and appropriate, licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter the holding of events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues."</i></p>

Contact details in back cover	Change <i>“Licensing Communication Strategy Branch”</i> to <i>“Licensing Guidance Review Team ”</i> and <i>“Telephone : 020 7211 6347”</i> to <i>“Telephone : 020 7211 6380”</i>
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Existing Guidance Paragraphs

- 2.2 The 2003 Act, the associated explanatory notes and any statutory instruments made under its provisions may be viewed on the HMSO website www.hmso.gov.uk HMSO website www.hmso.gov.uk. All statutory instruments may also be viewed on the DCMS website.
- 2.17 The National Pubwatch Good Practice Guide provides advice on how such schemes can be established locally and includes Codes of Practice on sharing information, photographs and banning policies with regard to responsibilities under the Data Protection Act 1998. Licensing authorities should familiarise themselves with Pubwatch schemes operating in their areas and support their aims. Information about Pubwatch can be obtained through their website: www.uniquepubs.com/pubwatch
- 2.18 “Safer Clubbing” concerns drugs and nightclubs. The Home Office, in conjunction with the Department of Health, and the DCMS, has also produced the Safer Clubbing Guide that provides comprehensive new advice for nightclub owners, dance event promoters and existing local authority licensing departments on how to ensure the health and safety of anyone attending dance events in England. The Guide can be viewed in full on www.drugs.gov.uk.
- 2.23 For information on potential alcohol-related harms generally, and the relationship between alcohol and crime specifically, licensing authorities are invited to look at the Prime Minister's Strategy Unit's interim analysis paper which was produced to summarise the evidence based on all forms of alcohol-related harm <http://www.number10.gov.uk/output/Page4498.asp>. Up-to-date information on alcohol-related crime research can be found on the Home Office's alcohol and crime research page <http://www.homeoffice.gov.uk/rds/alcohol1.html>. It is also important for local areas to understand their local alcohol-related crime problems. The Home Office has produced guidance for local agencies into the different sources of data available and how to collect it in order to adequately audit local problems <http://www.homeoffice.gov.uk/rds/dprpubs1.html>.
- 2.24 There are a number of key safety publications in the context of regulated entertainment with which licensing authorities should be familiar. They include:
- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999)(“The Purple Book”) ISBN 0 7176 2453 6
 - Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
 - 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
 - The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
 - Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through www.streetartsnetwork.org/pages/publications

- 3.41 Details of “responsible authorities” are given in Chapter 5 of this Guidance. They include public bodies that must be notified about, and that are entitled to lodge representations about, applications for premises licences or club premises certificates or major variations of such licences or certificates or who may ask the licensing authority to review a premises licence or club premises certificate. Applicants for premises licences and club premises certificates will be required to copy details of their applications to these bodies when an application is made and it must therefore be clear which bodies are concerned. In connection with the protection of children from harm, the responsible authorities include a 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. A statement of licensing policy should therefore indicate which body the licensing authority judges to be competent in this area and therefore to which applications will need to be copied. In most cases, this may be the Area Child Protection Committee. However, in some areas, the Committee’s involvement may not be practical and the licensing authority should consider alternatives. For example, the local authority social services department. It would be practical and useful for statements of licensing policy to include the correct descriptions of the responsible authorities in any area and appropriate contact details.
- 3.47 In connection with cultural strategies, licensing policy statements should include clearly worded statements indicating that they will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing. Care will be needed to ensure that only necessary, proportionate and reasonable licensing conditions impose any restrictions on such events. Where there is any indication that such events are being deterred by licensing requirements, statements of licensing policy should be re-visited with a view to investigating how the situation might be reversed. Broader cultural activities and entertainment may also be affected. In developing their statements of licensing policy, licensing authorities should also consider any views of the local authority’s arts committee where one exists.
- 3.50 A statement should describe any protocols agreed between the local police and other licensing enforcement officers and indicate that arrangements will be made for them to report to local authority transport committees so that those committees may have regard to the need to disperse people from town and city centres swiftly and safely to avoid concentrations which produce disorder and disturbance when developing their policies. When developing the statement licensing authorities should have regard to the existing policies and strategies of the relevant local transport authority, as set out in their local Transport Plan¹.
- 3.51 A statement should also indicate:
- that arrangements have been made for licensing committees to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations;

¹ Local Transport Plans are the mechanism by which local authorities should work in partnership with all appropriate bodies to deliver effective local transport strategies. Effective strategies will include provision of night-time and evening services, where this is appropriate to the local situation. It is for local authorities to identify where and how to take action.

- the licensing authority's intention to keep their licensing committee apprised of the employment situation in the area and the need for new investment and employment where appropriate;
- that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. Licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee or following appeals against decisions taken by that committee. Similarly, the granting by the licensing committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control² where appropriate. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This would enable the planning committee to have regard to such matters when taking its decisions and avoid any unnecessary overlap.

3.52 A statement of licensing policy should also recognise that:

- the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups;
- local authorities are also required under the 1976 Act, as amended, to produce a race equality scheme, assess and consult on the likely impact of proposed policies on race equality, monitor policies for any adverse impact on the promotion of race equality, and publish the results of such consultations, assessments and monitoring;
- Home Office guidance on how to prepare race impact assessments will be available from June 2004 on www.raceimpact.homeoffice.gov.uk;
- the statement of licensing policy should therefore refer to this legislation and in turn, the statement of policy should be referenced in the race equality scheme.

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

² It should be borne in mind that an alteration is "material" for the purposes of the Building Regulations if it has the potential to affect structural stability, fire safety or access.

- 4.5 In the context of applications made under Part 6 of the 2003 Act, the statute does not prescribe how any individual should establish whether or not he has unspent convictions for a relevant offence or foreign offence. In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, the Secretary of State would expect that all applicants (other than those exercising “grandfather rights” during the period of transition) be required to produce a Criminal Record Bureau certificate to the licensing authority. This applies whether or not the individual has been living for a length of time in a foreign jurisdiction. It does not follow that such individuals will not have recorded offences in this country. All applicants would also be expected to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or an equivalent foreign offence. This applies to both applicants ordinarily resident in England and Wales as it does to any person from a foreign jurisdiction. Details of relevant offences as set out in the 2003 Act would be expected to be appended to application forms for the information of applicants, together with a clear warning that the making of any false statement is a criminal offence liable to prosecution. Relevant offences are listed in Annex C to this Guidance.
- 4.18 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than that associated with the provision of regulated entertainment and late night refreshment. This is why a personal licence is required by individuals who may be engaged in making and authorising such sales and supplies. Not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must be at least authorised by such a licence holder. Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. For example, there may be one owner or senior manager possessing a personal licence and several junior managers similarly qualified. The main purpose of the “designated premises supervisor” as defined in the 2003 Act is to ensure that there is always one specified individual, among these personal licence holders, who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder.
- 4.23 Where a designated premises supervisor is to be newly specified, the normal course is for the premises licence holder – perhaps a supermarket chain or a pub operating company – to apply to the licensing authority (including an application for immediate effect) accompanied by a form of consent by the individual concerned to show that he consents to taking on this responsible role; and to notify the police of the application. The whole premises licence does not have to be provided for amendment. The 2003 Act provides that a part of the licence may be submitted with the application. Ideally, this will require submission of a schedule to the main licence giving personal details of key individuals. This should be amended by the licensing authority and returned following receipt. In circumstances where the police do object to the specification see paragraph 4.21 above.
- 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.

- 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.
- 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.
- 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.

- 5.39 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.
- 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.

- 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.

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.

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 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.

5.68 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.

5.73 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.

- 5.105 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.
- 7.22 The Government's expectation is that the police will have a key role in undertaking the following tasks:
- developing a constructive working relationship with licensing authority licensing officers and bodies such as the Area Child Protection Committee;
 - developing a constructive working relationship with designated premises supervisors and other managers of premises, including those premises where late night refreshment is provided;
 - advising, where necessary, on the development of a venue drug policy;
 - agreeing the protocols for actions taken by door supervisors in relation to illegal drugs or violent behaviour, in particular when police officers should be called immediately;
 - advising on and approving search procedures and the storage procedures for confiscated drugs;
 - gathering and sharing intelligence on drug dealing and use with partner organisations and local nightclubs;
 - advising on the installation and monitoring of security devices such as CCTV;
 - advising on the provision of safe transport home in consultation with community safety colleagues;
 - working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and anti-social behaviour; and
 - advising on the protection of employees on licensed premises who may be targets for attacks and reprisals.

- 7.67 Where the 2003 Act provides for a mandatory condition to be included in a premises licence, it is the duty of the licensing authority issuing the licence to include that condition on the premises licence. The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or his or her licence has been suspended. In addition, the licence must require that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. This does not mean that the condition should require the presence on the premises at all material times of the designated premises supervisor. Similarly, the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make such sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol during the course of an evening, but may be absent at times from the premises when a transaction takes place. However, the personal licence holder will not be able to escape responsibility for the actions of those he authorises to make such sales.
- 7.73 Copyright law is intended to safeguard the livelihood of authors, composers, arrangers, playwrights, film-makers, publishers and makers of recordings and is extremely important and offences relating to copyright are made “relevant offences” by the 2003 Act. Conditions attached to premises licences should not require adherence to requirements in the general law that the use of copyright material must be authorised. However, because the existing law protects these rights, a condition included in a premises licence or club premises certificate could not be considered necessary for the promotion of one of the licensing objectives. Licensing authorities should however strongly remind applicants of the need to obtain Performing Right Society licences and Phonographic Performances Ltd licences and to observe other copyright arrangements; and that failure to observe the law in this area could lead to an application for the review of the premises licence or the club premises certificate on grounds of the crime prevention objective.
- 8.13 Licensing authorities may not seek to attach any terms, limitations or restrictions on the carrying on of licensable activities at such events under the authority of a temporary event notice. It is however desirable for licensing authorities to provide local advice about proper respect for the concerns of local residents; of other legislative requirements regarding health and safety, noise pollution or the building of temporary structures; of other necessary permissions, for example, with regard to road closures or the use of pyrotechnics in public places; with regard to local bye-laws; and the need to prevent anti-social behaviour by those attending. Local publicity should also remind premises users of relevant offences under licensing law including the laws governing sales of alcohol to minors or to any person who is drunk, and of the police powers to close down events with no notice on grounds of disorder, the likelihood of disorder or because of public nuisance caused by noise emanating from the premises. These matters may be covered in the licensing authority’s statement of licensing policy.
- 8.22 Licensing authorities on receiving temporary event notices will also need to check that other requirements of Part 5 of the 2003 Act are met. For example, a temporary event notice would be void unless there is a minimum of 24 hours between events notified by the premises user in respect of the same premises. This is to prevent evasion of the 96 hour limit on such events and

the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a notice is treated as being from the same premises user if it is given by an associate. The 2003 Act defines an associate as being:

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

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

- 9.6 A qualifying club will be permitted under the terms of a club premises certificate to sell and supply alcohol to its members and their guests only. In order to be a qualifying club instant membership is not permitted and members must wait at least two days between their application and their admission to the club. Any qualifying club may choose to obtain a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public, including the sale of alcohol to them. However, an individual on behalf of a club may give temporary event notices in respect of the premises to cover a period of up to 96 hours on up to 12 occasions each calendar year so long as no more than 499 people attend the event and subject to an overall maximum duration in the year of 15 days and on such occasions may sell alcohol to the public or hire out their premises for use by the public.
- 9.9 Section 62 of the 2003 Act sets out five general conditions which a relevant club must meet to be a qualifying club. Section 63 also sets out specified matters for licensing authorities to enable them to determine whether a club is established and conducted in good faith – the third qualifying condition. Section 64 sets out additional conditions which only need to be met by clubs intending to supply alcohol to members and guests. The full details in respect of these sections of the 2003 Act are reproduced in Annex I.
- 9.10 As well as their own members and guests, qualifying clubs are also able to admit associate members and their guests (i.e. members and guests from another qualifying club) to the club premises when qualifying club activities are being carried on without compromising the use of their club premises certificate. This reflects traditional arrangements where such clubs make their facilities open to members of other clubs which operate reciprocal arrangements.
- 9.11 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those in respect of a premises licence. Licensing authorities should therefore look to Chapter 5 of this Guidance on the handling of such applications and to Chapter 6 in respect of hours of opening. In those Chapters most of the references to the premises licence, premises licence holders and applicants can be read for the purposes of this Chapter as club premises certificates, qualifying clubs and club applicants.
- 10.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant licence holder, club or premises user against the representations of a responsible authority or an interested party or the objections of the chief officer of police, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to

the appeal and the person who made the relevant representation or the chief officer of police will be the appellants.

Annex C

Extract from the Licensing Act 2003: Relevant Offences

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| 17 | An offence under the Firearms (Amendment) Act 1997 (c. 5). |
| 18 | A sexual offence, within the meaning of section 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6). |
| 19 | A violent offence, within the meaning of section 161(3) of that Act. |
| 20 | An offence under section 3 of the Private Security Industry Act 2001 (c. 12) (engaging in certain activities relating to security without a licence). |

Annex D

Open containers not to be taken from the premises

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

Annex G

Hours

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted (other than where they are protected by the transitional provisions of the Licensing Act 2003) by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance. But this must be balanced by the potential impact on disorder which results from artificially early fixed closing times.

Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue.

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

Annex G

Noise and vibration

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by a simple requirement to keep doors and windows at the premises closed, or to use noise limiters on amplification equipment used at the premises;
- prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly;
- the use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted; and
- the placing of refuse – such as bottles - into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

Enquiries

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

**Licensing Communication Strategy Branch
Department for Culture, Media and Sport
Tourism Division
3rd Floor
2- 4 Cockspur Street
London SW1Y 5DH**

Telephone: 020 7211 6347

e.mail: alcohol.entertainment@culture.gov.uk

Amended Guidance Paragraphs

- 2.2 The 2003 Act, the associated explanatory notes and any statutory instruments made under its provisions may be viewed on the OPSI website www.opsi.gov.uk All statutory instruments may also be viewed on the DCMS website. The main statutory instruments are:
- The Licensing Act 2003 (Transitional provisions) Order 2005
 - The Licensing Act 2003 (Personal licences) Regulations 2005
 - The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005
 - The licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005
 - The Licensing Act 2003 (Hearings) Regulations 2005
 - The Licensing Act 2003 (Hearings) (Amendment) Regulations 2005
 - The Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005
 - The Licensing Act 2003 (Fees) Regulations 2005
 - The Licensing Act 2003 (Transitional conversions fees) Order 2005
 - The Licensing Act 2003 (Fees) (Amendment) Regulations 2005
- 2.17 The National Pubwatch Good Practice Guide provides advice on how such schemes can be established locally and includes Codes of Practice on sharing information, photographs and banning policies with regard to responsibilities under the Data Protection Act 1998. Licensing authorities should familiarise themselves with Pubwatch schemes operating in their areas and support their aims. Information about Pubwatch can be obtained through their website: www.nationalpubwatch.org.uk
- 2.18 “Safer Clubbing” concerns drugs and nightclubs. The Home Office, in conjunction with the Department of Health, the DCMS and key stakeholders, has also produced the Safer Clubbing Guide that provides comprehensive new advice for nightclub owners, dance event promoters and existing local authority licensing departments on how to ensure the health and safety of anyone attending dance events in England. The Guide can be viewed in full on www.drugs.gov.uk.
- 2.23 For information on potential alcohol-related harms generally, and the relationship between alcohol and crime specifically, licensing authorities are invited to look at the Prime Minister's Strategy Unit's interim analysis paper which was produced to summarise the evidence based on all forms of alcohol-related harm www.strategy.gov.uk/work_areas/alcohol_misuse/interim.asp. Up-to-date information on alcohol-related crime research can be found on the Home Office's alcohol and crime research page <http://www.homeoffice.gov.uk/rds/alcohol1.html>. It is also important for local areas to understand their local alcohol-related crime problems. The Home Office has produced guidance for local agencies into the different sources of data available and how to collect it in order to adequately audit local problems <http://www.homeoffice.gov.uk/rds/dprpubs1.html>.
- 2.24 There are a number of key safety publications in the context of regulated entertainment with which licensing authorities should be familiar. They include:

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

- 3.41 Details of “responsible authorities” are given in Chapter 5 of this Guidance. They include public bodies that must be notified about, and that are entitled to lodge representations about, applications for premises licences or club premises certificates or major variations of such licences or certificates or who may ask the licensing authority to review a premises licence or club premises certificate. Applicants for premises licences and club premises certificates will be required to copy details of their applications to these bodies when an application is made and it must therefore be clear which bodies are concerned. In connection with the protection of children from harm, the responsible authorities include a 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. A statement of licensing policy should therefore indicate which body the licensing authority judges to be competent in this area and therefore to which applications will need to be copied. This may be the local authority social services department, the Area Child Protection Committee, or another competent body. It would be practical and useful for statements of licensing policy to include the correct descriptions of the responsible authorities in any area and appropriate contact details.
- 3.47 In connection with cultural strategies, licensing policy statements should include clearly worded statements indicating that they will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing, for example, by considering whether premises that provide live music or culture are represented on licensing stakeholder forums, and ensuring that local cultural officers are regularly consulted about the impact on local culture. Where appropriate, town centre managers have an important role in coordinating live music events in town centres and can be an important source of information.
- 3.47A Care will be needed to ensure that only necessary, proportionate and reasonable licensing conditions impose any restrictions on such events. Where there is any indication that such events are being deterred by licensing requirements, statements of licensing policy should be re-visited with a view to investigating how the situation might be reversed. Broader cultural activities and entertainment may also be affected. In developing their statements of licensing policy, licensing authorities should also consider any views of the local authority’s arts committee where one exists.

3.50 A statement should describe any protocols agreed between the local police and other licensing enforcement officers and indicate that arrangements will be made for them to report to local authority transport committees so that those committees may have regard to the need to disperse people from town and city centres swiftly and safely to avoid concentrations which produce disorder and disturbance when developing their policies. When developing the statement licensing authorities should have regard to the existing policies and strategies of the relevant local transport authority, as set out in their local Transport Plan³. They may also wish to consult licensees who are likely to have a good knowledge of customer expectation and behavioural patterns in relation to transport options.

3.51 A statement should also indicate:

- that arrangements have been made for licensing committees to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations;
- the licensing authority's intention to keep their licensing committee apprised of the employment situation in the area and the need for new investment and employment where appropriate;
- that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. Licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee or following appeals against decisions taken by that committee. Similarly, the granting by the licensing committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control⁴ where appropriate. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This would enable the planning committee to have regard to such matters when taking its decisions and avoid any unnecessary overlap. However, there are circumstances when as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

3.52 A statement of licensing policy should also recognise that:

- the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups;
- local authorities are also required under the 1976 Act, as amended, to produce a race equality scheme, assess and consult on the likely impact of proposed policies on race

³ Local Transport Plans are the mechanism by which local authorities should work in partnership with all appropriate bodies to deliver effective local transport strategies. Effective strategies will include provision of night-time and evening services, where this is appropriate to the local situation. It is for local authorities to identify where and how to take action.

⁴ It should be borne in mind that an alteration is "material" for the purposes of the Building Regulations if it has the potential to affect structural stability, fire safety or access.

equality, monitor policies for any adverse impact on the promotion of race equality, and publish the results of such consultations, assessments and monitoring;

- guidance on how to prepare race impact assessments has been produced by the Commission for Racial Equality (CRE) in consultation with a Home Office cross-Whitehall user group and a CRE-led public authority advisory group. This guidance is available on <http://www.cre.gov.uk/duty/reia/index.html>;
- the statement of licensing policy should therefore refer to this legislation and in turn, the statement of policy should be referenced in the race equality scheme.

- 3.61 The 2003 Act provides that the functions of the licensing authority (including its determinations) are to be taken or carried out by its licensing committee (except those relating to the making of a statement of licensing policy or where another of its committees has the matter referred to it). The licensing committee may delegate these functions to sub-committees or in appropriate cases, to officials supporting the licensing authority. Where licensing functions are not automatically transferred to licensing committees, the functions must be carried out by the licensing authority as a whole and not by its executive. Statements of licensing policy should indicate how the licensing authority intends to approach its various functions. Many of the decisions and functions will be purely administrative in nature and statements of licensing policy should underline the principle of delegation in the interests of speed, efficiency and cost-effectiveness.
- 3.61A The 2003 Act does not prevent the development by a licensing authority of collective working practices with other parts of the local authority or other licensing authorities for work of a purely administrative nature, e.g. mail-outs, but any matters regarding licensing decisions must be carried out by the licensing committee, its sub-committees or officers. In addition, such administrative tasks may be contracted out to private businesses.
- 4.5 In the context of applications made under Part 6 of the 2003 Act, the statute does not prescribe how any individual should establish whether or not he has unspent convictions for a relevant offence or foreign offence. In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, applicants are required to produce a criminal conviction certificate or a criminal record certificate or the results of a subject access search of the police national computer by the National Identification Service to the licensing authority. This applies whether or not the individual has been living for a length of time in a foreign jurisdiction. It does not follow that such individuals will not have recorded offences in this country. All applicants would also be expected to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or an equivalent foreign offence. This applies to both applicants ordinarily resident in England and Wales as it does to any person from a foreign jurisdiction. Details of relevant offences as set out in the 2003 Act would be expected to be appended to application forms for the information of applicants, together with a clear warning that the making of any false statement is a criminal offence liable to prosecution. Relevant offences are listed in Annex C to this Guidance.
- 4.18 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than that associated with the provision of regulated entertainment and late night refreshment. This is why a personal licence is required by individuals who may be engaged in making and authorising such sales and

supplies. Not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must be at least authorised by such a licence holder. Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. For example, there may be one owner or senior manager possessing a personal licence and several junior managers similarly qualified. The main purpose of the “designated premises supervisor” as defined in the 2003 Act is to ensure that there is always one specified individual, among these personal licence holders, who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder. A designated premises supervisor may supervise more than one premises so long as they are able to ensure that the four licensing objectives will be properly promoted on the premises and that licensing law and licence conditions will be complied with.

4.23 Where a designated premises supervisor is to be newly specified, the normal course is for the premises licence holder – perhaps a supermarket chain or a pub operating company – to apply to the licensing authority (including an application for immediate effect) accompanied by a form of consent by the individual concerned to show that he consents to taking on this responsible role; and to notify the police of the application. The whole premises licence does not have to be provided for amendment. The 2003 Act provides that a part of the licence may be submitted with the application. Ideally, this will require submission of a schedule to the main licence giving personal details of key individuals. This should be amended by the licensing authority and returned following receipt. In circumstances where the police do object to the specification see paragraph 4.21 above. Where there are frequent changes of Designated Premises Supervisor, the premises licence holder may submit the form in advance specifying the date when the new individual will be in post and the change will take effect.

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. This section makes clear that to be excluded from the meaning of “sale by retail” a sale must be:

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

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

- traders for the purpose of their trade (including, for example, another wholesaler),
- holders of club premises certificates, premises licences, or personal licences, or
- premises users who have given temporary event notices for the purpose of making sales authorised by those notices.

5.8A However, 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. This will affect many wholesale businesses, cash and carries and bonded warehouses across England and Wales. If an employee were buying alcohol as an “agent” for his employer and for the purposes of his employer's trade

(i.e. selling alcohol), this could be treated as a sale to a trader. If, however, an employee were buying for his own consumption, this would be a retail sale, and would require a licence.

- 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.
- 5.9A In such circumstances a licensing authority will wish to carefully consider the distance selling supply chain in deciding where the alcohol is appropriated to the contract, as this will determine which premises will require a licence. Any premises where alcohol is supplied under a premises licence must have a designated premises supervisor. This will normally be the person in day to day running of the premises, and he or she will need to hold a 'personal licence'. In addition to this, all sales of alcohol must be made or authorised by a personal licence holder. This does not necessarily mean a personal licence holder must be personally present at every transaction or that a separate authorisation must be given for each sale of alcohol.
- 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, or a parish council;
 - 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.
- 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; the local weights and measures authority (trading standards); and any licensing authority, other than the relevant licensing authority, in whose area part of the premises are situated.

- 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. This may be the local authority social services department, the Area Child Protection Committee, or another competent body.
- 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.
- 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.

The Government recommends that forms should not be returned if they contain obvious and minor factual errors that can easily be amended’.

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

Plans should normally be drawn in standard scale (1:100), but an alternative scale may be used if the licensing authority has provided written consent. There is no requirement for plans to be professionally drawn as long as they clearly show all the prescribed information.

- 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.

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.

- 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 A4 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. Notices of applications to vary a premises licence should include a brief description of the proposed variation, e.g. details of extra hours applied for, hours varied from/to. 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.
- 5.52A In the case of applications for premises licences involving internet or mail order sales, notices should be conspicuously displayed at the place where the alcohol is appropriated to the contract in accordance with the relevant regulations (see paragraph 5.9).
- 5.52B Licensing authorities may wish to conduct random and unannounced visits to premises to confirm that notices have been clearly displayed and include relevant and accurate information.
- 5.65 For the purposes of this guidance, a 'major' variation is any variation that is not 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 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.

- 5.68 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.
- 5.68A Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences'. The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website.
- 5.68B There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree.

- 5.68C 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. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that interested parties and others have the most current information.
- 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. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises.
- 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. The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one request for a review of a premises within the 12 month period or other reasonable interval agreed by the licensing authority.

7.22 The Government's expectation is that the police will have a key role in undertaking the following tasks:

- developing a constructive working relationship with licensing authority licensing officers and bodies such as the Area Child Protection Committee or the local authority social services department;
- developing a constructive working relationship with designated premises supervisors and other managers of premises, including those premises where late night refreshment is provided;
- advising, where necessary, on the development of a venue drug policy;
- agreeing the protocols for actions taken by door supervisors in relation to illegal drugs or violent behaviour, in particular when police officers should be called immediately;
- advising on and approving search procedures and the storage procedures for confiscated drugs;
- gathering and sharing intelligence on drug dealing and use with partner organisations and local venues;
- advising on the installation and monitoring of security devices such as CCTV;
- advising on the provision of safe transport home in consultation with community safety colleagues;
- working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and anti-social behaviour; and
- advising on the protection of employees on licensed premises who may be targets for attacks and reprisals.

7.67 Where the 2003 Act provides for a mandatory condition to be included in a premises licence, it is the duty of the licensing authority issuing the licence to include that condition on the premises licence. The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises

supervisor does not hold a personal licence or his or her licence has been suspended. In addition, the licence must require that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. This does not mean that the condition should require the presence on the premises at all material times of the designated premises supervisor. Similarly, the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make such sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol during the course of an evening, but may be absent at times from the premises when a transaction takes place. However, the personal licence holder will not be able to escape responsibility for the actions of those he authorises to make such sales.

7.67A “Authorisation” does not imply direct supervision of each sale of alcohol by a personal licence holder. The question arises as to how sales can be authorised in circumstances where the personal licence holder is absent for longer periods, such as when taking a holiday. In the Government’s view it is not possible to state categorically how the requirement of authorisation is satisfied as the facts and circumstances in each case will differ. Whether or not an authorisation has been given within the meaning of Act or whether the frequency or length of absence meant that the personal licence holder could not, in fact, have authorised the sale would, ultimately, be a matter for a court to determine on the evidence before it when the issue arose.

Nevertheless, it seems reasonable to expect that the courts would require the authorisation to be meaningful and properly carried out and not involve any abdication of responsibility. In our view, the following factors might be relevant in considering whether there was real authorisation:

- the person(s) authorised to sell alcohol should be clearly identified;
- the authorisation should have specified the acts which may be carried out by the person being authorised;
- there should be an overt act of authorisation, for example, a specific oral or written statement given to the individual(s) being authorised; and
- there should be in place sensible arrangements for monitoring by the personal licence holder of the activity authorised by him or her on a reasonably regular basis.

7.73 Copyright law is intended to safeguard the livelihood of authors, composers, arrangers, playwrights, film-makers, publishers and makers of recordings and is extremely important and offences relating to copyright are made “relevant offences” by the 2003 Act. Conditions attached to premises licences should not require adherence to requirements in the general law that the use of copyright material must be authorised. However, because the existing law protects these rights, a condition included in a premises licence or club premises certificate could not be considered necessary for the promotion of one of the licensing objectives. Licensing authorities should however strongly remind applicants of the need to obtain Performing Right Society (PRS) licences and Phonographic Performances Ltd (PPL) licences and to observe other

copyright arrangements; and that failure to observe the law in this area could lead to an application for the review of the premises licence or the club premises certificate on grounds of the crime prevention objective.

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

8.13A A temporary event notice may be given for part of a building such as a single room within a village hall, a plot within a larger area of land, or a discrete area within a marquee as long as it includes a clear description of the area in which it is proposed to carry on licensable activities and the premises user intends to restrict the number of people present in the notified area at any one time to less than 500. If the premises user fails to restrict the numbers to a maximum of 499, he or she would be liable to prosecution for carrying on unauthorised licensable activities.

8.22 Licensing authorities on receiving temporary event notices will also need to check that other requirements of Part 5 of the 2003 Act are met. For example, a temporary event notice would be void unless there is a minimum of 24 hours between events notified by the same premises user, or an associate, or someone who is in business with the relevant premises user, in respect of the same premises. This is to prevent evasion of the 96 hour limit on such events and the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a notice is treated as being from the same premises user if it is given by an associate. The 2003 Act defines an associate as being:

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

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

9.6 A qualifying club will be permitted under the terms of a club premises certificate to sell and supply alcohol to its members and their guests only. In order to be a qualifying club instant membership is not permitted and members must wait at least two days between their application and their admission to the club. Any qualifying club may choose to obtain a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public, including the sale of alcohol to them. However, an individual on behalf of a club may give temporary event

notices in respect of the premises to cover a period of up to 96 hours on up to 12 occasions each calendar year so long as no more than 499 people attend the event and subject to an overall maximum duration in the year of 15 days and on such occasions may sell alcohol to the public or hire out their premises for use by the public.

- 9.6A The 2003 Act does not prevent visitors to a qualifying club being supplied with alcohol as long as they are 'guests' of any member of the club or the club collectively, and nothing in the 2003 Act prevents the admission of such people as guests without prior notice. For the sake of flexibility, the Act does not define "guest" and whether or not somebody is a genuine guest would in all cases be a question of fact. The term can include a wide variety of people who are invited by the qualifying club or any individual member to use the club facilities. The manner in which they are admitted as 'guests' would be for the club to determine and to consider setting out in their own club rules.
- 9.6B There is no mandatory requirement under the 2003 Act for guests to be signed in by a member of the club. However, a point may be reached where a club is providing commercial services to the general public in a way that is contrary to its qualifying club status. It is at this point that the club would no longer be conducted in "good faith" and would no longer meet "general condition 3" for qualifying clubs in section 62 of the 2003 Act. The question of when this line is crossed and when a club ceases to be conducted in good faith will be a question of fact to be determined in all the circumstances. The 2003 Act provides for the licensing authority to decide when a club has ceased to operate in "good faith". Where the licensing authority is so satisfied, it is required to give the club a notice withdrawing the club premises certificate. The club is entitled to appeal against such a decision to the magistrates' courts. Unless such an appeal is successful, the club would need to apply for a full premises licence to cover any licensable activities taking place there.
- 9.9 Section 62 of the 2003 Act sets out five general conditions which a relevant club must meet to be a qualifying club. Section 63 also sets out specified matters for licensing authorities to enable them to determine whether a club is established and conducted in good faith – the third qualifying condition. Section 64 sets out additional conditions which only need to be met by clubs intending to supply alcohol to members and guests. The full details in respect of these sections of the 2003 Act are reproduced in Annex I. Section 90 of the 2003 Act gives powers to the licensing authority to issue a notice to a club withdrawing its certificate where it appears that it has ceased to meet the qualifying conditions. There is a right of appeal against such a decision.
- 9.10 As well as their own members and guests, qualifying clubs are also able to admit associate members and their guests (i.e. members and guests from another 'recognised club' as defined by section 193 of the 2003 Act) to the club premises when qualifying club activities are being carried on without compromising the use of their club premises certificate. This reflects traditional arrangements where such clubs make their facilities open to members of other clubs which operate reciprocal arrangements.
- 9.11 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those in respect of a premises licence. Licensing authorities should therefore look to Chapter 5 of this Guidance on the handling of such applications and to Chapter 6 in respect of hours of opening. In those Chapters most of the references to the premises licence, premises

licence holders and applicants can be read for the purposes of this Chapter as club premises certificates, qualifying clubs and club applicants.

- 9.11A In addition to a plan of the premises and a club operating schedule, clubs must also include the rules of the club with their application. On notifying any alteration to these rules to the licensing authority, the club is required to pay a fee set down in regulations. Licensing authorities may wish to consider returning a certified copy of the rules to the applicant with the certificate'. Licensing authorities should bear in mind that they cannot require any changes to the rules to be made as a condition of receiving a licence unless relevant representations have been made. However, if a licensing authority is satisfied that the rules of a club indicate that it does not meet the qualifying conditions in the Act, a club premises certificate should not be granted.
- 10.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant licence holder, club or premises user against the representations of a responsible authority or an interested party or the objections of the chief officer of police, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal and the person who made the relevant representation or the chief officer of police will be the appellants.
- 10.4A Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as witnesses interested parties who made representations against the application, if it chooses to do so.

Annex C

Extract from the Licensing Act 2003: Relevant Offences

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

- 17 An offence under the Firearms (Amendment) Act 1997 (c. 5).
- 18 A sexual offence, being an offence —
- (a) listed in Part 2 of Schedule 15 to the Criminal Justice Act 2003^[2], other than the offence mentioned in paragraph 95 (an offence under section 4 of the Sexual Offences Act 1967 (procuring others to commit homosexual acts));
- (b) an offence under section 8 of the Sexual Offences Act 1956 (intercourse with a defective);

(c) an offence under section 18 of the Sexual Offences Act 1956 (fraudulent abduction of an heiress).

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

Annex D

Open containers not to be taken from the premises

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

Annex G

Hours

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted (other than where they are protected by the transitional provisions of the Licensing Act 2003) by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance. But this must be balanced by the potential impact on disorder which results from artificially early fixed closing times.

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

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

Annex G

Noise and vibration

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by one or more of the following conditions:
 - a simple requirement to keep doors and windows at the premises closed;
 - limiting live music to a particular area of the building;
 - moving the location and direction of speakers away from external walls or walls that abut private premises;
 - installation of acoustic curtains;
 - fitting of rubber seals to doorways;
 - installation of rubber speaker mounts;
 - requiring the licensee to take measure to ensure that music will not be audible above background level at the nearest noise sensitive location;
 - require licensee to undertake routine monitoring to ensure external levels of music are not excessive and take appropriate action where necessary;
 - noise limiters on amplification equipment used at the premises (if other measures have been unsuccessful).

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

- prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly;
- the use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted; and
- the placing of refuse – such as bottles - into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

Enquiries

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

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