

## 7 Conditions Attached to Premises Licences and Club Premises Certificates

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### General

- 7.1 This Chapter of the Guidance provides advice and recommendations concerning best practice in respect of conditions attached to premises licences and club premises certificates. Conditions may only be imposed on licences and certificates where they are necessary for the promotion of one or more of the four licensing objectives. Conditions may not be imposed on licences and certificates for other purposes.<sup>5</sup> Also, for example, conditions relating to night café and take away outlets operating from 11.00pm must relate to the night time operation of the premises, and must not be used to impose conditions which relate to day time operation and cannot be imposed on day time operators.
- 7.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions the holder of the premises licence or the club premises certificate will be required to take or refrain from taking at all times when licensable activities are taking place at the premises in question.
- 7.3 All interests – licensing authorities, licence and certificate holders, authorised persons, the police, other responsible authorities and local residents and businesses – should be working together in partnership to ensure collectively that the licensing objectives are promoted.
- 7.4 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which should be undertaken by applicants or clubs before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule that it is proposed to take to promote the licensing objectives. The operating schedule or club operating schedule must also set out the proposed hours of opening. The proposals must then be notified to the expert bodies who are the responsible authorities described in the 2003 Act to provide them with an opportunity to scrutinise the application. Interested parties, such as local residents, may also make representations at this stage following the advertising of the application by the applicant. Where the responsible authorities and interested parties do not raise any representations about the application made to the licensing authority, it is the duty of the authority to grant the licence or certificate subject only to conditions that are consistent with the operating schedule or club operating schedule and any mandatory conditions prescribed in the 2003 Act itself.
- 7.5 The licensing authority may not therefore impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing

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<sup>5</sup> Although no conditions may be imposed in respect of matters unrelated to the licensing objectives, licensing authorities should bear in mind that there are a number of powers available to local authorities, in particular in Part IV of the Environmental Protection Act 1990 to impose, for example, Street Litter Control Notices, which will allow local authorities to cope with the problems of litter from premises such as takeaway restaurants. This can ensure that the authority is able to cope better with extended opening hours within existing service provision.

of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants and clubs to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.

- 7.6 Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both. Further details of these offences are given in Chapter 14 of this Guidance.
- 7.7 Under former licensing regimes, the courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

## Disabled people

- 7.8 Licensing authorities should guard against well meaning conditions which are intended to provide for the safety of people or performers with disabilities, but which actively deter operators from admitting or employing such people, and responsible authorities should guard against making representations to suggest such provision. It is important that proper steps should be taken to provide for the safety of people and performers with disabilities, but conditions should be avoided which would enable an operator to justify their exclusion by reference to the condition. It is the policy of the Government that facilities for people and performers with disabilities should be provided at places of entertainment and the Secretary of State encourages licence holders and clubs to provide facilities enabling their admission and reminds them of the duties imposed by the Disability Discrimination Act 1995. The law provides that any person providing a service to the public must make reasonable adjustments to enable disabled people to access the service. No licensing condition should therefore be attached to a licence or certificate which conflicts with or duplicates this requirement. From October 2004 service providers will be under a new duty to make reasonable adjustments to any physical features which make it impossible or unreasonably difficult for disabled persons to access a service, or they have to provide the service by a reasonable alternative means. Access to buildings and their facilities is also a matter addressed in Building Regulations and planned alterations affecting access may involve the need to apply for building control.
- 7.9 Licensing authorities should therefore be ready to offer advice to applicants for licences and certificates about how to achieve this. Conditions which state that “wheelchairs and similar equipment shall not be allowed on the premises except in accordance with the terms of any consent issued by the licensing authority” can be ambiguous and be used to justify exclusion and may be ultra vires. Conditions should therefore be positively worded and assume the presence of people with disabilities on licensed premises.
- 7.10 In addition, Government guidelines exempting guide and assistance dogs from health and safety requirements have been in place since 1995. Any condition of a licence or certificate which states that “pets” may not be present on licensed premises for public safety reasons, must include a clear indication that the condition does not apply to guide or assistance dogs. Further advice can be obtained from the Disability Rights Commission’s website [www.drc-gb.org](http://www.drc-gb.org).

- 7.11 Currently, the Disability Discrimination Act 1995 does not require physical modifications to be made to existing vessels to accommodate the disabled, but it is proposed that the industry should develop best practice guidelines for the safety of disabled passengers on vessels. The intention is that these would be published by the Disabled Persons Transport Advisory Committee. In the meantime, where it is proposed to attach any conditions relating to the public safety of disabled people on passenger vessels the views of the Maritime and Coastguard Agency should always be taken into account.

## Race equality

- 7.12 Following receipt of representations, licensing authorities should also guard against imposing any condition on a licence or certificate which appear to apply to a wide group of people, but in fact would have an indirect discriminatory impact on particular ethnic groups. For example, a representation requesting that “No Travellers” or “No Caravan-Dwellers” be displayed inside or on premises purportedly to prevent crime or disorder should not be accepted not least because it would conflict with the authority’s race equality scheme.

## Duplication with other statutory provisions

- 7.13 The only conditions which should be imposed on a premises licence or club premises certificate are those which are necessary and proportionate for the promotion of the licensing objectives. Accordingly, if other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. For example, employers and self-employed persons are required by the Management of Health and Safety at Work Regulations 1999 (S.I 1999/3242) to assess the risks to their workers and any others (for example, members of the public visiting the premises) who may be affected by their business so as to identify what measures are needed to avoid or control risks. Further, where other legislation confers powers on inspection and enforcement agencies in relation to separate activities or concerns, the 2003 Act does not affect the continued use of such powers (and any conditions attached to a premises licence where necessary would be in addition to these); for example, the powers of an environmental health officer in respect of statutory nuisance under the Environmental Protection Act 1990. However, these general duties will not always adequately cover specific issues that arise on the premises in connection with, for example, certain types of entertainment. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence. The safety regime for passenger vessels is enforced under the Merchant Shipping Acts by the Maritime and Coastguard Agency (an executive agency of the Department for Transport) who operate a passenger ship certification scheme. Fire authorities, the HSE and local authority health and safety inspectors should normally be able to make “nil” returns in respect of passenger vessels and rely on the Maritime and Coastguard Agency to make any necessary representations in respect of this licensing objective.

## Consistency with steps described in operating schedule

- 7.14 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or interested parties, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required by the Act itself.
- 7.15 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule or club operating schedule. Some applicants for licences or certificates supported by legal representatives or trade associations can be expected to express steps necessary to promote the licensing objectives in clear and readily translatable terms. However, it must be recognised that some applicants will express the terms of their operating schedules less precisely or concisely. Ensuring that conditions are consistent with the operating schedule will then be more difficult. It must be remembered that conditions if broken may give rise to criminal prosecution or lead to an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. It must be clear to the holder of the licence or club, to enforcement officers and to the courts what duty has been placed on the holder or club in terms of compliance. For example, a condition relating to the safe capacity of premises following representations by the fire authority should be expressed in clear and simple terms, for example:

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

It should also be made clear whether a limit on capacity includes or excludes staff and performers working at the premises. For the sake of consistency, the Secretary of State recommends that capacity limits, where considered necessary and appropriate should include staff and performers. Where relevant representations have been made by either a responsible authority or an interested party and following a hearing the licensing authority has determined that the steps needed to promote the licensing objectives proposed by the applicant should be modified, the licensing authority will be able to revise the conditions expressed in the operating schedule or club operating schedule in terms that it considers necessary. But clarity and simplicity should guide all such decisions.

- 7.16 It should be noted that in preparing schedules, as stated earlier in the Guidance, it is in the interests of applicants to consult with responsible authorities about the steps that are necessary to take to promote the licensing objectives. Ideally, therefore, there will be opportunities for the experts and the applicants to agree a way forward before applications are finalised and representations are lodged which necessitate a hearing.

## Proportionality

- 7.17 By providing that only necessary conditions may be imposed, the 2003 Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. As has been said earlier, this effectively rules out standardised

conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues. For example, charities, community groups, voluntary groups, churches, schools and hospitals which host smaller events and festivals will not usually be pursuing these events commercially with a view to profit and will inevitably operate within limited resources. While the Secretary of State will set fees centrally for licences and certificates, licensing authorities and responsible authorities should be alive to the indirect costs that can arise because of conditions attached to licences. These could be a deterrent to the holding of events that are valuable to the community or for the funding of good and important causes. Such bodies may be loath to pursue appeals against any unnecessary conditions because of the costs involved. Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose. Public safety concerns (and the concerns identified in the other objectives) should not of course be ignored and in considering a proportionate response to the licensing needs for such events, the physical safety of those attending such events should remain a primary objective.

- 7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.
- 7.19 Licensing authorities and responsible authorities should also have proper regard for the history of certain events and activities. If over a significant period of time, regular events of a particular kind have not given rise to problems of disorder and nuisance or concerns about safety or children, responsible authorities will be expected to have regard to this when scrutinising an application in respect of the activities involved, and not make representations unless there are new issues which could cause them to do so. For example, since 1961 events involving up to two musicians performing live music in premises licensed for the sale of alcohol under the Licensing Act 1964 have enjoyed a disapplication from the requirements for a public entertainment licence. Local authorities will be aware of premises where this freedom has caused local nuisance for residents and where it has not. This local knowledge is important. Where premises have not caused such problems, the provision of small-scale live music should not normally give rise to the need to attach any conditions to the premises licence or club premises certificate other than those which are mandatory under the 2003 Act. On the other hand, where in the minority of cases problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.

## Crime and disorder

- 7.20 Annex D provides examples of conditions (not an exhaustive list of examples) which relate to the prevention of crime and disorder on licensed premises and can be used where necessary and appropriate to the particular circumstances of any individual premises. Accordingly, the Annex should be treated as a pool of conditions from which the necessary conditions for

premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be applied universally irrespective of circumstances.

- 7.21 The steps any licence holder or club might take to prevent crime and disorder are as varied as the premises or clubs where any licensable activities may be carried on. The example pool of conditions in Annex D cannot therefore cover every possible scenario. Licensing authorities should therefore look to the police as the main source of advice on these matters.
- 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.
- 7.23 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. As has been said above, conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and his staff or agents, but can directly impact on the behaviour of those under the licensee's direction when on his premises or in the immediate vicinity of the premises as they seek entry or leave.
- 7.24 Licence conditions should not replicate licensing offences that are set out in the 2003 Act. For example, a condition that states that a licence holder shall not permit drunkenness and disorderly behaviour on his premises would be superfluous because this is already a criminal offence. A condition that states that a licence holder shall not permit the sale of controlled drugs on the premises would be similarly superfluous.

- 7.25 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have such cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure certain areas are properly covered and to ensure that there is no subsequent dispute over the terms of the condition. Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are informed of such instances where the knowledge about certain premises, its style or characteristics give rise to a need for such requirements.
- 7.26 Text and radio pagers enabling premises licence holders, designated premises supervisors and managers of premises and clubs to communicate instantly with the local police can provide for rapid response to situations of disorder which may be endangering the customers and staff on the premises. The Secretary of State recommends that text or radio pagers should be considered appropriate necessary conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises.
- 7.27 Some conditions primarily focused on the prevention of crime and disorder will also promote other licensing objectives. For example, a condition requiring that all glasses used on the premises for the sale of alcoholic drinks should be made of plastic or toughened glass or not allowing bottles to pass across a bar may be necessary to prevent violence where such activity is likely to occur, by denying assailants suitable weapons, but may also benefit public safety by minimising the injury done to victims when such assaults take place (for example, facial injuries resulting from broken glass). A condition must also be capable of being met, for example, while beer glasses may be available in toughened glass, wine glasses may not. Conditions of this kind therefore need careful consideration to ensure that they are not only necessary but both practical and achievable. Similarly, although most commonly made a condition of a licence on public safety grounds, consideration can also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, consideration should also be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.
- 7.28 In the context of crime and disorder and public safety, the preservation of order on premises where alcohol is supplied for consumption and to which very large numbers of people are admitted may give rise to genuine concerns about the competency of the management team charged with the maintenance of order on those premises. The designated premises supervisor is the key person who will usually be charged with day to day management of the premises by the premises licence holder and therefore with preventing disorder there. No conditions relating to the management competency of designated premises supervisors should normally be attached to premises licences. Such a condition could only be justified as necessary in rare circumstances where it could be demonstrated that in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and

disorder and public safety. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained and licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act ensure, for example, that the prevention of disorder is in sharp focus for all such managers, licence holders and clubs.

- 7.29 Furthermore, again in the context of crime and disorder, where appropriate, communications between the managers of the premises and the police can be of great importance. Involvement by operators and managers in voluntary schemes and initiatives may be particularly valuable. Conditions requiring dedicated text or pager links between management teams and local police stations can provide early warning of disorder and also can be used to inform other licence holders that a problem has arisen in the area generally. For example, where a gang of youths is causing problems in one public house and their eviction will only result in them going on elsewhere to cause problems on other premises, there is advantage in communication links between the police and other licensed premises and clubs. However, while this may be necessary and effective in certain parts of licensing authority areas, it may be less effective or even unnecessary in others. Police views on such matters should be given considerable weight and licensing authorities must remember that only necessary conditions, which are within the control of the licence holder or club, may be imposed.
- 7.30 The Indecent Displays Act 1981 makes provision prohibiting the public display of indecent matter, subject to certain exceptions. It should not therefore be necessary for any conditions to be attached to licences or certificates concerning such displays in or outside the premises involved. For example, the display of advertising material on or immediately outside such premises is regulated by this legislation. Similarly, while conditions relating to public safety in respect of dancing may be necessary in certain circumstances, the laws governing indecency and obscenity are adequate to control adult entertainment involving striptease and lap-dancing which goes beyond what is lawful. Accordingly, conditions relating to the content of such entertainment which have no relevance to crime and disorder, public safety, public nuisance or the protection of children from harm could not be justified. In this context, however, it should be noted that it is in order for conditions relating to the exclusion of minors or the safety of performers to be included in premises licence or club premises certificate conditions where necessary. The Local Government (Miscellaneous Provisions) Act 1982 insofar as its adoptive provisions relate to sex establishments – sex shops, sex cinemas in London and sex encounter establishments – also remain in force.

## Public safety

- 7.31 Annex E provides examples of conditions which relate to public safety, including fire safety, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate, necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.

- 7.32 Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will of course be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene. In addition, no attempt should be made to use a licensing condition to impose a smoking ban for either health or desirability. These are matters for other legislation and voluntary codes of practice and duplication should be avoided. Details of the voluntary Public Places Charter on Smoking to which many licensed premises are signatories can be viewed on [www.airinitiative.com](http://www.airinitiative.com).
- 7.33 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be unnecessary for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if necessary, checks on such equipment to be conducted at specified intervals and for evidence of such checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, following the receipt of relevant representations from responsible authorities or interested parties, to attach conditions which required equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make clear their expectations in such respects to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.
- 7.34 “Safe capacities” should only be imposed where necessary for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a fire certificate for certain premises includes certain conditions, it would be unnecessary to reproduce them in a premises licence. Indeed, it would be wrong to lay down conditions which produce conflict with other legal requirements. However, if the fire certificate has been granted for premises when their future use for a licensable activity was not known, the fire authority may consider it necessary for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. In considering the representations, licensing authorities should give particular weight to those made by the fire authority in such circumstances. Capacities attached to premises licences or club premises certificates may in certain circumstances be necessary in preventing disorder, as overcrowded venues can increase the risks of disorder as crowds become frustrated and hostile.
- 7.35 The special provisions made for dancing, amplified and unamplified music in section 177 of the 2003 Act apply only to premises with a “permitted capacity” of not more than 200 persons. In this context, the capacity must either be one imposed through the premises’ fire certificate or where the certificate does not include a capacity or one does not exist, the fire authority must be asked to make a recommendation on the capacity of the premises. In the first instance, any application for a premises licence or club premises certificate in respect of premises without an existing permitted capacity where the applicant wishes to take advantage of the special

provisions set out in section 177 of the 2003 Act, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire authority who will consider it and then decide what the “permitted capacity” of those premises should be.

- 7.36 An order made under the 2003 Act will repeal the Cinematograph (Safety) Regulations 1955 (S.I 1995/1129) which contained a significant number of regulations in respect of fire safety provision at cinemas. Applicants taking advantage of the “grandfather rights” pursuant to Schedule 8 to the 2003 Act will be subject to conditions which re-state those regulations in their new premises licence or club premises certificate. To reduce the regulatory burden on them (to the extent to which that can be done while still promoting the licensing objectives), such applicants would also need to apply to vary their converted licences or certificates. For those who are not exercising “grandfather rights” or who are seeking to vary a converted licence, licensing authorities and responsible authorities should recognise the need for steps to be taken to assure public safety at such premises in the absence of the 1955 Regulations. Annexes E and F set out example conditions which should be considered as appropriate and necessary when preparing a risk assessment to ensure necessary public safety from fire.
- 7.37 Public safety includes the safety of performers appearing at any premises.

## Public nuisance

- 7.38 Annex G provides examples of conditions which relate to public nuisance, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate and necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.
- 7.39 The 2003 Act requires licensing authorities following receipt of relevant representations and, through the making of representations, responsible authorities to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 7.40 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act’s purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.<sup>6</sup>

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<sup>6</sup> It should also be noted in this context that it remains an offence under the 2003 Act to sell or supply alcohol to a person who is drunk. This is particularly important because of the nuisance and anti-social behaviour which can be provoked after leaving licensed premises.

- 7.41 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises, from simple mechanisms like ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated mechanisms like sound level inhibitors on amplification equipment or sound proofing. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of premises and the type of activities expected to take place there.
- 7.42 As with all conditions, it will be clear that conditions relating to noise nuisance may in certain circumstances not be necessary where the provisions of the Environmental Protection Act 1990 and of the Noise Act 1996 adequately protect those living in the vicinity of the premises in question. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.
- 7.43 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- 7.44 Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance such issues.
- 7.45 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from a responsible authority or interested party that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.
- 7.46 The cumulative effects of litter in the vicinity of premises carrying on licensable activities can cause public nuisance. For example, it may be appropriate and necessary for a condition of a licence to require premises serving customers from take-aways and fast food outlets from

11.00pm to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter from its customers. Such conditions may be necessary and appropriate in circumstances where customers late at night may have been consuming alcohol and be inclined to carelessness and anti-social behaviour. As with all conditions, the licensing authority will have to consider whether such a requirement is necessary having regard to the licensable activities carried on, the type and characteristics of the premises.

## The protection of children from harm

- 7.47 Annex H provides examples of conditions which relate to the protection of children from harm, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate and necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.
- 7.48 The protection of children from harm includes the protection of children from moral, psychological and physical harm, and this would include the protection of children from too early an exposure to strong language and sexual expletives, for example, in the context of film exhibitions, or where adult entertainment is provided.
- 7.49 However, in the context of many licensed premises such as pubs, restaurants, café bars and hotels, it should be noted that the Secretary of State does not wish to see the development of family-friendly environments frustrated by overly restrictive conditions in respect of children where there is no good reason to impose them. It should be noted that conditions relating to any of the licensing objectives may not be lawfully imposed unless they are **necessary**. The Secretary of State intends that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions unless the 2003 Act itself imposes such a restriction or there are good reasons to restrict entry or to exclude children completely. The changes in the 2003 Act to the law concerning consumption of alcohol by minors on licensed premises now mean the focus for licensing authorities, the police and other authorised persons should be on the enforcement of those laws.
- 7.50 Conditions relating to the access of children which are necessary to protect them from harm are self evidently of great importance. As mentioned in connection with statements of licensing policy in Chapter 3 of this Guidance, issues will arise about the access of children in connection with premises:
- where adult entertainment is provided;
  - where there have been convictions of the current management for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider in the company of adults during a table meal);
  - where requirements for proof of age cards or other age identification to combat the purchase of alcohol by minors is not the norm;

- with a known association with drug taking or dealing;
- where there is a strong element of gambling on the premises (but not small numbers of cash prize machines);
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

7.51 It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm. Such trading practices should be obvious from the operating schedule or club operating schedule provided with the relevant application allowing the framing of an appropriate, time-limited condition. Similarly, gambling may take place in part of a leisure centre but not in other parts of those premises. This means that the access of children will need to be carefully considered by applicants, licensing authorities and responsible authorities. In many respects, it should be possible to rely on the discretion and common sense of licence and certificate holders. However, licensing authorities and responsible authorities should still expect applicants when preparing an operating schedule or club operating schedule to state their intention to exercise such discretion and where they are necessary, to set out the steps to be taken to protect children from harm when on the premises.

7.52 Conditions, where they are necessary, should reflect the licensable activities taking place on the premises and can include:

- where alcohol is sold, requirements for the production of proof of age cards or other age identification before sales are made to individuals under 18 years (be the age limit 18 or 16 as in the case of the consumption of beer, wine and cider in the company of adults during a table meal);
- limitations on the hours when children may be present;
- limitations on the presence of children under certain ages when particular specified activities are taking place;
- limitations on the parts of the premises to which children may have access;
- age limitations (below 18);
- limitations or exclusions when certain activities are taking place;
- requirements for accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
- full exclusion of people under 18 from the premises when any licensable activities are taking place.

7.53 The Secretary of State considers that representations made by the children protection bodies and the police in respect of individual applications should be given considerable weight when they address necessary issues regarding the admission of children.

7.54 The 2003 Act provides that where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under

section 4 of the Video Recordings Act 1984 specified in the licence (the British Board of Film Classification is currently the only body which has been so designated) or by the licensing authority itself.

7.55 Where a condition adopts the approach of the licensing authority classifying films, it should normally be expressed in terms which require the cinema or venue operator to submit any film that it intends to exhibit 28 days before it is proposed to show it. This is to allow the authority time to classify it and advise the licence holder or club of the age restrictions that will apply in that instance.

7.56 Films would normally be classified by the British Board of Film Classification or the licensing authority in the following way:

- U – Universal. Suitable for all.
- PG – Parental Guidance. Some scenes may be unsuitable for young children.
- 12A – Passed only for viewing by persons aged 12 years or older or younger persons accompanied by an adult.
- 15 – Passed only for viewing by persons aged 15 years and over.
- 18 – Passed only for viewing by persons aged 18 years and over.
- Restricted 18 – Passed only for viewing by persons aged 18 years or over who are members of a properly constituted club or their guests aged 18 or over.

7.57 Against the background of such classifications, a condition might be expressed in the following terms:

“Where a programme includes a film in the 12A, 15 or 18 category no person appearing to be under the age of 12 (and unaccompanied in that case), 15 or 18 as appropriate shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position a notice in the following terms –

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

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

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

7.58 Moreover, in connection with a film exhibition, conditions should normally specify that immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the category of the film. For a film passed by the licensing authority conditions should require notices to be displayed both inside and outside the premises so that persons entering can readily read them and be aware of the category attached to any film or trailer.

- 7.59 The admission of children to theatres, as with other licensed premises, should not normally be restricted. However, theatres may present a range of diverse activities. The admission of children to the performance of a play should normally be at the discretion of the licence holder and no condition restricting their access to plays should be attached. However, theatres may also present a wide range of entertainment including, for example, variety shows incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be necessary. Entertainments may also be presented at theatres specifically for children. It may be necessary to consider whether a condition should be attached to a premises licence or club premises certificate which requires the presence of a sufficient number of adult staff on the premises to ensure the well being of the children during any emergency.
- 7.60 The British Board of Film Classification invests considerable resources and expertise in the classification of films. The Secretary of State therefore recommends that licensing authorities should not duplicate this effort by choosing to classify films themselves. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role. Licensing authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

### **Safer Clubbing – drugs in clubs**

- 7.61 The Government outlined its commitment to addressing drugs in clubs in 1998 in its strategy “Tackling Drugs to Build a Better Britain”. In 2001 the Home Office and the London Drug Policy Forum produced guidance entitled “Safer Clubbing” which, building on the earlier success of “Dance Till Dawn Safely”, was nationally welcomed and proved an extremely useful document for licensing officers, club managers and promoters. The aim of reducing the potential for harm through better management of dance venues was affirmed in the 2003 “Updated Drug Strategy” which may be viewed with “Safer Clubbing” at [www.drugs.gov.uk](http://www.drugs.gov.uk).
- 7.62 A key element of the strategy described in “Safer Clubbing” is the use of necessary and appropriate licensing conditions to control the environment at relevant premises. A check-list of the most important measures described in “Safer Clubbing” are reproduced in Annex J (modified to refer to provisions of the 2003 Act). The Secretary of State commends this document for use by the police, all licensing authorities, all responsible authorities and all authorised persons under the 2003 Act.
- 7.63 “Safer Clubbing” recommends that every Drug Action Team which has clubs in its area, should take the lead in getting the police, club owners and promoters, local authorities and local drug agencies to sit down together and plan a strategy which ensures that dance events take place in as safe an environment as possible. There may also be the need to involve existing multi-agency partnerships, such as Crime and Disorder Reduction Partnerships, or town centre management groups, in developing a strategy.
- 7.64 “Safer Clubbing” also shows that clubs themselves have a responsibility to develop a drugs policy and in many cases will wish to contact the Drug Action Team (DAT) in order to pursue

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

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

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

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

- ensuring that door supervisors have been properly trained; and
- encouraging the provision of free cool water and “chill out areas” so that clubbers do not become overly exhausted or dehydrated.

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

### **Mandatory conditions where a premises licence authorises supply of alcohol**

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.

### **The performance of plays**

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

### **Censorship**

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

## Door supervision

- 7.70 Under the terms of the 2003 Act, whenever a condition is included in a premises licence that at any time individuals must be present at the premises to carry out a security activity (for example, door supervisors), the licence must include a condition requiring that each such person must be licensed by the Security Industry Authority. Further details can be found in the Private Security Industry Act 2001 (as amended by the 2003 Act). The 2001 Act also sets out a number of exemptions primarily relating to premises staging plays or exhibiting films or that are casinos or bingo halls licensed under the Gaming Act 1968 (or premises where a club premises certificate is in force when activities are being carried on under the authority of that certificate).
- 7.71 It should be noted that a condition may provide for stewards and other persons whose role is not to carry out a security activity but to provide advice about and ensure the safety of those visiting the premises. Such individuals need not be registered with the Security Industry Authority (SIA). This underlines the need for clarity when expressing any condition to be attached to a premises licence. In addition, there will be cinemas and theatres carrying on other licensable activities on the premises as well as their primary function of exhibiting films or presenting plays. The Secretary of State recommends that such premises should not normally require door supervision by individuals registered with the SIA in such premises, but the circumstances of all applications should, of course, be considered individually.
- 7.72 It is therefore important that conditions being included in licences or certificates are clear and unambiguous about their requirements. For example, a licence may include a requirement for staff at the premises to be present to undertake a certain activity (for example, in a safety context) or for stewards to organise, advise and direct members of the public. If the licensing authority intends that certain individuals (for example, door supervisors) should carry out security activities as defined in the 2001 Act, this should be explicit and therefore give rise to the need for the mandatory condition on a premises licence. It should be equally clear where such arrangements (and the mandatory condition) are not required.

## Copyright and royalties

- 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.

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

- 7.74 Licensing authorities should publicise the need for the organisers of major festivals and carnivals to approach them at the earliest opportunity to discuss arrangements for the licensing of those activities falling under the 2003 Act. In respect of some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations within the premises. This would involve the preparation of a substantial operating schedule, and licensing authorities should offer advice and assistance about its preparation. In particular, the licensing authority should act as a co-ordinating body for the input from the responsible authorities that will eventually be notified formally about the proposal and who can make representations before an application is made.
- 7.75 For other events, applications for many connected premises licences may be made which in combination will represent a single festival. It is important that licensing authorities should publicise the need for proper co-ordination of such arrangements and will need to ensure that responsible authorities are aware of the connected nature of the individual applications. Licensing authorities should encourage such applicants to establish a co-ordinating committee to ensure a strategic approach to the development of operating schedules. The purpose would be to ensure that conditions are not included in licences which conflict with each other, make compliance uncertain or would be difficult to enforce.
- 7.76 In the case of circuses and fairgrounds, much will depend on the content of any entertainment presented. For example, at fairgrounds, a good deal of the musical entertainment may be incidental to the main attractions and rides at the fair which are not themselves regulated entertainment. However, in the case of a circus, music and dancing are likely to be main attractions themselves (and would be regulated entertainment) amidst a range of other activities which are not all regulated entertainment.
- 7.77 Particular regard should be paid to the relevant guidance provided in the publications listed at paragraph 5.129 of this Guidance in respect of such events.
- 7.78 In addition, in the context of festivals and carnivals, local authorities should bear in mind their ability (mentioned in Chapter 3) to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas where festivals and carnivals might take place. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give performances in these places, although they would need the permission of the local authority to put on the event. Care should be exercised to ensure that there is no confusion between the role of enforcing licensing legislation, which falls to the licensing authority, and the role of providing advice and assistance to festival and carnival organisers from other parts of the local authority.

## Discounting and sales promotions

- 7.79 Because of local concerns about the potential for drunkenness and disorder, licensing authorities may be minded to agree local voluntary Codes of Practice in respect of the discounting of the costs of alcoholic drinks, “happy hours” and sales promotions whereby drinks are offered free in

certain circumstances; or to consider adding conditions to premises licences to that end. No generalised voluntary arrangements should be promoted by licensing authorities and no standard conditions should be routinely attached to premises licences in an area which relate to drinks promotions. The promotion of price fixing or the creation of cartels is unlawful, and there would also be serious risks of breaching competition law. It is in order for licensing authorities to encourage adoption locally of voluntary industry codes of practice which cover **irresponsible** drinks promotions such as that produced by the British Beer and Pub Association (the BBPA's Guidelines on On-Trade Promotions). In general, it would be necessary to consider each application on its individual merits, tailoring any conditions carefully to cover only irresponsible promotions in the particular and individual circumstances of any premises where these are necessary for the promotion of the licensing objectives. In addition, when considering any relevant representations from responsible authorities, such as the police, or interested parties, such as local residents, which demonstrate a clear causal link between sales promotions or price discounting and levels of crime and disorder on or in the vicinity of the premises, it would be appropriate for the licensing authority to consider the imposition of a new condition prohibiting irresponsible sales promotions or the discounting of prices of alcoholic beverages at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice. There will often be very fine lines between what is and is not lawful within the scope of their power under the 2003 Act.

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

- 7.80 Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons. A comprehensive review of the research conducted in the last twenty-five years into alcohol and crime and its relationship to licensed premises, “Alcohol and Crime: Taking Stock” by Ann Deehan, Home Office Crime Reduction Research Series No.3 (1999) can be viewed on [www.crimereduction.gov.uk/drugsalcohol8.htm](http://www.crimereduction.gov.uk/drugsalcohol8.htm). It shows that the environment within such establishments can have a significant bearing on the likelihood of crime and disorder arising on the premises. Key points on preventing crime and disorder include:
- controlling the capacity to prevent overcrowding and frustration to customers;
  - ensuring adequate seating for customers; and
  - ensuring the provision of door security teams at the premises to control capacity and ensure already drunk or disorderly individuals are not admitted.
- 7.81 Where necessary and appropriate, conditions can be attached to premises licences for the promotion of the prevention of crime and disorder at such premises (if not volunteered by the venue operator and following representations made on such grounds) which require adherence to:
- a prescribed capacity;
  - an appropriate ratio of tables and chairs to customers based on the capacity; and
  - the presence of SIA registered security teams to control entry for the purpose of compliance with the capacity limit and to deny entry to individuals who appear drunk or disorderly or both.