



# 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

Issued by The Secretary of State for Culture, Media and Sport

July 2004



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## Foreword by the Secretary of State for Culture, Media and Sport

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The Licensing Act 2003 marks the end of the existing outdated licensing regimes. The activities covered by the new legislation will be carried on in a modern, vibrant society that deserves a more responsive and flexible system. The 2003 Act integrates six existing licensing regimes into a single, streamlined and more efficient system of licensing that will significantly reduce red tape.

The legislation provides a clear focus on the promotion of four statutory objectives which must now be addressed when licensing functions are undertaken. They are:

- the prevention of crime and disorder;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

But the modernisation of the legislation has also been pursued to support a number of other key aims and purposes. These are of vital importance and should be principal aims for all involved in licensing work. They include:

- the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
- greater choice for consumers, including tourists, about where, when and how they spend their leisure time;
- the encouragement of more family friendly premises where younger children can be free to go with the family;
- the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;
- the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and
- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.

Through the legislation, we hope that local people and visitors to this country will have better opportunities to enjoy their leisure time safely while on, or arriving at or leaving a huge range of venues.

Some licensing in the past has been unfocused and led to disproportionate standard conditions and routine inspection which has hindered the development of business and local economies without any positive gain for society. The Act ensures that premises which are causing problems within our communities can be dealt with appropriately but provides a much lighter touch for those businesses and community activities which benefit and enhance people's lives by providing important opportunities for the enjoyment of leisure time. Similarly, in terms of enforcement, we expect to see a sharp focus on premises failing in terms of the licensing objectives, with other businesses left to go about their legitimate activities without unnecessary interference.

This Guidance is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean

that we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice.

The Act provides tough powers to enable licensing authorities and the police to bring the minority of badly managed premises into line with the best. Through the review procedures and the extended closure powers, we are equipping the authorities and the enforcement agencies with the tools that they need to deter behaviour that produces disorder or generates public nuisance or threatens public safety or the well being of our children. We prize the protection of children very highly. The risk of harm to children remains a paramount consideration and we are therefore providing extensive guidance on the relevant issues after consultation with a range of children's organisations and the police.

The Prime Minister's Strategy Unit Interim Analytical Report, published in September 2003, refers to alcohol misuse costing the economy up to £20bn a year, of which the crime and disorder costs are up to £7.3bn a year. Alcohol misuse is also a very substantial contributor to the rise in violent crime and the British Crime Survey shows that 47% of victims of violence described their assailant as being under the influence of alcohol at the time. There is also a strong link between alcohol and domestic violence, and even more so between alcohol and low level intimidatory behaviour. It is therefore important that the new licensing regime is used proactively alongside existing measures to tackle all levels of alcohol misuse.

The new legislation goes to the heart of many of this Government's policies. It is fundamentally about recognising rights and the acceptance of responsibilities. This modernisation of the licensing laws removes obstacles to the further development of the tourism, retail, hospitality, and leisure industries, but this is not being achieved at the price of weakening their social responsibilities. The new legislation provides industry with greater freedom and flexibility to meet the needs of consumers but balances that with clear responsibilities for the industry and strong powers for the police to control any disorderly premises and for licensing authorities to protect residents from disturbance. We expect the right balances to be struck and this Guidance is intended to help the licensing authorities achieve them.

We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.

**Tessa Jowell**

Secretary of State for Culture, Media and Sport

# 1 Background

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1.1 Section 182 of the Licensing Act 2003 (“the 2003 Act”) provides that the Secretary of State must issue, and from time to time, may revise guidance to licensing authorities on the discharge of their functions under the 2003 Act. This document represents the Guidance and is issued by the Secretary of State for Culture, Media and Sport. The Guidance has been published on the DCMS website and on UK Online. Any local authority or other organisation is free to publish the Guidance on its own website or provide an appropriate link to either of these websites.

1.2 The Guidance has been prepared in consultation with other Government Departments, executive agencies and an Advisory Group comprising representatives of the following organisations:

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

1.3 In addition, the Guidance takes account of the views of over 650 other interested organisations, residents’ associations, businesses and public bodies that have written to the Government about licensing reform and this Guidance. It does not, of course, precisely reflect the views of

all these bodies. Some views and comments have inevitably been incompatible with others and the Secretary of State has attempted to balance them carefully to ensure that appropriate advice is given to licensing authorities.

- 1.4 The Guidance is provided for licensing authorities carrying out their functions. Furthermore it provides information for magistrates hearing appeals against licensing decisions. It is also being made widely available for the benefit of operators of licensed premises, their legal advisers and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. The police remain key enforcers of licensing law. The Guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. However, the Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
- 1.5 Part 8 of the 2003 Act also significantly extends the existing powers of the police (a) to seek court orders closing licensed premises in a geographical area that is experiencing or likely to experience disorder; and (b) to close down instantly individual licensed premises that are disorderly, likely to become disorderly or are causing nuisance as a result of noise from the premises. Ministers have previously given undertakings to Parliament that guidance would be issued to police officers about the operation of those powers. Chapter 11 of this Guidance therefore constitutes that guidance.
- 1.6 The Guidance will be kept under constant review in consultation with key stakeholder groups and will be amended or supplemented as necessary at any time to address problems affecting local communities, licensing committees, the police, applicants for licences and club premises certificates, those giving temporary event notices and performers.
- 1.7 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation.

## 2 Introduction and Purpose

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

### The Licensing Act 2003

- 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](http://www.hmso.gov.uk). All statutory instruments may also be viewed on the DCMS website.

### The Guidance

- 2.3 Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 2.4 Section 4 further requires that licensing authorities must have regard to their own licensing statement of policy published under section 5. However, it should be noted that the making of such a statement is a licensing function and as such the authority must have regard to the Secretary of State's guidance when making and publishing its policy. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. But once again, it is important that they should give full reasons for departing from their published statement of licensing policy.

### The licensing objectives

- 2.5 The 2003 Act also provides in section 4 that it is the duty of all licensing authorities to carry out their functions under the Act with a view to promoting the licensing objectives. The licensing objectives are:
- the prevention of crime and disorder;
  - public safety;
  - the prevention of public nuisance; and
  - the protection of children from harm.
- 2.6 Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.

## Partnership working

- 2.7 Licensing functions under the 2003 Act are only one means of promoting the delivery of the objectives described. They can make a substantial contribution in respect of the premises affected but cannot be regarded as a panacea for all community problems. Delivery should therefore involve working in partnership for licensing authorities, planning authorities, environmental health and safety authorities, the police, the fire authority, Crime and Disorder Reduction Partnerships, town centre managers, local business, performers and their representatives, local people, local transport authorities, transport operators and those involved in child protection working towards the promotion of the common objectives described. In particular, it is stressed that the private sector and local residents and community groups have an equally vital role to play in partnership with public bodies to promote the licensing objectives. The Secretary of State considers that there is value in the formation of liaison groups that bring together all the interested parties on a regular basis to monitor developments in the area and where problems have arisen, to discuss these and propose possible solutions. In addition, the Secretary of State recommends that all licensing authorities should hold regular open meetings, well publicised amongst the local community, at which the community can express how well it feels the licensing objectives are being met.
- 2.8 It is also important that licensing authorities should guard against the possibility of licensing policies and decisions driving a wedge between the hospitality and leisure industries and performers and those charged with enforcing the licensing regime, including the police. Co-operation and partnership remain the best means of promoting the licensing objectives.
- 2.9 Anti-social behaviour undermines the fabric of our communities – creating an environment of fear and neglect. Effective solutions to these problems are not the responsibility of a single agency or organisation. Residents and tenants, local authorities, victims and witnesses, the police, social services, schools, businesses and many other groups and individuals have a role and a responsibility to tackle anti-social behaviour.
- 2.10 On 14th October 2003, the Government launched the Together Campaign and published an Action Plan “Together: Tackling Anti-Social Behaviour”. The campaign aims to improve the response to tackling anti-social behaviour – including funding for every area of England and Wales, a new Together ActionLine, website ([www.together.gov.uk](http://www.together.gov.uk)) and Academy to provide help and support to practitioners and a range of projects to tackle nuisance families, begging and environmental crime.

## British Beer and Pub Association Partnerships Initiative

- 2.11 The Government and the British Beer and Pub Association (BBPA) are committed to encouraging the voluntary participation of licensees’ groups in their local Crime and Disorder Reduction Partnerships; and encouraging CDRPs and local representatives of the hospitality industry to work together in partnership. Since March 2000, 240 CDRPs have sought industry involvement in the work of their partnership. The Government and the BBPA continue to work to encourage further participation.

## Alcohol Harm Reduction Strategy

- 2.12 The Government has developed an Alcohol Harm Reduction Strategy for England which identifies a number of initiatives and priorities which may help to promote one or more of the licensing objectives. Licensing authorities should ensure that they familiarise themselves with it.

## Crime and Disorder Act 1998

- 2.13 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998<sup>1</sup> when carrying out their functions as licensing authorities under the 2003 Act.
- 2.14 Section 17 recognises that certain key authorities, including local authorities and police and fire authorities, have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do all they reasonably can to prevent crime and disorder in their area. The purpose of section 17 is simple: the level of crime and its impact is influenced by the decisions and activities taken in the day-to-day business of local bodies and organisations. Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making.
- 2.15 The Government believes that it is good practice to involve Crime and Disorder Reduction Partnerships (CDRPs) in decision-making in order to maximise the effectiveness of reducing crime, misuse of drugs and the fear of crime. Engaging CDRPs will enable local key partners such as small businesses, transport, health authorities and others to have an input and thereby ensure that statements of licensing policy being developed through consultation under section 5(3) of the 2003 Act are well thought out and that solutions that take full account of the crime and disorder implications are reached.

## National Pubwatch and local Pubwatch schemes

- 2.16 Pubwatch schemes have been in existence throughout the United Kingdom for over 20 years and range in size from over 200 premises in cities to small rural schemes with as few as 5 premises involved. The basic working principle underpinning a Pubwatch scheme is that the licensees of the premises involved agree on a number of policies to counter individuals who threaten damage, disorder, and violence or use or deal in drugs in their premises. Normally, action consists of agreeing to refuse to serve individuals that cause, or are known to have caused, these sorts of problems. Refusal of admission and service to those that cause trouble has proved to be effective in reducing anti-social behaviour. To work effectively any Pubwatch scheme must work closely with the police, licensing authorities and other agencies. National

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<sup>1</sup>Section 17 of the Crime and Disorder Act 1998 states: "Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area."

Pubwatch is an entirely voluntary organisation set up to support existing pubwatches and encourage the creation of new pubwatch schemes with the key aim of achieving a safe, secure social drinking environment in all licensed premises throughout the UK helping to reduce drink-related crime.

- 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](http://www.uniquepubs.com/pubwatch).

## Safer Clubbing

- 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](http://www.drugs.gov.uk).
- 2.19 Key details describing necessary action for licensing authorities relating to safer clubbing are reproduced in this Guidance at Annex K and are discussed in greater detail in Chapter 7.

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

- 2.20 In October 2001, the Government issued non-statutory guidance to police officers in respect of section 17 of the Criminal Justice and Police Act 2001, which inserted new closure order provisions into the Licensing Act 1964, which concerned their powers to close without notice for up to 24 hours certain licensed premises that were disorderly, likely to become disorderly or excessively noisy. The 2001 guidance is being replaced with guidance reflecting the terms of Part 8 of the 2003 Act and this is contained in Chapter 11 of this Guidance. Until the end of the transitional period (“the second appointed day”), the provisions of the Licensing Act 1964 and the associated 2001 guidance will remain in force; and the new Guidance contained within Chapter 11 of this document will only have effect from the second appointed day. The current 2001 guidance relating to the Licensing Act 1964 may be viewed on the DCMS website.

## The Anti-Social Behaviour Act 2003

- 2.21 Licensing authorities need to be aware of new powers that will be available to local authorities when the provisions of sections 40 and 41 of the Anti-Social Behaviour Act 2003 are commenced. That Act provides that if the noise from any licensed premises is causing a public nuisance, an authorised environmental health officer would have the power to issue a closure order in respect of it effective for up to 24 hours. Under this provision, it will be for the Chief Executive of the local authority to delegate his or her power to environmental health officers

within his or her local authority. If after receiving a closure order the premises remain open, the person responsible may upon summary conviction receive a fine of up to £20,000, or imprisonment for a term not exceeding three months, or both. This will complement the police powers under the 2003 Act to close licensed premises for temporary periods described fully in Chapter 11 of this Guidance.

## LACORS/TSI Code of Best Practice on Test Purchasing

2.22 Licensing authorities should also familiarise themselves with the LACORS and Trading Standards Institute (TSI) Code of Best Practice on Test Purchasing insofar as it relates to the test purchasing of alcohol by trading standards officers. LACORS continue to fulfil an important co-ordinating role in advising and informing licensing authorities about the requirements of the 2003 Act and the transitional period. LACORS' website may be viewed on [www.lacors.gov.uk](http://www.lacors.gov.uk).

## Research

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>. Some key findings from the British Crime Survey in relation to alcohol and crime are:

- Almost half of all violence is alcohol-related (47%)
- Stranger violence and acquaintance violence are the most likely to be committed by someone under the influence of alcohol (58% and 51% respectively)
- One in 5 violent incidents occur in or around a pub or clubs (21%)
- A quarter of the population consider drunk and rowdy behaviour a 'very' or 'fairly' big problem in their local area.

## Public safety

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](http://www.streetartsnetwork.org/pages/publications).

## Qualifications supporting the licensing objectives

2.25 A range of qualifications, designed to support the licensing objectives, are available from the British Institute of Innkeeping (BII), in addition to the statutory requirement for personal licence holders to have an accredited licensing qualification. These include the National Certificate for Entertainment Licensees, the National Certificate for Licensees (Drugs Awareness), the National Certificate for Door Supervisors and the Barperson’s National Certificate. The BII is also developing a further range of courses and qualifications covering issues such as risk assessment, conflict management, retail operations and the sale of age-restricted products. Further information is available by contacting the BII by e-mail at the following address: [info@bii.org](mailto:info@bii.org).

## 3 Statements of Licensing Policy

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- 3.1 This Chapter provides guidance on the development and preparation of local statements of licensing policy for publication by licensing authorities, the general principles that the Secretary of State recommends should underpin them, and core content to which licensing authorities are free to add.

### General

- 3.2 Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy every three years. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the 2003 Act. During the three year period, the policy must be kept under review and the licensing authority may make such revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the statutory objectives are being met.
- 3.3 Before determining its policy for any three year period, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:
- (a) the chief officer of police for the area;
  - (b) the fire authority for the area;
  - (c) persons/bodies representative of local holders of premises licences;
  - (d) persons/bodies representative of local holders of club premises certificates;
  - (e) persons/bodies representative of local holders of personal licences; and
  - (f) persons/bodies representative of businesses and residents in its area.
- 3.4 The views of all these persons/bodies listed should be given appropriate weight when the policy is determined. It is recognised that in some areas, it may be difficult to identify persons or bodies representative for all parts of industry affected by the provisions of the 2003 Act, but licensing authorities must make reasonable efforts to identify the persons or bodies concerned.
- 3.5 Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons before determining their policies. For example, certain authorities may consider it essential to consult the Crime and Disorder Reduction Partnerships (CDRPs), British Transport Police, local Accident and Emergency Departments, bodies representing consumers, local police consultative groups or those charged locally with the promotion of tourism. They may also consider it valuable to consult local performers, performers' unions (such as the Musicians' Union and Equity) and entertainers involved in the cultural life of the local community.
- 3.6 Beyond the statutory requirements, it is for each licensing authority to decide the full extent of its consultation and for it to decide whether any particular person or body is representative of the group described in the statute. When undertaking consultation exercises, licensing authorities should have regard to cost and time. Licensing authorities should note that the

Secretary of State will establish fee levels to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy, but this will be based on the statutory requirements. Where licensing authorities exceed these requirements, they should note that they would have to absorb those costs themselves.

- 3.7 Licensing authorities consulting on their first statement of licensing policy should also note the requirements of paragraph 29 of Part 4 of Schedule 8 to the 2003 Act which provides that prior to making its first statement of policy, the authority must consult bodies representative of current licence holders before determining their statement. Current licence holders include those holding:
- justices' licences (off- and on- licences);
  - canteen licences issued under the Licensing Act 1964;
  - licences issued under Schedule 12 to the London Government Act 1963 (licensing of public entertainment in Greater London);
  - licences issued under the Private Places of Entertainment (Licensing) Act 1967;
  - licences issued under the Theatres Act 1968;
  - licences issued under the Late Night Refreshment Houses Act 1969;
  - licences issued under Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 (licensing of public entertainments outside Greater London);
  - licences issued under section 1 of the Cinemas Act 1985; and
  - licences issued under Part 2 of the London Local Authorities Act 1990 (night cafe licensing).

## Fundamental principles

- 3.8 All statements of policy should also begin by stating the four licensing objectives, which the licensing policy will be determined with a view to promoting. In determining its policy, a licensing authority must have regard to this Guidance and give appropriate weight to the views of those it has consulted. Having regard to this Guidance will be important for consistency, particularly where licensing authority boundaries meet.
- 3.9 While statements of policy may set out a general approach to the making of licensing decisions, they must not ignore or be inconsistent with provisions in the 2003 Act. For example, a statement of policy must not undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its individual merits.
- 3.10 Similarly, no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act.
- 3.11 Statements of policies should make clear that licensing is about regulating the carrying on of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act, and that the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others in

possession of relevant authorisations. Accordingly, these matters will centre on the premises being used for licensable activities and the vicinity of those premises. Whether or not incidents can be regarded as being “in the vicinity” of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. But statements of licensing policy should make it clear that in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of public living, working or engaged in normal activity in the area concerned. A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres.

## **The need for licensed premises**

- 3.12 There can be confusion about the difference between “need” and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy. “Need” is a matter for planning committees and for the market.

## **The cumulative impact of a concentration of licensed premises**

- 3.13 “Cumulative impact” is not mentioned specifically in the 2003 Act but means in this Guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance on a town or city centre of a large concentration of licensed premises in that part of the local licensing authority area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.
- 3.14 A licensing authority may not impose conditions on or refuse to grant or vary a premises licence or club premises certificate unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business which is a relevant representation. It is however important that applicants, responsible authorities and interested parties should know through the statement of licensing policy, whether the licensing authority already considers that a particular concentration of licensed premises in a particular part of its area is considered to be already causing a cumulative impact on one or more of the licensing objectives. Whether an area is nearing this point should be one of the issues on which local residents are consulted. The open meetings recommended at paragraph 2.7 should assist licensing authorities in keeping the situation as to whether an area is nearing this point under review.

- 3.15 In some town and city centre areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport. Queuing in turn may be leading to conflict, disorder and anti-social behaviour. While the general lengthening of licensing hours can be expected to reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater in these cases than the impact of customers of individual premises.
- 3.16 Where, after considering the available evidence and consulting those individuals and organisations listed in section 5(3) of the 2003 Act and any others, a licensing authority is satisfied that it is appropriate and necessary to include an approach to cumulative impact in the licensing policy statement, it should indicate in the statement that it is adopting a special policy of refusing new licences whenever it receives relevant representations about the cumulative impact on the licensing objectives from responsible authorities and interested parties which it concludes after hearing those representations should lead to refusal (see paragraph 3.19 below).
- 3.17 There should be an evidential basis for the decision to include a special policy within the statement of licensing policy. For example, Crime and Disorder Reduction Partnerships will often have collated information which demonstrates cumulative impact as part of their general role on anti-social behaviour; and crime prevention strategies may have already identified cumulative impact as a local problem. Similarly, environmental health officers may be able to demonstrate concentrations of valid complaints relating to noise disturbance.
- 3.18 In summary, the steps to be followed in considering whether to adopt a special policy within the statement of licensing policy are:
- identification of concern about crime and disorder or public nuisance;
  - consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area from which problems are arising and the boundaries of that area; or that the risk factors are such that the area is reaching a point when a cumulative impact is imminent;
  - consultation with those specified by section 5(3) of the 2003 Act as part of the general consultation required in respect of the whole statement of licensing policy;
  - subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from that area within the terms of this Guidance in the statement of licensing policy;
  - publication of the special policy as part of the statement of licensing policy required by the 2003 Act.
- 3.19 The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations will normally be refused, if relevant representations to that effect are received, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced. Applicants would need to address the special policy issues in their

operating schedules in order to rebut such a presumption. However, a special policy must stress that this presumption does not relieve responsible authorities or interested parties of the need to make a relevant representation before a licensing authority may lawfully consider giving effect to its special policy. If no representation is received, it would remain the case that any application must be granted in terms that are consistent with the operating schedule submitted. However, responsible authorities, such as the police, or interested parties, can make a written representation maintaining that it is necessary to refuse the application for the promotion of the prevention of crime and disorder and referring to information which had been before the licensing authority when it developed its statement of licensing policy.

- 3.20 Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or need expanding. While a special policy is in existence, applicants will need to demonstrate why the operation of the premises would not add to the cumulative impact being experienced.
- 3.21 The absence of a special policy does not prevent any responsible authority or interested party making representations on a new application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

### **Limitations on special policies relating to cumulative impact**

- 3.22 It would normally not be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises. Special policies will address the impact of a concentration of licensed premises selling alcohol for consumption on the premises which may give rise to large numbers of people who have been drinking alcohol on the streets in a particular area.
- 3.23 A special policy should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted. Following receipt of representations in respect of a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not. If after such consideration, the licensing authority decides that an application should be refused, it will still be for the licensing authority to show that the grant of the application would undermine the promotion of one of the licensing objectives and if it would, that necessary conditions would be ineffective in preventing the problems involved.
- 3.24 Special policies should never be used as a ground for revoking an existing licence or certificate when relevant representations are received about problems with those premises. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder or nuisance) situation in a town centre would generally not be regarded as a relevant representation if it cannot be positively tied or linked by a causal connection to particular

premises that would allow for a proper review of its licence or certificate. In this context, it should be noted that the “cumulative impact” on the promotion of the licensing objectives of a concentration of multiple licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered. A review must relate specifically to individual premises, and by its nature, “cumulative impact” relates to the effect of a concentration of many premises. Identifying individual premises in the context of a review would inevitably be arbitrary. Where it becomes clear that there is a problem in a part of the licensing authority area after a premises licence or club premises certificate has been granted, and it becomes clear that an individual premises is undermining the promotion of the prevention of crime and disorder in that area, the licence may only be reviewed if representations are made about that objective by either an interested party, such as a residents’ association, or a responsible authority such as the police.

- 3.25 Special policies can also not be used to justify rejecting applications to vary an existing licence or certificate except where those modifications are directly relevant to the policy (as would be the case with an application to vary a licence with a view to increasing the capacity limits of the premises) and are strictly necessary for the promotion of the licensing objectives.
- 3.26 A special policy relating to cumulative impact cannot justify and should not include provisions for a terminal hour in a particular area. For example, it would be wrong not to apply the special policy to applications that include provision to open no later than, for example, midnight, but to apply the policy to any other premises that propose opening later. The effect would be to impose a fixed closing time akin to that under the “permitted hours” provisions of the Licensing Act 1964. Terminal hours dictated by the Licensing Act 1964 were abolished to avoid the serious problems that arise when customers exit licensed premises simultaneously. Attempting to fix a terminal hour in any area would therefore directly undermine a key purpose of the 2003 Act.
- 3.27 Special policies must not impose quotas – based on either the number of premises or the capacity of those premises – that restrict the consideration of any application on its individual merits or which seek to impose limitations on trading hours in particular areas. Quotas that indirectly have the effect of pre-determining the outcome of any application should not be used because they have no regard to the individual characteristics of the premises concerned. Public houses, nightclubs, restaurants, hotels, theatres, concert halls and cinemas all could sell alcohol, serve food and provide entertainment but with contrasting styles and characteristics. Proper regard should be given to those differences and the differing impact they will have on the promotion of the licensing objectives.

## Other mechanisms for controlling cumulative effect

- 3.28 Once away from the licensed premises, a minority of consumers will behave badly and unlawfully. To enable the general public to appreciate the breadth of the strategy for addressing these problems, statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing such issues. For example:
- planning controls;

- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;
- the provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;
- powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;
- the confiscation of alcohol from adults and children in designated areas;
- police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance; and
- the power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.

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

## Licensing hours

- 3.29 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists without compromising the ability to resource local services associated with the night-time economy. Providing consumers with greater choice and flexibility is an important consideration.
- 3.30 The term “zoning” is used in this Guidance to refer to the setting of fixed trading hours within a designated area. As experience in Scotland suggests that zoning leads to the significant movement of people across boundaries in search of premises opening later and puts greater pressure on town and city centres than is necessary, it should not be adopted as a policy. Zoning can result in greater disturbance in the streets at particular times and concentrations of disturbance and noise, particularly where licensing authorities seek to adopt fixed “terminal hours” as a matter of policy. It also assumes that the representations of residents in one area should be treated less favourably than others in other areas simply because they live in busy central areas of towns and cities or because residential housing is less dense than in other areas. It is acceptable for a statement of policy to make clear that stricter

conditions with regard to noise control will be expected in areas which have denser residential accommodation, but this should not limit opening hours without regard to the individual merits of any application.

- 3.31 With regard to shops, stores and supermarkets, the Government strongly recommends that statements of licensing policy should indicate that the norm will be for such premises to be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are very good reasons for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there. Statements of licensing policy should therefore reflect this general approach.
- 3.32 Chapter 6 of this Guidance provides further advice on the issue of licensing hours.

## Children

- 3.33 The 2003 Act makes it an offence to permit children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or primarily for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or where that activity is carried on under the authority of a temporary event notice. In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at other premises supplying alcohol for consumption on the premises under the authority of any premises licence, club premises certificate or temporary event notice. Outside of these hours, the offence does not prevent the admission of unaccompanied children under 16 to the wide variety of premises where the consumption of alcohol is not the exclusive or primary activity at those venues. Accordingly, between 5am and midnight the offence would not necessarily apply to many restaurants, hotels, cinemas and even many pubs where the main business activity is the consumption of both food and drink. This does not mean that children should automatically be admitted to such premises and the following paragraphs are therefore of great importance notwithstanding the new offences created by the 2003 Act.
- 3.34 It is not intended that the definition “exclusively or primarily” in relation to the consumption of alcohol should be applied in a particular way by reference to turnover, floor space or any similar measure. The expression should be given its ordinary and natural meaning in the context of the particular circumstances. It will normally be quite clear that the business being operated at the premises is predominantly the sale and consumption of alcohol. Mixed businesses may be harder to pigeonhole and it would be sensible for both operators and enforcement agencies to consult where necessary about their respective interpretations of the activities taking place on the premises before any moves are taken which might lead to prosecution.
- 3.35 The fact that the new offence may effectively bar children under 16 unaccompanied by an adult from premises where the consumption of alcohol is the exclusive or primary activity does not mean that the 2003 Act automatically permits unaccompanied children under the age of 18 to have free access to other premises or to the same premises even if they are accompanied or to

premises where the consumption of alcohol is not involved. Subject only to the provisions of the 2003 Act and any licence or certificate conditions, admission will always be at the discretion of those managing the premises. The 2003 Act includes on the one hand, no presumption of giving children access or on the other hand, no presumption of preventing their access to licensed premises. Each application and the circumstances obtaining at each premises must be considered on its own merits.

- 3.36 A statement of licensing policy must not therefore seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm to them. Licensing policy statements should not attempt to anticipate every issue of concern that could arise in respect of children with regard to individual premises and as such, general rules should be avoided. Consideration of the individual merits of each application remains the best mechanism for judging such matters.
- 3.37 A statement of policy should highlight areas that will give rise to particular concern in respect of children. For example, these should include premises:
- where entertainment or services of an adult or sexual nature are commonly provided;
  - where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking;
  - with a known association with drug taking or dealing<sup>2</sup>;
  - where there is a strong element of gambling on the premises (but not, for example, the simple presence of a small number of cash prize gaming machines); and
  - where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.
- 3.38 In the context of paragraph 3.37 above, it is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible authorities and licensing authorities will need to apply common sense to this matter. However, such entertainment or services, for example, would generally include topless bar staff, striptease, lap-, table- or pole-dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment involving strong and offensive language.
- 3.39 A statement of policy should make clear the range of alternatives which may be considered for limiting the access of children where that is necessary for the prevention of harm to children. These, which can be adopted in combination, include:
- limitations on the hours when children may be present;
  - limitations on the exclusion of the presence of children under certain ages when particular specified activities are taking place;

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<sup>2</sup> Police, licensing authorities and licensees need to be aware that following its commencement on the 20th January 2004, a new power is available under the Anti-Social Behaviour Act 2003 to close premises where there is the production supply or use of class A drugs and serious nuisance or disorder. This power provides an extra tool to the police to enable rapid action against a premises where there is a Class A drug problem, enabling its closure in as little as 48 hours should this be necessary. Police authorities are advised to consult the Notes of Guidance on the use of this power (Home Office, 2004) available on the Home Office website. These powers will also be covered in brief in the update to Safer Clubbing available in 2004.

- limitations on the parts of premises to which children might be given access;
- age limitations (below 18);
- requirements for accompanying adults (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 those people under 18 from the premises when any licensable activities are taking place.

3.40 Statements of policy should also make clear that conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is necessary, this should remain a matter for the discretion of the individual licensee or club or person who has given a temporary event notice. Venue operators seeking premises licences and club premises certificates may also volunteer such prohibitions and restrictions in their operating schedules because their own risk assessments have determined that the presence of children is undesirable or inappropriate. Where no relevant representations are made to the licensing authority concerned, these volunteered prohibitions and restrictions will become conditions attached to the licence or certificate and will be enforceable as such. No other conditions concerning the presence of children on premises may be imposed by the licensing authority in these circumstances.

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.

## **The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks**

3.42 The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an

Independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important weapon in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors. The Secretary of State commends the Code to licensing authorities and recommends that they should commend it in their statements of licensing policy.

## Children and cinemas

- 3.43 The statement of policy should make clear that in the case of premises giving film exhibitions, the licensing authority will expect licensees or clubs to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the licensing authority itself. Where a licensing authority intends to adopt its own system of classification, its statement of policy should indicate where the information regarding such classifications will be published and made available to licensees, clubs and the general public.
- 3.44 The 2003 Act also provides that it is mandatory for a condition to be included in all premises licences and club premises certificates authorising the exhibition of films for the admission of children to the exhibition of any film to be restricted in accordance with the recommendations given to films either by a body designated under section 4 of the Video Recordings Act 1984 – the British Board of Film Classification is the only body which has been so designated – or by the licensing authority itself.

## Integrating strategies

- 3.45 The Secretary of State recommends that statements of policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, race equality schemes, and cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Many of these strategies are not directly related to the promotion of the four licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

## Crime prevention

- 3.46 Licensing policy statements should indicate that conditions attached to premises licences and club premises certificates will, so far as possible, reflect local crime prevention strategies. For example, the provision of closed circuit television cameras in certain premises. Where appropriate it should reflect the input of the local Crime and Disorder Reduction Partnership.

## Cultural strategies

- 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.
- 3.48 Over 325 local authorities from all over England and Wales are members of the National Association of Local Government Arts Officers (NALGAO), which is the largest organisation in the country representing local government art interests. Some local authorities do not yet have arts specialists or arts development officers and in such circumstances, a licensing authority may wish to consult NALGAO for practical help and advice.
- 3.49 The United Kingdom ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. Article 15 of the Covenant requires that progressive measures be taken to ensure that everyone can participate in the cultural life of the community and enjoy the arts. It is therefore important that the principles underpinning ICESCR are integrated, where possible, with the licensing authority's approach to the licensing of regulated entertainment.

## Transport

- 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 Plan<sup>3</sup>.

## Tourism, employment, planning and building control

- 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;

<sup>3</sup> 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 control<sup>4</sup> 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.

## Promotion of Racial Equality

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 is available at [www.raceimpact.homeoffice.gov.uk](http://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.

## Duplication

3.53 Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues both in respect of employees and of the general public when

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<sup>4</sup> 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.

on the premises in question. Similarly, many aspects of fire safety will be covered by existing and future legislation. Conditions in respect of public safety should only be attached to premises licences and club premises certificates that are “necessary” for the promotion of that licensing objective and if already provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with licensable activities, particularly regulated entertainment, at specific premises and tailored conditions may be necessary.

- 3.54 It is particularly important that licensing authorities and responsible authorities, including fire authorities, fully appreciate that regulations under which a fire safety inspection would normally be carried out do not apply to ships/boats unless they are in dry dock. The safety regime for passenger vessels is enforced under the Merchant Shipping Acts by the Maritime and Coastguard Agency who operate a passenger ship certification scheme. Accordingly, it will not normally be necessary to duplicate the controls imposed through the certification scheme.

### Standardised conditions

- 3.55 Statements of policy should make clear that a key concept underscoring the 2003 Act is for conditions to be attached to licences and certificates which are tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should therefore be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case. However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions from which necessary and proportionate conditions may be drawn in particular circumstances. Chapter 7 of this Guidance provides further details and stresses that there will be circumstances where no additional conditions may be necessary in circumstances where existing legislation and regulation already effectively promote the licensing objectives, and where, for whatever reason, licensed premises could not conceivably add to any crime and disorder or other relevant issues.

### Enforcement

- 3.56 As part of their statement of policy, the Government **strongly** recommends that licensing authorities should express the intention to establish protocols with the local police on enforcement issues. This would provide for a more efficient deployment of licensing authority staff and police officers who are commonly engaged in enforcing licensing law and the inspection of licensed premises.
- 3.57 In particular, these protocols should also provide for the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema, night café and late night refreshment house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks make such inspections necessary. The 2003 Act does not require inspections to take place save at the

discretion of those charged with this role. The principle of risk assessment and targeting should prevail and inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are more effectively concentrated on problem premises.

## Live music, dancing and theatre

- 3.58 Statements of licensing policy should also recognise that as part of implementing local authority cultural strategies, proper account should be taken of the need to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre, including the performance of a wide range of traditional and historic plays, for the wider cultural benefit of communities. A natural concern to prevent disturbance in neighbourhoods should always be carefully balanced with these wider cultural benefits, particularly the cultural benefits for children. In determining what conditions should be attached to licences and certificates as a matter of necessity for the promotion of the licensing objectives, licensing authorities should be aware of the need to avoid measures which deter live music, dancing and theatre by imposing indirect costs of a disproportionate nature. Performances of live music and dancing are central to the development of cultural diversity and vibrant and exciting communities where artistic freedom of expression is a fundamental right and greatly valued. Traditional music and dancing are parts of the cultural heritage of England and Wales. Music and dancing also help to unite communities and particularly in ethnically diverse communities, new and emerging musical and dance forms can assist the development of a fully integrated society. It should also be noted that the absence of cultural provision in any area can itself lead to the young people being diverted into anti-social activities that damage communities and the young people involved themselves.
- 3.59 To ensure that cultural diversity thrives, local authorities should consider establishing a policy of seeking premises licences from the licensing authority for public spaces 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. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give a performance in these places. They would still require the permission of the local authority as the premises licence holder for any regulated entertainment that it was proposed should take place in these areas. It should be noted that when one part of a local authority seeks a premises licence of this kind from the licensing authority, the licensing committee and its officers must consider the matter from an entirely neutral standpoint. If relevant representations are made, for example, by local residents or the police, they must be considered fairly by the committee. Those making representations genuinely aggrieved by a positive decision in favour of a local authority application by the licensing authority would be entitled to appeal to the magistrates' court and thereby receive an independent review of any decision made.
- 3.60 The Secretary of State recommends that licensing authorities should publish contact points in their statements of licensing policy where members of the public can obtain advice about whether or not activities fall to be licensed.

## Administration, exercise and delegation of functions

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.

3.62 Where under the provisions of the 2003 Act, there are no relevant representations on an application for the grant of a premises licence or club premises certificate or police objection to an application for a personal licence or to an activity taking place under the authority of a temporary event notice, these matters should be dealt with by officers in order to speed matters through the system. Licensing committees should receive regular reports on decisions made by officers so that they maintain an overview of the general situation. Although essentially a matter for licensing authorities to determine themselves, the Secretary of State recommends that delegation should be approached in the following way:

### 3.63 Recommended delegation of functions

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases
Request to be removed as designated premises supervisor			All cases

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc.			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

## 4 Personal Licences

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- 4.1 This Chapter provides advice about best practice in administering the process for issuing personal licences to sell or supply alcohol. In particular, the Government stresses that the “fit and proper” test associated with the old alcohol licensing regime has been abolished and the tests established by the 2003 Act are the only ones which may now be applied. Moreover, in this context, it must also be stressed that a personal licence is not a qualification that is associated with business competency. The four licensing objectives apply to consideration of applications for personal licences as to all other parts of the Act.

### General

- 4.2 In the case of an individual seeking a personal licence under the terms of Part 3 of Schedule 8 to the 2003 Act (transitional provisions) as a “grandfather right”, the qualifications are in summary that:
- the person is the holder of a justices’ licence issued under the provisions of the Licensing Act 1964 at the time of his/her application;
  - the person has provided the justices’ licence or a certified copy of it and a photograph of him/her endorsed to the effect that it is a true likeness;
  - if applicable, the person has provided a statement giving details of any relevant or foreign offence of which they have been convicted;
  - the police have been given a copy of the application within 48 hours of the application being made; and
  - a) the police have not given an objection notice about the grant of a personal licence; or
  - b) the police have given an objection notice because of a conviction for an unspent relevant offence or a foreign offence, but the licensing authority has not considered it necessary to reject the application on crime prevention grounds; and
  - the applicant has paid the appropriate fee to the licensing authority.
- 4.3 In the case of an application for a personal licence under Part 6 of the 2003 Act, the requirements are that the applicant:
- must be aged 18 or over;
  - possesses a licensing qualification accredited by the Secretary of State (or one which is certified as if it is such a qualification or is considered equivalent) or is a person of a description prescribed by the Secretary of State by regulations (NB. Any such secondary legislation may be viewed on the DCMS website);
  - must not have had forfeited a personal licence within five years of his application; and
  - a) the police have not given an objection notice about the grant of a personal licence following notification of any unspent relevant offence or foreign offence; or

- b) the police have given an objection notice because of a conviction for an unspent relevant offence or a foreign offence, but the licensing authority has not considered it necessary to reject the application on crime prevention grounds; and
- the applicant has paid the appropriate fee to the licensing authority.

4.4 Any individual may apply for a personal licence whether or not he is currently employed or has business interests associated with the use of the licence. The issues which arise when the holder of a personal licence becomes associated with particular licensed premises and the personal licence holder is specified as the “designated premises supervisor” for those premises are dealt with in paragraphs 4.18 – 4.23 below. Licensing authorities may not therefore take into account such matters when considering an application for a personal licence.

## Criminal record

- 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.
- 4.6 Licensing authorities are required to notify the police when an applicant is found to have an unspent conviction for a relevant offence defined in the 2003 Act or for a foreign offence.
- 4.7 Where an applicant has an unspent conviction for a relevant or foreign offence, and the police object to the application on crime prevention grounds, the applicant is entitled to a hearing before the licensing authority. If the police do not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant it.
- 4.8 The Secretary of State recommends that, where the police have issued an objection notice, refusal of the application should be the normal course unless there are, in the opinion of the licensing authority, exceptional and compelling circumstances which justify granting the application. For example, certain offences can never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that he or she no longer has any propensity to re-offend, a licensing authority may consider that the individual circumstances of the case are so exceptional and compelling and any risk to the community so diminished that it is right to grant the application.

- 4.9 If an application is refused, the applicant will be entitled to appeal against the decision. Similarly, if the application is granted despite a police objection notice, the chief officer of police is entitled to appeal against the licensing authority's determination. Licensing authorities are therefore expected to record in full the reasons for any decision that they make.

## Licensing qualifications

- 4.10 Details of licensing qualifications currently accredited by the Secretary of State will be notified to licensing authorities and the details may be viewed on the DCMS website.
- 4.11 From time to time, licensing authorities may also be concerned that documents and certificates produced as evidence of the possession of a licensing qualification may be forged or improperly amended. Contact points for issuing authorities regarding the possible forgery of qualifications are also given on the DCMS website. It also provides information about the core content of licensing qualification courses.
- 4.12 The Secretary of State intends to prescribe persons admitted to the Hon Company of the Vintners of the City of London as persons who will not need to possess the licensing qualification. Proof of admission to the Company will therefore be required by licensing authorities receiving such applications. In addition, holders of licences issued by the Board of the Green Cloth and by the University of Cambridge will be prescribed to enable such persons to apply for a personal licence before the second appointed day.
- 4.13 For the purposes of transition, Schedule 8 to the 2003 Act provides that existing holders of justices' licences do not need to hold a licensing qualification before being granted a personal licence. This is because the licensing justices, following a hearing, have already declared the individual concerned to be a "fit and proper" person to sell alcohol. Licensing authorities are not empowered to require such an individual to obtain a licensing qualification before applying for a personal licence during the transitional period. It may well be, of course, that some licensing justices may have required licensees to hold certain licensing qualifications as part of deciding that they are "fit and proper" to hold a licence.

## Relevant licensing authority

- 4.14 Personal licences are valid for ten years unless surrendered or suspended or revoked or declared forfeit by the courts. Once granted, the licensing authority which issued the licence remains the "relevant licensing authority" for it and its holder, even though the individual may move out of the area or take employment elsewhere. The personal licence itself will give details of the issuing licensing authority.

## Changes in name or address

- 4.15 The holder of the licence is required by the 2003 Act to notify the licensing authority of any changes of name or address. These changes should be recorded by the licensing authority. The holder is also under a duty to notify any convictions for relevant offences to the licensing

authority and the courts are similarly required to inform the licensing authority of such convictions, whether or not they have ordered the suspension or forfeiture of the licence. The holder must also notify the licensing authority of any conviction for a foreign offence. These measures ensure that a single record will be held of the holder's history in terms of licensing matters. Licensing authorities should maintain easily accessible records and maintain a service enabling the police in any area and other licensing authorities to be promptly advised of any details they require about the holder of the personal licence concerned which relate to the discharge of their licensing functions. The 2003 Act authorises the provision and receipt of such personal information to such agencies for the purposes of the Act.

## Central database

- 4.16 The licensing authorities, supported by the Government, are considering the development of a central database which will, among other things, include details of all personal licence holders. Future developments relating to the creation of a central database will be reported on the DCMS website.

## Renewal

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

## Designated premises supervisors

- 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.
- 4.19 By specifying the premises supervisor in the premises licence, it will usually be clear who is in day to day charge of the premises. The Government considers it to be essential that police

officers, fire officers or officers of the licensing authority can identify immediately the designated premises supervisor as a person in a position of authority at any premises selling or supplying alcohol. They can do that because a copy of the licence must be held at the premises and a summary displayed. The premises licence will specify the name of the designated premises supervisor who is also a personal licence holder. This should ensure that any problems can be dealt with swiftly by engaging with this key individual. It is stressed that only one designated premises supervisor may be specified in a single premises licence.

- 4.20 In addition, the police are able to object to the designation of a new premises supervisor where, **in exceptional circumstances**, they believe that the appointment would undermine the crime prevention objective. Police objection is permitted where, for example, a particular designated premises supervisor is first appointed or transfers into particular premises and the presence of that individual in combination with particular premises gives rise to exceptional concerns. For example, this could occur where a personal licence holder has been allowed by the courts to retain his licence despite convictions for selling alcohol to minors (a relevant offence) and he then transfers into premises with some degree of notoriety for underage drinking.
- 4.21 Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put their arguments. The 2003 Act provides that the applicant may apply for the individual to take up his post as designated premises supervisor immediately and therefore, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter **must** confine their consideration to the issue of crime and disorder. They should give comprehensive reasons for their decision and either party would be entitled to appeal if their argument is rejected.
- 4.22 The portability of personal licences from one premises to another is an important concept within the 2003 Act. The Secretary of State expects that objections by the police on the specification of the designated premises supervisor would arise in only genuinely exceptional circumstances. An objection made routinely in individual circumstances that could not be regarded as exceptional would not be in accordance with the 2003 Act. If a licensing authority believes that the police are routinely objecting on un-exceptional grounds, they should raise the matter with the chief officer of police as a matter of urgency. The 2003 Act provides for the suspension and forfeiture of personal licences by the courts following convictions for relevant offences, including breaches of licensing law. The police can at any stage after the appointment of a designated premises supervisor seek a review of a premises licence on any grounds relating to the licensing objectives if anxieties arise about the performance of such a supervisor. The portability of personal licences is also important to industry because of the frequency with which some businesses move managers from premises to premises. It is therefore not expected that licensing authorities or the police should seek to use the power of intervention as a routine mechanism for hindering the portability of a licence or use hearings of this kind as a fishing expedition to test out the individual's background and character. The Secretary of State therefore expects that such hearings should be rare and genuinely exceptional.
- 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.

## Convictions and liaison with the courts

4.24 Where a personal licence holder is convicted by a court for a relevant offence, the court is under a duty to notify the relevant licensing authority of the conviction and of any decision to order that the personal licence be suspended or declared forfeit. The sentence of the court has immediate effect despite the fact that an appeal may be lodged against conviction or sentence (although the court may suspend the forfeiture or suspension of the licence pending the outcome of any appeal). On receipt of such a notification, the licensing authority should contact the holder and request his licence so that the necessary action can be taken. The holder must then produce his licence to the authority within 14 days. It is expected that the chief officer of police for the area in which the holder resides would be advised if he or she does not respond promptly. On receipt of the licence, the details of the conviction should be recorded in the authority's records and endorsed on the licence, as should any period of suspension if so ordered. The licence should then be returned to the holder. If the licence is declared forfeit, it should be retained by the licensing authority.

## Relevant offences

4.25 Relevant offences are set out in Schedule 4 to the 2003 Act and the Schedule is reproduced at Annex C.

## 5 Premises Licences

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

### Licensable activities

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

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

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

### Small venues providing dancing and amplified or unamplified music

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

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

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

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

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

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

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

## Wholesale of alcohol

- 5.8 The wholesale of alcohol to the general public was not licensable prior to the coming into force of the 2003 Act. Licensing authorities will want to have particular regard to the definition of “sale by retail” given in section 192 of the 2003 Act. Sales which are made to traders for the purpose of their trade (including, for example, another wholesaler) or holders of club premises certificates, premises licences, personal licences or premises users who have given temporary event notices for the purpose of making sales authorised by those permissions or notices, are not licensable. But a sale otherwise made to a member of the public in wholesale quantities is now a licensable activity and subject to the provisions of the 2003 Act.

## Internet and mail order sales

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

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

## Regulated entertainment

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

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

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

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

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

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

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

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

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

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

## Pub games

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

## Private events

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

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

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

## Incidental music

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

## Spontaneous music, singing and dancing

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

## Late night refreshment

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

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

## Premises

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

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

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

## Garages

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

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

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

## Relevant licensing authority

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

## Authorised persons, interested parties and responsible authorities

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

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

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

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

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

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

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

- 5.34 Licensing authorities should consider providing advice on their websites about how any interested party can make representations to them.
- 5.35 The third group – “responsible authorities” – includes public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. All representations made by responsible authorities are relevant representations if they concern the effect of the application on the licensing objectives. For all premises, these include the chief officer of police; the local fire authority; the local enforcement agency for the Health and Safety at Work etc. Act 1974 (which may be the local authority in certain circumstances, and the Health and Safety Executive in others); the local authority with responsibility for environmental health; the local planning authority; any body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm and is recognised by the licensing authority for that area as being competent to advise it on such matters; and any licensing authority, other than the relevant licensing authority, in whose area part of the premises are situated.
- 5.36 In respect of the protection of children from harm, it is expected that the body recognised by the licensing authority to be competent to advise will have been indicated in the statement of licensing policy. This is important as applications for premises licences have to be copied to the responsible authorities by the applicant in order for them to make any representations they think are relevant. In many licensing authority areas, it is expected that the body recognised by the licensing authority to be competent in this regard will be the Area Child Protection Committee. However, in some areas, the Committee’s involvement may not be practical and in these circumstances the licensing authority is expected to nominate another body, for example, the local authority social services department.
- 5.37 In relation to a vessel, but no other premises, responsible authorities also include navigation authorities within the meaning of section 221(1) of the Water Resources Act 1991 that have statutory functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is proposed to be navigated at a time when it is used for licensable activities; the Environment Agency; the British Waterways Board; and the Secretary of State. The provision of the Secretary of State as a responsible authority in this case means the Secretary of State for Transport who in practice acts through the Maritime and Coastguard Agency, an executive agency of central Government, which has no formal legal existence.

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

## Applications for premises licences

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

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

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

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

## The operating schedule

- 5.46 The operating schedule will form part of the completed application form for a premises licence. An operating schedule should include information which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory. For example, it should include a description of the style and character of the business to be conducted on the premises (for example, a supermarket, or a cinema with six screens and a bar, or a restaurant, or a public house with two bars, a dining

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

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

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

## Steps to promote the licensing objectives

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

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

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

## Advertising applications

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

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

## Casinos and bingo clubs

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

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

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

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

## **Sports stadia with roofs that open and close**

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

## Vessels

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

## International airports and International ports

- 5.60 Under the 2003 Act, the Secretary of State may designate a port, hoverport or airport, if it appears to the Secretary of State that there is a substantial amount of international traffic, so that an activity is not a licensable activity if it is carried on at such designated locations. The Secretary of State may also preserve existing designations made under earlier legislation. Details of the ports, hoverports and airports so designated may be viewed on the DCMS website.
- 5.61 Where a port has been designated by the Secretary of State, the areas at the ports which are “airside” or “wharveside” are included in the exemption in the 2003 Act from the licensing regime. These are areas to which the non-travelling public do not have access and are subject to stringent bye-laws, and the exemption is to enable the provision of refreshment of all kinds to travellers at all times of the day and night. Other parts of designated ports, hoverports and airports are subject to the normal licensing controls.

## Vehicles

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

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

## Trains and aircraft

5.64 Under the 2003 Act, railway vehicles and aircraft engaged on journeys are exempted from the licensing regime. However, licensing authorities should note that some defunct aircraft and railway carriages are used as restaurants and bars, remaining in a fixed position. Licensing authorities may consider applications made in respect of such premises and they are subject to the provisions of the 2003 Act. It should also be noted that under the 2003 Act, the sale of alcohol to a minor anywhere in England and Wales has been made a criminal offence. Until the 2003 Act came into force, such sales were only offences if they took place on licensed premises. This is no longer the case. Accordingly, the sale of alcohol aboard a train or aircraft to a minor is now a criminal offence.

## Considering applications for new and major variations of premises licences

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

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

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

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

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

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

After considering all the relevant issues, it is open to the licensing authority to grant the application subject to such conditions that are consistent with the operating schedule, and these can be modified to such an extent that the licensing authority considers necessary for the promotion of the licensing objectives. Any conditions so imposed must be necessary for the promotion of the licensing objectives. There is no power for the licensing authority to attach a condition which is merely aspirational: it must be necessary. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Alternatively, the licensing authority may refuse the application on the grounds that refusal is necessary for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities.

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

### **Relevant, vexatious and frivolous representations**

- 5.73 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. A representation that fails to do this is not “relevant” for the purposes of the 2003 Act. It is not intended, for example, that the consideration of the application should be a re-run of the planning application which would have considered a wider range of matters. Premises licences authorise the activities within the scope of the 2003 Act that it is proposed should take place on the premises. For example, a representation from a local businessman which argued that his business would be commercially damaged by the new business for which an application is being made under Part 3 of the 2003 Act would not be relevant. On the other hand, a representation to the effect that nuisance caused by the new business would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance are inadequate would amount to

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

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

## Transfers of premises licences

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

## Applications to change the designated premises supervisors

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

## Provisional statements

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

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

## Interim authorities

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

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

- 5.93 These circumstances arise only where a premises licence has lapsed owing to the death, incapacity or insolvency of the holder. In such circumstances, an "interim authority" notice may be given to the licensing authority within seven days beginning the day after the licence lapsed. It should also be copied to the chief officer of police. The premises licence would lapse until such a notice is given and carrying on licensable activities in that time would be unlawful. Such activity will be an offence as an unauthorised licensable activity under section 136(1)(a) of the 2003 Act, to which there is a "defence of due diligence" provided in section 139. This may be relevant where, for example, the manager of particular premises is wholly unaware for a period of time that the premises licence holder has died. As soon as an interim authority notice is given within the seven day period, the business may continue to carry on any licensable activities permitted by the premises licence.
- 5.94 An interim notice may only be given either by a person with a prescribed interest in the premises as set out by the Secretary of State in regulations which may be viewed on the DCMS website; or by a person connected to the former holder of the licence (normally a personal representative of the former holder or a person with power of attorney or where someone has become insolvent that persons insolvency practitioner).
- 5.95 The effect of giving the notice is to reinstate the premises licence as if the person giving the notice is the holder of the licence and thereby allow licensable activities to continue to take place pending a formal application for transfer. The maximum period for which an interim authority notice may have effect is two months.
- 5.96 The interim authority notice ceases to have effect unless by the end of the initial 7 day period a copy of the notice has been given to the chief officer of police. Within 48 hours of the giving of the copy of the notice, and if satisfied that in the exceptional circumstances of the case failure to cancel the interim authority would undermine the crime prevention objective, the police may give a notice to that effect to the licensing authority. In such circumstances, the licensing authority must hold a hearing to consider the objection notice and cancel the interim authority notice if it determines that it is necessary to do so for the promotion of the crime prevention objective.
- 5.97 In respect of these matters, it is expected that licensing authorities will be alert to the urgency of the circumstances and the need to consider the objection quickly.
- 5.98 It should also be noted that by virtue of section 50 of the 2003 Act where the premises licence lapses (because of death, incapacity or insolvency of the holder etc.) or by its surrender, but no interim authority notice has effect, a person who may apply for the grant of a premises licence under section 16(1) may apply within 7 days of the lapse for the transfer of the licence to him with immediate effect pending the determination of the application – causing the licence to be reinstated from the point at which the transfer application was received by the licensing authority. The person applying for the transfer must copy his application to the chief officer of police.

## Reviews

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

- representations considered by the licensing authority when the premises licence was first granted; or
- representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and
- in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.

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

### **Powers of a licensing authority on the determination of a review**

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

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

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

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

## Reviews arising in connection with crime

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

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

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





























































































































































































































