



PREMISES / PERSONAL LICENCES SUB-COMMITTEE

DATE: Tuesday, 20 October 2020

TIME: 10.00 am

VENUE: Telephone Hearing - For meetings held through remote means of a teleconference, public access details for the teleconference can be obtained from the Officer whose details are below.

MEMBERSHIP:

Councillor V Guglielmi
Councillor Casey

Councillor Coley
Councillor Winfield

This Meeting is being held in accordance with the provisions of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020. For meetings held through remote means of a teleconference, public access details for the teleconference can be obtained from the Officer whose details are below. You are encouraged to request those details at the earliest opportunity to avoid any connection issues arising on the day of the meeting.

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Meeting papers can be provided, on request, in large print, in Braille, or on disc, tape, or in other languages.

For further details and general enquiries about this meeting, contact Debbie Bunce Email: dbunce@tendringdc.gov.uk or Telephone on 01255 686573.

DATE OF PUBLICATION: Monday, 5 October 2020

AGENDA

1 Election of Chairman for the Meeting

The Sub-Committee will elect its Chairman for the meeting.

2 Apologies for Absence and Substitutions

The Sub-Committee is asked to note any apologies for absence and substitutions received from Members.

3 Declarations of Interest

Councillors are invited to declare any Disclosable Pecuniary Interests or Personal Interest, and the nature of it, in relation to any item on the agenda.

4 Report of Corporate Director (Operations & Delivery) - A.1 - Application for the Review of a Premises Licence - Truth/Pulse (formerly Bentleys), 5 Marine Parade East, Clacton-on-Sea (Pages 1 - 254)

The Sub-Committee will consider an application for the review of the Premises Licence held in respect of the above premises which has been submitted by Essex Police, being a Responsible Authority, under Section 51 of the Licensing Act 2003.

5 Adjournment of Meeting

Following the conclusion of the consideration of item A.1 the Sub-Committee will then adjourn until such time as the Chairman deems appropriate.

6 Report of Corporate Director (Operations & Delivery) A.1 - Application for the Review of a Premises Licence - Truth/Pulse (formerly Bentleys), 5 Marine Parade East, Clacton-on-Sea

After its deliberations the Sub-Committee and the Council's Solicitor will return to the meeting (and the interested parties and public will be re-admitted) in order for the Chairman to formally announce the Sub-Committee's decision following its review of the Premises Licence held in respect of Truth/Pulse (formerly Bentleys), 5 Marine Parade East, Clacton-on-Sea.

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11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided that the licensing authority agrees and the applicant submits a subsequent hard copy of the application, if the licensing authority requires one. The licensing authority may also agree in advance that the application need not be given in hard copy. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. 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.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 14 of this Guidance.
- 11.9 Representations must be made 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. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the licensing authority when the premises licence or certificate was 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 grant.

- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives:
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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 informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as 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 address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- 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;
- 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)¹⁰;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

- 11.20 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 that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.21 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.
- 11.22 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 that impact upon the licensing objectives.
- 11.23 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. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, 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 appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

¹⁰ See chapter 15 in relation to the licensing of live and recorded music.

Reviews arising in connection with crime

- 11.24 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, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. 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. 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 beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should 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 licence holder 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 appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 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 illegal 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 employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Review of a premises licence following closure order

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or section 38 of and Schedule 6 to the Immigration Act 2016. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than five working days before the first hearing day (there must be five clear working days between the giving of the notice and the start of the hearing).

Review of a premises licence following persistent sales of alcohol to children

11.30 The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.

PREMISES/PERSONAL LICENCES SUB-COMMITTEE

20 OCTOBER 2020

REPORT OF CORPORATE DIRECTOR [OPERATIONS AND DELIVERY]

LICENSING ACT 2003

Members are respectfully reminded that, in determining the matters listed under item **A.1**, they are exercising an administrative function but should determine each matter adopting the civil burden of proof, i.e. 'on the balance of probabilities'. The matters will be determined on the facts before the Sub-Committee and the rules of natural justice will apply. Each application must be considered in its own right and on its own merits.

The Licensing Act 2003 established a single integrated scheme for licensing premises that are used for the supply of alcohol, regulated entertainment or provision of late night refreshment. This system of licensing incorporates the sale of alcohol both on and off licensed premises; public entertainment such as music, dancing, indoor sporting events, boxing or wrestling, theatres, cinemas; and late night refreshment houses and take-aways.

The purpose of the licensing system is to positively promote the four 'licensing objectives'.

These are:

- The Prevention of Crime and Disorder
- The Prevention of Public Nuisance
- Public Safety
- The Protection of Children from Harm.

Human Rights Implications

A Licence is to be regarded as the property of the applicant; however their right to the use of the property must be balanced against all other public interests or representations in this matter that the Premises/Personal Licences Sub-Committee may wish to consider as appropriate, reasonable and proportionate in relation to the Premises Licence Review application that has been submitted and also the representations that have been received in support of that application.

In making their decision in respect to this application to review a premises licence, Members of the Premises/Personal Licences Sub-Committee should also take into consideration Article 1 of the First Protocol of the Human Rights Act 1998, that individuals are entitled to the peaceful enjoyment of their property, and also Article 8 that everyone has the right to respect for his private and family life and his correspondence.

Crime and Disorder Implications

Section 17 of the Crime and Disorder Act 1998 imposes a duty on local authorities when exercising any of their functions to have due regard to the likely effect of the exercise of those functions on, and the need to do all it possibly can to prevent, crime and disorder in its area.

Members are requested to consider the information shown below where the Licensing Authority has received an application to review a premises licence and also representations supporting that review relevant to one or more of the four Licensing Objectives, and which suggests that the premises may currently be having a negative impact on one or more of the Licensing Objectives.

**A.1 LICENSING ACT 2003 - APPLICATION FOR THE REVIEW OF PREMISES LICENCE
- TRUTH/PULSE [FORMERLY BENTLEYS], 5 MARINE PARADE EAST,
CLACTON ON SEA, ESSEX**
[Report prepared by Emma King]

1.0 REASON FOR APPLICATION

Under Section 51 of the Licensing Act 2003 Essex Police, being a Responsible Authority, has applied for a Review of the above Premises Licence currently held by Bentleys of Clacton Ltd.

2.0 DETAILS OF CURRENT LICENCE WHICH IS SUBJECT TO REVIEW

2.1 Premises

Truth/Pulse [formerly Bentleys], 5 Marine Parade East, Clacton on Sea, Essex

2.2 Licence No

18/00146/PREMVA

2.3 Premises Licence Holder

Bentleys of Clacton Ltd

2.4 Designated Premises Supervisor

Jenna Howard

2.5 Current Licensable Activities

The current licensable activities permitted by the Premises Licence are:-

Sale of Alcohol on and off the premises

Monday to Thursday	08:00 - 00:00
Friday	08:00 - 02:00
Saturday	10:00 - 02:00
Sunday	10:00 - 00:00

Performance of Live Music

Fridays and Saturdays	19:00 - 00:00
Sunday	15:00 - 22:00

Performance of Recorded Music

Monday to Thursday	12:00 - 00:00
Fridays and Saturdays	12:00 - 02:30
Sunday	12:00 - 22:00

Late Night Refreshment

Monday to Sunday	23:00 - 02:00
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Non Standard Timings

Performance of Live Music

Bank Holiday Sunday	15:00 – 00:00
Bank Holiday Monday	15:00 – 22:00
Christmas Eve / Christmas Day	finish at 03:00
New Year's Eve / New Year's Day	finish at 04:00

Provision of Recorded Music

Bank Holiday Sunday	15:00 – 02:30
Bank Holiday Monday	15:00 – 22:00
Christmas Eve / Christmas Day	finish at 03:00
New Year's Eve / New Year's Day	finish at 04:00

Sale of Alcohol on and off the premises only

Bank Holiday Sunday 08:00 – 02:30
Bank Holiday Monday 08:00 – 22:00
Christmas Eve / Christmas Day finish at 03:00
New Year's Eve / New Year's Day finish at 04:00

The ability to sell or supply alcohol and/or refreshment to residents and their bona fide guests at any time.

The opening hours of the premises

Monday	08:00 - 00:00
Tuesday	08:00 - 00:00
Wednesday	08:00 - 00:00
Thursday	08:00 - 00:00
Friday	08:00 - 02:30
Saturday	10:00 - 02:30
Sunday	10:00 - 22:00

Where the licence authorises supplies of alcohol whether these are on and / or off supplies

Sale of alcohol on and off the premises

A copy of the full Premises Licence is attached to this report as **APPENDIX 1**.

2.6 General Information

Bentleys of Clacton Ltd have been the Premises Licence holder since a variation and transfer of the licence on 8 May 2018, and Jenna Howard has been the Designated Premises Supervisor (DPS) of the premises since 14 February 2018.

DETAILS OF APPLICATION FOR REVIEW

3.1 Application Details

An application for the Review of the Premises Licence for Truth/Pulse [formerly Bentleys] has been submitted by Essex Police. This was received by the Licensing Authority on 25 August 2020 on the grounds that the Licensing Objective in respect of the Prevention of Crime and Disorder has been breached; as the Premises Licence holder Bentleys of Clacton Ltd and DPS Jenna Howard had been found by Essex Police to be in breach of The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 in that it operated as a nightclub or otherwise operated as a venue which was open at night, provided music and had a dance floor or other space for dancing.

A copy of the Premises Licence Review application are attached to this report in full as a bundle and are attached as **APPENDIX 2**.

3.2 Notice of Display and Advertisement

Notice of the review application has been made and advertised in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. In particular, a notice detailing the review application was clearly displayed on the premises concerned and on the Tendring District Council Website for the prescribed 28 day period. Periodic checks were undertaken by the Licensing Authority to ensure that this was the case. The end of the notice period was 23 September 2020.

3.3 Validity of Application for Review

The Licensing Authority has accepted the review application and is satisfied that it has been properly served in accordance with Section 51 of the Licensing Act 2003 and the regulations that accompany it. The Head of Customer and Commercial Services is satisfied that the application and the representations that it makes are relevant to the licensing objectives and are not vexatious, repetitive or frivolous in nature.

3.4 Other Responsible Authorities

No representations have been received from any other Responsible Authorities. However, an e-mail was sent to Ms Howard, DPS, from the Council's Environmental Services on 25 August 2020 informing that the risk assessment that was submitted was not adequate and gave guidance on what is required.

3.5 Other Persons

Other persons can also make representations in regards to review applications. Other persons in terms of the Licensing Act 2003 can include any individual, body or business and in accordance with paragraph 8.13 of the Section 182 Guidance issued by the Secretary of State (April 2017 version) which accompanies the Licensing Act 2003, are entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence.

- 3.6** Such representations should be relevant and not be considered by the Licensing Authority as vexatious, repetitious or frivolous and can be made in opposition to, or support of, an application and can be made by any individual, body or business that has grounds to do so. The S182 Guidance is silent on whether representations can be made against an application for a review, or in support of the respondent to the review (which in this case is the Premises Licence holder Bentleys of Clacton Ltd). However, given that the Guidance is silent on this question, but clearly indicates that other persons can make representations in regards to a review and that representations can be made in support of applications, it is therefore reasonable to assume that representations can also be made in support of the Premises Licence Holder Bentleys of Clacton Ltd in this matter for due consideration by the Licensing Sub Committee and as part of the Review application hearing process.

There has been one letter from a resident in support of the premises licence holder of Bentleys of Clacton/Pulse Ltd.

4.0 LA 2003 SECTION 182 GUIDANCE WITH REGARD TO REVIEW HEARINGS (Version April 2017)

Sections 11.1 to 11.28 of the Guidance [issued by the Secretary of State under Section 182 of the Licensing Act 2003] assists all parties in respect to advice on review applications and hearings, including those arising in connection with crime and the relevant extracts of this guidance are attached to this report as **APPENDIX 3**.

5.0 TENDRING DISTRICT COUNCILS STATEMENT OF LICENSING POLICY

The relevant sections/extracts of the Council's Statement of Licensing Policy in respect to Review applications are as follows:

Reviews

- 1.41 Where possible and appropriate the Licensing Authority and all other Responsible Authorities will give early warning to licence holders of any concerns about problems identified at premises which may undermine, or are undermining, one or more of the licensing objectives and to initiate a dialogue that can lead to a resolution of these problems to the satisfaction of all parties. The review process represents a valuable protection mechanism for residents and the wider community to be able address problems with a specific premises where for instance there is alcohol related crime and disorder or public nuisance and where for example dialogue between the licence holder, responsible authorities or other parties concerned such as residents to prevent or mitigate such problems has not worked.
- 1.42 Responsible authorities or other persons (which could include a resident, business or Ward Councillor for example) can make an application to trigger a review of a premises licence but evidence of the problems being experienced would be required to be presented to the

Licensing Authority and an applicant or applicants for a review would ordinarily be expected to be able to substantiate their complaints at a Licensing Sub Committee hearing. Representations must be relevant to one or more of the four licensing objectives and will not be accepted if they are determined by the Licensing Authority to be frivolous, vexatious or repetitious.

- 1.43 No more than one review application from interested parties other than a Responsible Authority will normally be permitted within any 12 month period on similar grounds except in exceptional and compelling circumstances.

6.0 APPEALS

An appeal against the decision of the Licensing Authority can be made by the following:

- (a) the Applicants
- (b) the holders of the Premises Licence
- (c) any person who made relevant representations in relation to the application

The appeal has to be made to the Magistrates' Court within a period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of its decision.

7.0 ASSOCIATED PAPERS

- (i) Copies of the following documents have been supplied to the Premises Licence holder:
 - (a) Review application from Essex Police.
 - (b) One letter from a resident in support of the premises licence holder
- (ii) In addition to the documents already attached as Appendices to this report, the following papers are also enclosed:-
 - (a) Location Plan of the premises
 - (b) Details of the Hearing Procedure

Copies of all documentation concerning this Application for Review are available from Licensing Team upon request.

8.0 OPTIONS UNDER SECTION 52 LICENSING ACT 2003

- 8.1 Following Members' consideration of this review application submitted by Essex Police, Section 52 of the Licensing Act 2003 states that Members of the Licensing Authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the Licensing Objectives.

These steps are:-

- (i) to modify the conditions of the licence
- (ii) to exclude a licensable activity from the scope of the licence
- (iii) to remove the Designated Premises Supervisor
- (iv) to suspend the licence for a period not exceeding three months
- (v) to revoke the licence

For this purpose, the conditions of the licence are modified if any of them are altered or omitted, or any new conditions are added as a result of this Review Hearing.

In addition to the above measures, Members are advised that it is also open to them that they may for example decide to take **Page 11** respect of the review application, or issue an informal/formal warning letter and/or recommend improvement to the premises and its management within a particular period of time if they think that on consideration of the facts

and balance of probabilities, this is a reasonable, proportionate and appropriate approach to take in regards to this Review application.

9.0 RECOMMENDATION/S

- 9.1 **No specific recommendation is made to the Licensing Sub Committee in respect to this Review application other than in accordance with Section 52 of the Licensing Act 2003 (as shown above). Members of the Licensing Sub Committee are asked to reasonably, proportionately and appropriately determine this application for a Review of a Premises Licence in respect of the premises and person named as the licence holder in its own right and on its own merits taking into account all matters detailed in in the agenda, report and accompanying papers and any other relevant matters that may be brought up at the hearing itself by any of the parties that have an interest in this Review hearing.**

**DAMIAN WILLIAMS
CORPORATE DIRECTOR (OPERATIONS AND DELIVERY)**

OFFICIAL SENSITIVE

Schedule 12 Part A

Regulation 33,34

Tendring District Council Premises Licence

Premises Licence Number

18/00146/PREMVA

Part 1 – Premises Details

Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code

Bentley's Of Clacton
5 Marine Parade East
Clacton-on-Sea
Essex
CO15 1PT

Telephone number

Where the licence is time limited the dates

None

Licensable activities authorised by the licence

Sale of Alcohol on and off the premises
Performance of Live Music
Performance of Recorded Music
Late Night Refreshment

Times the licence authorises the carrying out of licensable activities

Sale of Alcohol on and off the premises

Monday to Thursday	08:00 - 00:00
Friday	08:00 - 02:00
Saturday	10:00 - 02:00
Sunday	10:00 - 00:00

Performance of Live Music

Fridays and Saturdays	19:00 - 00:00
Sunday	15:00 - 22:00

Performance of Recorded Music

Monday to Thursday	12:00 - 00:00
Fridays and Saturdays	12:00 - 02:30
Sunday	12:00 - 22:00

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Late Night Refreshment

Monday to Sunday

23:00 - 02:00

Non Standard Timings**Performance of Live Music**

Bank Holiday Sunday 15:00 – 00:00

Bank Holiday Monday 15:00 – 22:00

Christmas Eve / Christmas Day finish at 03:00

New Year's Eve / New Year's Day finish at 04:00

Provision of Recorded Music

Bank Holiday Sunday 15:00 – 02:30

Bank Holiday Monday 15:00 – 22:00

Christmas Eve / Christmas Day finish at 03:00

New Year's Eve / New Year's Day finish at 04:00

Sale of Alcohol on and off the premises only

Bank Holiday Sunday 08:00 – 02:30

Bank Holiday Monday 08:00 – 22:00

Christmas Eve / Christmas Day finish at 03:00

New Year's Eve / New Year's Day finish at 04:00

The ability to sell or supply alcohol and/or refreshment to residents and their bona fide guests at any time.

The opening hours of the premises

Monday	08:00 - 00:00
Tuesday	08:00 - 00:00
Wednesday	08:00 - 00:00
Thursday	08:00 - 00:00
Friday	08:00 - 02:30
Saturday	10:00 - 02:30
Sunday	10:00 - 22:00

Where the licence authorises supplies of alcohol whether these are on and / or off supplies

Sale of alcohol on and off the premises

Part 2**Name, (registered) address, telephone number and email (where relevant) of holder of premises licence**

Bentley's of Clacton Ltd
20-22 Wenlock Road
London
N1 7GU

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Registered number of holder, for example company number, charity number (where applicable)

974208

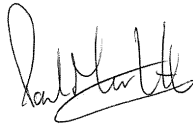
Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Jenna Howard
28 Passive Close
Rainham
Essex
RM13 8HQ

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Personal Licence Number	19939
Licensing Authority	London Borough of Havering

for and on behalf of the Licensing Authority



Paul Price
CORPORATE DIRECTOR [OPERATIONAL SERVICES]

Dated: 8 May 2018

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Annex 1 – Mandatory conditions

- 1 No supply of alcohol may be made under the Premises Licence:-
 - (a) At a time when there is no Designated Premises Supervisor in respect of the Premises Licence, or
 - (b) At a time when the Designated Premises Supervisor does not hold a Personal Licence or his Personal Licence is suspended.
- 2 Every supply of alcohol under the Premises Licence must be made or authorised by a person who holds a Personal Licence.
- 3 (1) Schedule 1(1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
(2) Schedule 1(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises:
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to:
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
 - (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
- 4 The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
- 5 The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 6 (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.

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- 7 The responsible person must ensure that
- (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml;
 - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
 - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.
- 8
1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
 2. For the purposes of the condition set out in paragraph 1 -
 - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) "permitted price" is the price found by applying the formula -

$$P = D + (D.V)$$

where -

- (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
- (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
- (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or
 - (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
- (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
- (e) "valued added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

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3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Annex 2 – Conditions consistent with the Operating Schedule

- 1 The ability to sell/supply alcohol or refreshment to residents and their bona fide guests at any time.
- 2 A door admissions policy including age restrictions, expected dress standards and the screening of hand bags to be in place. This policy must be advertised on the premises website (if it has one) and clearly displayed at the entrance to the premises. Those who do not meet the criteria or refuse to be searched will be denied entry.
- 3 The premises will operate a "Challenge 21" scheme, or equivalent, so long as those appearing 21 or under are asked for identification as to their age.
- 4 Any conditions consistent with the Operating Schedule not specified above.

Annex 3 – Conditions attached after a hearing by the licensing authority

None

Annex 4 – Plans

Plans as submitted to the Licensing Authority

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Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I William Moody 79383 - District Licensing Officer of Essex Police

(Insert name of applicant)

apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Bentley's of Clacton (Pulse /Truth Nightclub) 5 Marine Parade East	
Post town Clacton on Sea	Post code (if known) CO15 1PS

Name of premises licence holder or club holding club premises certificate (if known) Bentley's of Clacton Ltd Company number 11163318
--

Number of premises licence or club premises certificate (if known) 18/00146/PREMVA
--

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises
 - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address William Moody on behalf of the Chief Officer of Police Essex Police Licensing Department Braintree Police Station Blyths Meadow Braintree CM7 3DJ
Telephone number (if any) 07966 481 931
E-mail address (optional) Licensing.applications@essex.pnn.police.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 1)

On Friday the 14th of August, the crime and disorder objective of the Licensing Act was undermined in that, on its first night of reopening, the licence holder and DPS immediately breached The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 in that it operated as a nightclub or otherwise operated as a venue which was open at night, provided music and had a dance floor or other space for dancing.

Regulation 4(1) requires that a person responsible for carrying on a business or providing a service which is listed in Schedule 2 must cease to carry on that business or to provide that service during the emergency period. Schedule 2 lists 1. Nightclubs, and 2.—(1) Dance halls, discotheques, and any other venue which— (a) opens at night, (b) has a dance floor or other space for dancing by members of the public (and for these purposes members of the venue in question are to be considered members of the public); (c) provides music, whether live or recorded, f or dancing.

This is a criminal offence and one committed by the operators and licence holders of the venue as a calculated act.

By operating in the fashion they have risked potential exposure of hundreds of people spreading of coronavirus . The current backdrop shows that Clacton is on the cusp of a local lockdown – Essex Police have evidenced that the premises cannot be trusted to act to support any of the licensing objectives.

Deterrence is an established part of the Licensing Act 2003 – see the cases of R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350 and

East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2016] EWHC 1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime. This also forms part of the reason Essex Police has applied for a review of the premises licence.

Please provide as much information as possible to support the application
(please read guidance note 2)

On Saturday the 15th of August, officers from Clacton Town Team - part of the community policing team, were patrol licensed premises in the town as part of their regular duties. Officers had concerns raised to them by members of the public and staff from various other venues that Truth nightclub had operated in breach of the Health Protection Regulations 2020 the day previously (Friday the 14th), by opening as a nightclub for dancing. Evidence obtained from social showing the inside of the nightclub very busy with loud music and people dancing media supported the suggestion the venue had operated as a night club. This evidence will be made available for the review hearing.

Officers attended the venue to share their concerns with staff, after initially denying that there was any issue at the club on Friday, once shown the video, door staff conceded that it was taken from inside the nightclub. On subsequent visits to the nightclub on Saturday the 15th, officers challenged the Designated Premises Supervisor (DPS) that, the premises were operating as a nightclub, with patrons dancing to loud music and a live-stream DJ in the premises. This was accepted by the DPS who stated that she "could not ask people to stop dancing as they were waiting for the bar". This is simply not acceptable. Licensees have a responsibility to uphold the four licensing objectives and the operators of Truth have had over a month to prepare and learn from how the licensed trade has responded to the threat of COVID-19, and as such we can attest that opening in breach of the regulations over two consecutive days was a calculated act.

These breaches have been considered serious enough for Tendring District Council's Environmental Health Team to serve a prohibition notice on the venue on 20/08/2020.

On Tuesday the 18th of August a meeting was held with the DPS at Clacton Police station. The seriousness of the matter was relayed and the DPS who, in mitigation, reported that there were people dancing while waiting for the bar. It was explained that Essex Police did not accept this as an excuse, and all the evidence that had been gathered will be passed to Tendring District Council's Environmental Health Team. The DPS was also informed that Essex Police were considering a review and the seriousness of the matter was compounded due to the fact Clacton has been on the cusp of a local lockdown due to an uptick in COVID-19 cases.

In addition to this, in response to police attendance and advice given, the Premises Licence Holder took to social media in a clear disregard for authority and reported 'Truth nightclub opening with a power look' as well as abusing the police officers who attended to give advice on the Saturday evening and stating that he wishes to waste police time. It is clear neither the DPS nor the Premises Licence Holder took their responsibilities seriously.

It is for these reasons Essex Police have proceeded with a review application.

Essex Police reserves the right to amplify this application at a licensing hearing.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

--	--	--	--	--	--	--	--

If you have made representations before relating to this premises please state what they were and when you made them

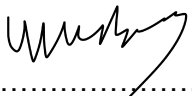
Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant’s solicitor or other duly authorised agent
(See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature 

Date 25/08/2020

Capacity District Licensing Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town	Post Code
------------------	------------------

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.



Home Office

Revised Guidance issued under section 182 of the Licensing Act 2003

April 2018

Revised Guidance issued under section 182 of the Licensing Act 2003

April 2018



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Email: AlcoholStrategy@homeoffice.gsi.gov.uk

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1. Introduction

The Licensing Act 2003

1.1 The Licensing Act 2003 (referred to in this Guidance as the 2003 Act), its explanatory notes and any statutory instruments made under it may be viewed online at www.legislation.gov.uk. The statutory instruments include regulations setting out the content and format of application forms and notices. The Home Office has responsibility for the 2003 Act. However, the Department for Culture, Media and Sport (DCMS) is responsible for regulated entertainment, for which there is provision in Schedule 1 to the 2003 Act (see Chapter 16).

Licensing objectives and aims

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

1.3 The licensing objectives are:

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

1.4 Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

1.5 However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

The guidance

- 1.6 Section 182 of 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 revised guidance takes effect as soon as it is published. Where a licence application was made prior to the publication of the revised guidance, it should be processed in accordance with the guidance in effect at the time at which the application was made; the revised guidance does not apply retrospectively. However, all applications received by the licensing authority on or after the date the revised guidance was published should be processed in accordance with the revised guidance.

Purpose

- 1.7 This Guidance is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.
- 1.8 The police remain key enforcers of licensing law. This Guidance does not bind police officers who, within the parameters of their force orders and the law, remain operationally independent. However, this Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

Legal status

- 1.9 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. This Guidance is therefore binding on all licensing authorities to that extent. However, this Guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this 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.
- 1.10 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 any public authorities under human rights legislation). This 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 2003 Act is a matter for the courts. Licensing authorities and others using this Guidance must take their own professional and legal advice about its implementation.

Licensing policies

- 1.11 Section 5 of the 2003 Act requires a licensing authority to determine and publish a statement of its licensing policy at least once every five years. The policy must be published before it carries out any licensing functions under the 2003 Act.
- 1.12 However, determining and publishing a statement of its policy is a licensing function and as such the authority must have regard to this Guidance when taking this step. 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 it should be able to give full reasons for departing from its published statement of licensing policy. Where revisions to this Guidance are issued by the Secretary of State, there may be a period of time when the licensing policy statement is inconsistent with the Guidance (for example, during any consultation by the licensing authority). In these circumstances, the licensing authority should have regard, and give appropriate weight, to this Guidance and its own existing licensing policy statement.

Licensable activities

- 1.13 For the purposes of the 2003 Act, the following are licensable activities:
- 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.

Further explanation of these terms is provided in Chapter 3.

Authorisations or permissions

- 1.14 The 2003 Act provides for four different types of authorisation or permission, as follows:
- Premises licence – to use premises for licensable activities.
 - Club premises certificate – to allow a qualifying club to engage in qualifying club activities as set out in Section 1 of the Act.
 - Temporary event notice – to carry out licensable activities at a temporary event.
 - Personal licence – to sell or authorise the sale of alcohol from premises in respect of which there is a premises licence.

General principles

- 1.15 If an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions. It is recommended that licence applicants contact responsible authorities when preparing their operating schedules.

Licence conditions – general principles

1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will” is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

Each application on its own merits

1.17 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location 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 be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

Additional guidance

1.18 From time to time, the Home Office may issue additional supporting guidance to licensing authorities and other persons on the Gov.uk website. This supporting guidance is good practice guidance and should be viewed as indicative and subject to change. Such supporting guidance will broadly reflect but will not be part of the statutory guidance issued by the Secretary of State under section 182 of the 2003 Act. Licensing authorities may wish to refer to, but are under no statutory duty to have regard to such supporting guidance issued by the Home Office.

Other relevant legislation

1.19 While licence conditions should not duplicate other statutory provisions, licensing authorities and licensees should be mindful of requirements and responsibilities placed on them by other legislation. Legislation which may be relevant includes:

- The Gambling Act 2005
- The Environmental Protection Act 1990
- The Noise Act 1996
- The Clean Neighbourhoods and Environmental Act 2005
- The Regulatory Reform (Fire Safety) Order 2005
- The Health and Safety at Work etc. Act 1974
- The Equality Act 2010
- The Immigration Act 2016
- Regulators' Code under the Legislative and Regulatory Reform Act 2006

2. The licensing objectives

Crime and disorder

- 2.1 Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).
- 2.2 In the exercise of their functions, licensing authorities should seek to co-operate with the Security Industry Authority (“SIA”) as far as possible and consider adding relevant conditions to licences where appropriate. The SIA also plays an important role in preventing crime and disorder by ensuring that door supervisors are properly licensed and, in partnership with police and other agencies, that security companies are not being used as fronts for serious and organised criminal activity. This may include making specific enquiries or visiting premises through intelligence led operations in conjunction with the police, local authorities and other partner agencies. Similarly, the provision of requirements for door supervision may be appropriate to ensure that people who are drunk, drug dealers or people carrying firearms do not enter the premises and ensuring that the police are kept informed.
- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.
- 2.4 The inclusion of radio links and ring-round phone systems should be considered an appropriate condition for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These systems allow managers of licensed premises to communicate instantly with the police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises.
- 2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

- 2.6 The prevention of crime includes the prevention of immigration crime including the prevention of illegal working in licensed premises. Licensing authorities should work with Home Office Immigration Enforcement, as well as the police, in respect of these matters. Licence conditions that are considered appropriate for the prevention of illegal working in licensed premises might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check are retained at the licensed premises.

Public safety

- 2.7 Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Conditions relating to public safety may also promote the crime and disorder objective as noted above. There will of course be occasions when a public safety condition could incidentally benefit a person's health more generally, but it should not be the purpose of the condition as this would be outside the licensing authority's powers (be ultra vires) under the 2003 Act. Conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.
- 2.8 A number of matters should be considered in relation to public safety. These may include:
- Fire safety;
 - Ensuring appropriate access for emergency services such as ambulances;
 - Good communication with local authorities and emergency services, for example communications networks with the police and signing up for local incident alerts (see paragraph 2.4 above);
 - Ensuring the presence of trained first aiders on the premises and appropriate first aid kits;
 - Ensuring the safety of people when leaving the premises (for example, through the provision of information on late-night transportation);
 - Ensuring appropriate and frequent waste disposal, particularly of glass bottles;
 - Ensuring appropriate limits on the maximum capacity of the premises (see paragraphs 2.12-2.13, and Chapter 10; and
 - Considering the use of CCTV in and around the premises (as noted in paragraph 2.3 above, this may also assist with promoting the crime and disorder objective).
- 2.9 The measures that are appropriate to promote public safety will vary between premises and the matters listed above may not apply in all cases. As set out in Chapter 8 (8.38-8.46), applicants should consider when making their application which steps it is appropriate to take to promote the public safety objective and demonstrate how they achieve that.

Ensuring safe departure of those using the premises

- 2.10 Licence holders should make provision to ensure that premises users safely leave their premises. Measures that may assist include:
- Providing information on the premises of local taxi companies who can provide safe transportation home; and
 - Ensuring adequate lighting outside the premises, particularly on paths leading to and from the premises and in car parks.

Maintenance and repair

- 2.11 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be inappropriate for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if appropriate, checks on this equipment to be conducted at specified intervals and for evidence of these checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or any other persons, to attach conditions which require equipment of particular standards to be maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make their expectations clear in this respect to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

Safe capacities

- 2.12 “Safe capacities” should only be imposed where appropriate for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be inappropriate to reproduce it in a premises licence. Indeed, it would also be wrong to lay down conditions which conflict with other legal requirements. However, if no safe capacity has been imposed through other legislation, a responsible authority may consider it appropriate for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. For example, in certain circumstances, capacity limits may be appropriate in preventing disorder, as overcrowded venues can increase the risks of crowds becoming frustrated and hostile.
- 2.13 The permitted capacity is a limit on the number of persons who may be on the premises at any time, following a recommendation by the relevant fire and rescue authority under the Regulatory Reform (Fire Safety) Order 2005. For any application for a premises licence or club premises certificate for premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act¹, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire and rescue authority which will consider it and decide what the “permitted capacity” of

¹ S 177 of the 2003 Act now only applies to performances of dance.

those premises should be.

- 2.14 Public safety may include the safety of performers appearing at any premises, but does not extend to the prevention of injury from participation in a boxing or wrestling entertainment.

Public nuisance

- 2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 2.17 Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate. However, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable (see chapter 16). Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.18 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.
- 2.19 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, the most sensitive period for people being disturbed by unreasonably loud music is at night and into the

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early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. This is why there is still a need for a licence for performances of live music between 11 pm and 8 am. In certain circumstances, conditions relating to noise emanating from the premises may also be appropriate to address any disturbance anticipated as customers enter and leave.

- 2.20 Measures to control light pollution will also require careful thought. Bright lighting outside premises which is considered appropriate to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance these issues.
- 2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

Protection of children from harm

- 2.22 The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.
- 2.23 The Government believes that it is completely unacceptable to sell alcohol to children. Conditions relating to the access of children where alcohol is sold and which are appropriate to protect them from harm should be carefully considered. Moreover, conditions restricting the access of children to premises should be strongly considered in circumstances where:
- adult entertainment is provided;
 - a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking (other than in the context of the exemption in the 2003 Act relating to 16 and 17 year olds consuming beer, wine and cider when accompanied by an adult during a table meal);
 - it is known that unaccompanied children have been allowed access;
 - there is a known association with drug taking or dealing; or
 - in some cases, the premises are used exclusively or primarily for the sale of alcohol for consumption on the premises.
- 2.24 It is also possible that activities, such as adult entertainment, may take place at certain times on premises but not at other times. For example, premises may operate as a café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00pm. It is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature. Applicants, responsible

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authorities and licensing authorities will need to consider this point carefully. This would broadly 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.

- 2.25 Applicants must be clear in their operating schedules about the activities and times at which the events would take place to help determine when it is not appropriate for children to enter the premises. Consideration should also be given to the proximity of premises to schools and youth clubs so that applicants take appropriate steps to ensure that advertising relating to their premises, or relating to events at their premises, is not displayed at a time when children are likely to be near the premises.
- 2.26 Licensing authorities and responsible authorities should expect applicants, when preparing an operating schedule or club operating schedule, to set out the steps to be taken to protect children from harm when on the premises.
- 2.27 Conditions, where they are appropriate, should reflect the licensable activities taking place on the premises. In addition to the mandatory condition regarding age verification, other conditions relating to the protection of children from harm can include:
- restrictions on the hours when children may be present;
 - restrictions or exclusions on the presence of children under certain ages when particular specified activities are taking place;
 - restrictions on the parts of the premises to which children may have access;
 - age restrictions (below 18);
 - restrictions or exclusions when certain activities are taking place;
 - requirements for an accompanying adult (including for example, a combination of requirements which provide that children under a particular age must be accompanied by an adult); and
 - full exclusion of people under 18 from the premises when any licensable activities are taking place.
- 2.28 Please see also Chapter 10 for details about the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010.
- 2.29 Licensing authorities should give considerable weight to representations about child protection matters. In addition to the responsible authority whose functions relate directly to child protection, the Director of Public Health may also have access to relevant evidence to inform such representations. These representations may include, amongst other things, the use of health data about the harms that alcohol can cause to underage drinkers. Where a responsible authority, or other person, presents evidence to the licensing authority linking specific premises with harms to children (such as ambulance data or emergency department attendances by persons under 18 years old with alcohol-related illnesses or injuries) this evidence should be considered, and the licensing authority should also consider what action is appropriate to ensure this licensing objective is effectively enforced. In relation to applications for the grant of a licence in areas where evidence is presented on high levels of alcohol-related harms in persons aged under 18, it is recommended that the licensing authority considers what conditions may be appropriate to ensure that this objective is promoted effectively.
- 2.30 The 2003 Act provides that, where a premises licence or club premises certificate

authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (the British Board of Film Classification is currently the only body which has been so designated) or by the licensing authority itself. Further details are given in Chapter 10.

- 2.31 Theatres may present a range of diverse activities and entertainment including, for example, variety shows incorporating adult entertainment. It is appropriate in these cases for a licensing authority to consider restricting the admission of children in such circumstances. Entertainments may also be presented at theatres specifically for children. It will be appropriate to consider whether a condition should be attached to a premises licence or club premises certificate which requires the presence of a sufficient number of adult staff on the premises to ensure the wellbeing of the children during any emergency.

Offences relating to the sale and supply of alcohol to children

- 2.32 Licensing authorities are expected to maintain close contact with the police, young offenders' teams and trading standards officers (who can carry out test purchases under section 154 of the 2003 Act) about the extent of unlawful sales and consumption of alcohol by minors and to be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions. Licensing authorities, alongside the police, are prosecuting authorities for the purposes of these offences, except for the offences under section 147A (persistently selling alcohol to children). Where, as a matter of policy, warnings are given to retailers prior to any decision to prosecute in respect of an offence, it is important that each of the enforcement arms should be aware of the warnings each of them has given.

Table of relevant offences under the 2003 Act

Section	Offence	Prosecuting Authority
Section 145	Unaccompanied children prohibited from certain premises	Police and/or Licensing Authority
Section 146	Sale of alcohol to children	Police, Licensing Authority and/or Local Weights and Measures Authority
Section 147	Allowing the sale of alcohol to children	Police, Licensing Authority and/or Local Weights and Measures Authority
Section 147A	Persistently selling alcohol to children	Police and/or Local Weights and Measures Authority
Section 149	Purchase of alcohol by or on behalf of children	Police and/or Licensing Authority
Section 150	Consumption of alcohol by children	Police and/or Licensing Authority
Section 151	Delivering alcohol to children	Police and/or Licensing Authority
Section 152	Sending a child to obtain alcohol	Police and/or Licensing Authority
Section 153	Prohibition of unsupervised sales by children	Police and/or Licensing Authority

3. Licensable activities

Summary

- 3.1 A premises licence authorises the use of any premises (see Chapter 5) for licensable activities. Licensable activities are defined in section 1 of the 2003 Act, and a fuller description of certain activities is set out in Schedules 1 and 2 to the 2003 Act.
- 3.2 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.

Wholesale of alcohol

- 3.3 The sale of alcohol to the general public is licensable under the 2003 Act in accordance with the definition of “sale by retail” in section 192 of the 2003 Act. This section makes it clear that, to be excluded from the meaning of “sale by retail”, a sale must be:
- made from premises owned by the person making the sale, or occupied under a lease with security of tenure; and
 - for consumption off the premises.
- 3.4 In addition, to be excluded, the sales must be sales which are made to:
- a trader for the purpose of his trade;
 - to a club for the purposes of that club;
 - to a holder of a premises licence or a personal licence for the purpose of making sales under a premises licence; or
 - a premises user who has given a temporary event notice, for the purpose of making sales authorised by that notice.
- 3.5 If an employee were buying alcohol as an “agent” for their employer and for the purposes of their employer’s trade (i.e. selling alcohol), this could be treated as a sale to a trader. If, however, an employee were buying for the employee’s own consumption, this would be a retail sale, and would require a licence.
- 3.6 The same considerations apply in the case of caterers who supply alcohol to their customers. Where a caterer purchases alcohol and then sells this alcohol to its customer, an authorisation will be required at the location where the retail sale of the alcohol is made (likely to be the caterer’s own premises). If the customer was proposing to sell the alcohol under an authorisation, it is the customer who would need an authorisation under the 2003 Act. In this case, the exemption under the 2003 Act may apply to the sale made by the caterer.
- 3.7 From 1 April 2017, businesses which sell alcohol (for example, retailers of alcohol and trade buyers) will need to ensure that the UK wholesalers that they buy alcohol from have been approved by HMRC under the Alcohol Wholesaler Registration Scheme (AWRS). They will need to check their wholesalers Unique Registration Number (URN)

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against the HMRC online database which will be available from April 2017. This is an ongoing obligation and if a business is found to have bought alcohol from an unapproved wholesaler, they may be liable to a penalty or could even face criminal prosecution and their alcohol stock may be seized. Any trader who buys alcohol from a wholesaler for onward sale to the general public (known as a 'trade buyer') does not need to register unless they sell alcohol to other businesses. Examples of trade buyers would be pubs, clubs, restaurants, cafes, retailers and hotels. However, they will need to check that the wholesaler they purchase alcohol from is registered with HMRC. Further information may be found at: <https://www.gov.uk/guidance/the-alcohol-wholesaler-registration-scheme-awrs>.

Mobile, remote, internet and other delivery sales

- 3.8 The sale by retail of alcohol is a licensable activity and may only be carried out in accordance with an authorisation under the 2003 Act. Therefore, a person cannot sell alcohol from a vehicle or moveable structure at a series of different locations (e.g. house to house), unless there is a premises licence in respect of the vehicle or moveable structure at each location at which a sale of alcohol is made in, on or from it.
- 3.9 The place where the order for alcohol, or payment for it, takes place may not be the same as the place where the alcohol is appropriated to the contract (i.e. the place where it is identified and specifically set apart for delivery to the purchaser). This position can arise when sales are made online, by telephone, or mail order. Section 190 of the 2003 Act provides that the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. It will be the premises at this location which need to be licensed; for example, a call centre receiving orders for alcohol would not need a licence but the warehouse where the alcohol is stored and specifically selected for, and despatched to, the purchaser would need to be licensed. These licensed premises will, as such, be subject to conditions including the times of day during which alcohol may be sold. The premises licence will also be subject to the mandatory licence conditions.
- 3.10 Persons who run premises providing 'alcohol delivery services' should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.

Regulated entertainment

- 3.11 Schedule 1 to the 2003 Act sets out what activities are to be treated as the provision of regulated entertainment and those that are not and are therefore exempt from the regulated entertainment aspects of the licensing regime, including incidental music – (see paragraphs 16.1 to 16.3 below). Chapter 16 of this Guidance document sets out the types of entertainment regulated by the 2003 Act.

Late night refreshment

- 3.12 Schedule 2 to the 2003 Act provides a definition of what constitutes the provision of late night refreshment. It involves the supply of 'hot food or hot drink' between the hours of 23.00 and 05.00 to the public for consumption on or off the premises. It includes the supply of hot food or hot drink between those hours on premises to which the public has access. Under Schedule 2, food or drink is considered to be 'hot' if, before it is supplied, it has been heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and at the time of supply it is above that temperature; or after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.
- 3.13 Shops, stores and supermarkets selling only cold food and cold drink, whether it is immediately consumable or not, from 23.00 are not licensable as providing late night refreshment. The 2003 Act affects premises such as night cafés and takeaway food outlets where people may gather to purchase hot food or drink at any time from 23.00 and until 05.00. In this case, supply takes place when the hot food or hot drink is given to the customer and not when payment is made. For example, supply takes place when a table meal is served in a restaurant or when a takeaway is handed to a customer over the counter.
- 3.14 Some premises provide hot food or hot drink between 23.00 and 05.00 by means of vending machines. The supply of hot drink by a vending machine is not a licensable activity and is exempt under the 2003 Act provided the public have access to and can operate the machine without any involvement of the staff.
- 3.15 However, this exemption does not apply to hot food. Premises supplying hot food for a charge by vending machine are licensable if the food has been heated on the premises, even though no staff on the premises may have been involved in the transaction.
- 3.16 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.
- 3.17 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is licensed by the provisions relating to the sale or supply of alcohol.
- 3.18 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.
- 3.19 Supplies made on moving vehicles (for example boats, trains or coaches) are also exempt. However supplies made from a vehicle which is permanently or temporarily parked, such as from a mobile takeaway van, are not exempt (see section 3.34 below for more detail on provisions for 'Vessels, vehicles and moveable structures').
- 3.20 Supplies of hot food or hot drink from 23.00 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 of a particular employer (for example in a staff canteen);
- a person who is engaged in a particular profession or who follows a particular vocation (for example, a tradesman carrying out work at particular premises);
- a guest of any of the above.

Late night refreshment exemptions based on designated locations, premises types and times

- 3.21 The provision of late night refreshment is regulated primarily because it is often linked to alcohol-fuelled crime and disorder in the night-time economy, such as at fast-food takeaways where late-night drinkers congregate. However, these safeguards may not be needed everywhere or for every type of late night refreshment business. For example, some late-night cafés serving hot drinks after 23.00 may be located nowhere near pubs and nightclubs or areas associated with alcohol-related crime and disorder.
- 3.22 Paragraph 2A of Schedule 2 to the 2003 Act (as inserted by the Deregulation Act 2015) gives licensing authorities powers to exempt premises, in certain circumstances, from the requirement to have a licence to provide late night refreshment. Decisions to exempt supplies of late night refreshment are best made with local knowledge. The powers therefore allow licensing authorities to choose to apply an exemption specifically where they think it will be helpful to businesses and where there are no problems with anti-social behaviour, disorder associated with the night time economy, or illegal working in licensed premises. As well as freeing up the businesses in question from unnecessary costs, this can also provide greater flexibility for licensing authorities to target their resources more effectively.
- 3.23 The powers allow a relevant licensing authority to exempt the supply of late night refreshment if it takes place:
- on or from premises which are wholly situated in a designated area;
 - on or from premises which are of a designated description; or
 - during a designated period (beginning no earlier than 23.00 and ending no later than 05.00).
- 3.24 When choosing to designate a particular area as exempt, the relevant licensing authority must define the location, which can be of any size.
- 3.25 When choosing to designate particular categories of premises as exempt, a licensing authority can only exempt types of premises set out in the regulations. These are:
- Motorway service areas;
 - petrol stations;
 - local authority premises (except domestic premises) unless there is an event taking place at which more than 500 people are present;
 - schools (except domestic premises) unless there is an event taking place at which more than 500 people are present;

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- hospitals (except domestic premises);
 - community premises (church, chapel, village, parish or community hall or other similar building) unless there is an event taking place at which more than 500 people are present;
 - licensed premises authorised to sell by retail alcohol for consumption on the premises between the hours of 23.00 and 05.00.
- 3.26 When choosing to exempt the provision of late night refreshment at particular times, the relevant licensing authority must determine the times between 23.00 and 05.00 when the exemption applies. The exemption and any subsequent change to the time will apply to the whole licensing authority area.
- 3.27 A relevant licensing authority may use more than one type of exemption at the same time, for example by changing the times across the licensing authority area during which licensing requirements will apply and also exempting premises by type across the whole licensing authority area. However, it cannot use different forms of exemption in conjunction with one another – for example, it would not be permitted to change the times in one geographic area only.
- 3.28 Where a premises is situated in the areas of two or more licensing authorities, any of those authorities may be the relevant licensing authority and it would be advisable for an authority wishing to apply an exemption to discuss it with the other authority concerned. This might apply, for example, where an area or premises type exemption is being applied and the licensing authority is aware that a particular premises such as a motorway service area sits across the boundary of two or more licensing authority areas.
- 3.29 Licensing authorities should consider deregulation where possible. However, they do not have to use the exemptions and can continue to require all late night refreshment providers to be licensed where this is appropriate for the promotion of the licensing objectives.
- 3.30 Existing late night refreshment licences for premises that become exempt from regulation will remain extant unless the holder chooses to surrender it to the licensing authority, but there will be no requirement on the licence holder to pay annual fees and any conditions on the licence will cease to apply for as long as the exemption is in place. In cases where an exemption in relation to late night refreshment provision is applied, other licensing is unaffected. For example if a premises is licensed to sell alcohol and is exempt from requiring a late night refreshment licence, their licence in respect of the sale of alcohol is unaffected. Where a premises benefits from an exemption applied by the licensing authority, any existing conditions on a licence relating solely to the provision of late night refreshment will have no effect during the period of the exemption.
- 3.31 When deciding which exemption to use, if any, the relevant licensing authority should always first consider what the risks are in terms of the promotion of the licensing objectives, including the prevention of illegal working in those premises. The decision to make an exemption is a licensing function that licensing authorities should include within their statement of licensing policy. It would then therefore be subject to the statutory consultation process with other responsible authorities and relevant parties set out in section 5 of the 2003 Act. However, it is for the licensing authority to decide on the detail

and extent of the consultation beyond the statutory minimum; for example, in areas where there are concerns about illegal working in licensed premises the licensing authority should consult Home Office Immigration Enforcement. The licensing authority may decide to only consult on the proposed exemption or, alternatively, it may form part of a wider review of other matters within its statement of licensing policy.

- 3.32 When applying any of the exemptions the relevant licensing authority must publicise the changes and should decide on the most appropriate way to do this, in addition to updating its statement of licensing policy as soon as is practical. There is no requirement for licensing authorities to tell premises individually, however they should publicise the exemption in a way that ensures that those who are likely to be affected may benefit from it. If any fees are paid prior to an exemption coming into effect, licensing authorities should consider whether a refund or partial refund is appropriate. It is for each individual licensing authority to develop its own refund policy and ensure that it is communicated appropriately to all licence holders that are likely to be affected by an exemption.
- 3.33 Licensing authorities can review the exemptions at any time, to change the times, locations or types. However, unlike many other types of licensing decision, the late night refreshment exemptions are not made on a case by case basis and there is no recourse to bring an individual premises back into the licensing regime if there is a problem with that particular premises. In such cases the licensing authority would have to take a decision about the entire exemption and apply it across the whole area. Alternatively, depending on the scale of the problem, other powers could be used such as closure powers under the Anti-social Behaviour, Crime and Policing Act 2014. Environmental health legislation around noise nuisance may also offer a solution.

Late night refreshment from vessels, vehicles and moveable structures

- 3.34 Under section 189 of the 2003 Act, a vehicle which is not permanently situated in the same place and is or is proposed to be used for one or more licensable activities while parked at a particular place, is to be treated as if it were premises situated at that place. Therefore, a mobile provider of late night refreshment, such as a kebab van, could be treated as exempt if it supplied hot food to the public late at night in an area which had been designated as exempt. If the mobile van drove to and began operating in a non-exempt area, a licence to carry on this activity would be required. Should the licensing authority introduce an exemption, and subsequently wish to revoke it if problems arise, it has the power to do so. Areas which are likely to be considered for exemption by licensing authorities (for example, an area outside a town centre) are unlikely to be areas in which mobile kebab vans would frequently operate. As such, mobile vehicles selling late night refreshment are likely to still require licences in the areas in which they are more commonly found.

Unauthorised activities

- 3.35 It is a criminal offence under section 136 of the 2003 Act to carry on any of the licensable activities listed at paragraph 3.2 above other than in accordance with a licence or other authorisation under the 2003 Act. The fine for this offence is unlimited. Police and local authorities have powers to take action in relation to premises carrying on unauthorised activities.

4. Personal licences

- 4.1 This chapter provides advice about the framework for personal licences. It also contains guidance for decision-making on applications by those managing community premises (church and village halls etc.) to remove the usual mandatory conditions that relate to personal licences and the requirement for a designated premises supervisor (DPS). The Deregulation Act 2015 removed the requirement to renew a personal licence with effect from 1 April 2015.

Requirements for a personal licence

- 4.2 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 the provision of regulated entertainment and late night refreshment. This is why sales of alcohol may not be made under a premises licence unless there is a DPS in respect of the premises (who must hold a personal licence); and every sale must be made or authorised by a personal licence holder. The exception is only for those community premises which have successfully applied to remove the DPS requirement (see paragraph 4.52 below).
- 4.3 Any premises at which alcohol is sold or supplied where the requirement for a personal licence holder does apply may employ one or more such licence holders. For example, there may be one owner or senior manager and several junior managers holding a personal licence. However, the requirement that every sale of alcohol must at least be authorised by a personal licence holder does not mean that the licence holder has to be present on the premises or oversee each sale; it is sufficient that such sales are authorised. It should be noted that there is no requirement to have a DPS in relation to a Temporary Event Notice (TEN) or club premises certificate, and sales or supplies of alcohol authorised by a TEN or club premises certificate do not need to be authorised by a personal licence holder.

Who can apply?

- 4.4 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;
 - the applicant, if subject to immigration control, must have permission to work in a licensable activity (see paragraph 4.8);
 - the applicant 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 as prescribed in the Licensing Act 2003 (Personal licences) Regulations 2005²).
 - the applicant must not have forfeited a personal licence within five years of their application;
 - the applicant has paid the appropriate fee to the licensing authority; and

² Currently persons prescribed in regulations are: a member of the company of the Master, Wardens, Freemen and Commonalty of the Mystery of the Vintners of the City of London; a person operating under a licence granted by the University of Cambridge; or a person operating premises under a licence granted by the Board of the Green Cloth.

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- in a case in which the applicant has an unspent conviction for a relevant offence or a foreign offence, the police have not objected to the grant of the application on crime prevention grounds or the licensing authority has considered their objection but determined that the grant of the application will not undermine the crime prevention objective.
- 4.5 Any individual may apply for a personal licence whether or not they are currently employed or have 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 is specified as the DPS for those premises are dealt with at paragraphs 4.31 to 4.38 below. Licensing authorities may not therefore take these matters into account when considering an application for a personal licence.
- 4.6 Applicants for personal licences who are ordinarily resident in a licensing authority's area are required to make the application to that licensing authority. An applicant who is not ordinarily resident in a licensing authority's area (which may include persons living outside England and Wales), may apply for the grant of a personal licence to any licensing authority in England and Wales.
- 4.7 For applications made after 6 April 2017, applicants who are subject to UK immigration control must be entitled to work in a licensable activity. Section 192A of the Licensing Act 2003 defines 'entitlement to work' for the purposes of the Act

Entitlement to work in the UK

- 4.8 Individuals applying for a personal licence must be entitled to work in the UK. The Immigration Act 2016 amended the Licensing Act 2003 with effect from 6 April 2017 so that an application made on or after that date by someone who is not entitled to work in the UK must be rejected. Licences must not be issued to people who are illegally present in the UK, who are not permitted to work, or who are permitted to work but are subject to a condition that prohibits them from doing work relating to the carrying on of a licensable activity. In order to discharge this duty, from 6 April 2017, licensing authorities must be satisfied that an applicant has the right to work in the UK and should require applicants to submit one of the documents listed at Annex A, to show that the applicant has permission to be in the UK and to undertake work in a licensable activity. This also applies to individuals who apply for premises licences. The purpose of this is to prevent illegal working in the UK.
- 4.9 The list of documents which an applicant may provide to demonstrate their entitlement to work in the UK is published on gov.uk and at Annex A of this guidance.
- 4.10 For applications made on or after 6 April 2017, where an applicant's immigration permission to live and work in the UK is time-limited, a personal licence may be issued but will become invalid when the immigration permission expires. In the event that the Home Office cuts short or ends a person's immigration permission (referred to as curtailment or revocation), any licence issued in respect of an application made on or after 6 April 2017 will automatically lapse (see paragraph 4.15 below).
- 4.11 A person is disqualified from applying for a personal licence or a premises licence by reason of their immigration status if:
- The person requires leave to enter or remain in the UK and has not been granted it;
 - or

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- The person's leave to enter or remain in the UK:
 - is invalid,
 - has ceased to have effect (whether by reason of curtailment, revocation, cancellation, passage of time, or otherwise), or
 - is subject to a condition preventing the person from doing work of that kind.

A person is also disqualified from holding a licence if they are subject to a condition on their permission to be in the UK preventing them from holding a licence, for example they are subject to an immigration restriction that does not permit them to work.

- 4.12 The requirements to demonstrate immigration status are not retrospective. This means that licensing authorities do not need to check the immigration status of those people who already hold a licence which was issued before 6 April 2017.
- 4.13 Applicants may provide photocopies or scanned copies of the documents, which do not need to be endorsed as a copy of the original. Applicants should not be encouraged or required by licensing authorities to submit original copies of documents. The licensing authority must be satisfied that the applicant is entitled to work in the UK, but the licensing authority is not required to check the validity of any document submitted by the applicant to demonstrate the right to work. The licensing authority should establish whether or not an applicant has a lawful immigration status in the UK or is prohibited from working because they are in the UK illegally or is subject to a condition that prevents them from holding a licence.
- 4.14 To ensure that licensing authorities do not discriminate against anyone, all licence applicants should be treated in the same way after 6 April 2017 during the licence application process. This will also demonstrate a fair, transparent and consistent application process. Assumptions should not be made about a person's right to work in the UK or their immigration status on the basis of their nationality, ethnic origin, accent, the colour of their skin, or the length of time they have been resident in the UK.
- 4.15 If an applicant has restrictions on the length of time they may work in the UK, a premises licence or personal licence may still be issued, but the licence will cease to have effect when the right to work lapses. Migrants who are subject to UK immigration control may be granted permission to enter or remain in the UK, with a condition permitting employment, on a time-limited basis or on an indefinite basis. When the person's stay is time limited, this will be shown in their immigration documentation. It is possible for a migrant to apply to extend their stay, and if they do so before their previous status expires, they continue to have any right to work that they previously had while their application and any associated administrative review or appeal is outstanding. In such cases, a person's status may be confirmed by the licensing authority contacting the Home Office Status, Verification, Evidence and Checking (SVEC) Unit.
- 4.16 In most cases the licensing authority should be able to make an assessment that the applicant is not disqualified from applying for a premises or personal licence based on any information provided with the application. This will include all cases where the applicant is a British citizen. An immigration status check may be made by contacting the Home Office SVEC Unit in the following circumstances to verify that someone has the right to hold a premises or personal licence:

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- the applicant provides a copy of a Certificate of Application which is less than six months old and indicates that work is permitted; or
- the applicant has not provided any acceptable documents because they have an outstanding application for permission to remain in the UK with the Home Office which was made before their previous immigration leave expired or has an appeal or administrative review pending against a Home Office decision that grants them a right to work and, therefore, cannot provide evidence of their right to work.

In these two circumstances the SVEC Unit will confirm the individual's immigration status.

- 4.17 Assistance on this process may be obtained from Home Office Local Partnership Managers, or by email I&SDLPMSsupportTeam@homeoffice.gsi.gov.uk. In most cases, a Local Partnership Manager or local Immigration, Compliance and Enforcement (ICE) team will be the first point of contact for licensing authorities.
- 4.18 A premises or personal licence issued in respect of an application made on or after 6 April 2017 will lapse if the holder's permission to live or work in the UK comes to an end. This could be because their permission to be in the UK has time-expired or because the Home Office has brought it to an end (for example, the Home Office has curtailed their permission to live and work in the UK). The licensing authority is under no duty to carry out on-going immigration checks to see whether a licence-holder's permission to be in the UK has been brought to an end, and the Act does not place a duty on the licensing authority to withdraw or revoke the licence if this occurs. The migrant will be aware when their time-limited permission has come to an end and the Home Office will inform them if their permission to be in the UK is curtailed. If the individual is subsequently granted leave to work in the UK and wishes to once again hold a personal licence they must make an application for a new personal licence.

Criminal record

- 4.19 Regulations made under the 2003 Act require that, in order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, an applicant for the grant of a personal licence must include a criminal conviction certificate, a criminal record certificate or the results of a subject access search of the Police National Computer by the National Identification Service to the licensing authority.
- 4.20 The requirement for an individual to establish whether or not they have unspent convictions for a relevant offence or foreign offence 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 are also required to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or an equivalent foreign offence. This applies both to applicants ordinarily resident in England and Wales and any person from a foreign jurisdiction. Details of relevant offences as set out in the 2003 Act should be appended to application forms for the information of applicants, together with a clear warning that making any false statement is a criminal offence liable to prosecution.

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- 4.21 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. The police have no involvement or locus in such applications until notified by the licensing authority.
- 4.22 Civil penalties received after 6 April 2017 for immigration matters are treated in the same way as relevant offences. Licensing authorities are required to notify the Secretary of State for the Home Department (through Home Office Immigration Enforcement) when an applicant declares that they have been issued with an immigration penalty or convicted of an immigration offence or a foreign offence comparable to an immigration offence. The Home Office may object to an application on grounds that granting the personal licence would be prejudicial to the prevention of illegal working in licensed premises. Civil penalties for immigration matters were added to the Licensing Act with effect from 6 April 2017, and penalties received before that date cannot be taken into account in respect of grant, revocation or suspension of a personal licence.
- 4.23 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. The applicant is also entitled to a hearing if the Home Office (Immigration Enforcement) object to the application on the grounds of the prevention of illegal working where the applicant has an unspent conviction for a relevant immigration offence or has been required to pay an immigration penalty. If the police or Home Office (Immigration Enforcement) do not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant it. Home Office (Immigration Enforcement) can object only with respect to convictions and civil immigration penalties received on or after 6 April 2017.
- 4.24 A number of relevant offences never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that the applicant no longer has a propensity to re-offend, a licensing authority may consider that it is appropriate to grant the application on the basis that doing so would not undermine the crime prevention objective.
- 4.25 If an application is refused, the applicant will be entitled to appeal against the decision they make. Similarly, if the application is granted despite a police objection notice or an objection from the Home Office (Immigration Enforcement), the chief officer of police or Home Office are entitled to appeal against the licensing authority's determination. Licensing authorities are therefore expected to record in full the reasons for any decision which they make.

Issuing of personal licences by Welsh licensing authorities

- 4.26 All application forms in Wales should be bilingual. Proceedings before a court must be capable of being conducted in Welsh at the request of the applicant. There is a panel of Welsh speaking magistrates so this can be arranged if necessary. Licensing authorities in Wales should consider issuing personal licences in a bilingual format.

Licensing qualifications

- 4.27 Details of licensing qualifications accredited by the Secretary of State will be notified to licensing authorities and the details may be viewed on the GOV.UK website.

Relevant licensing authority

- 4.28 Personal licences remain valid unless surrendered, suspended, revoked or declared forfeit by the courts. For applications made on or after 6 April 2017, a licence granted to someone subject to immigration control will lapse if the individual ceases to be entitled to work in the UK. The requirement to renew a personal licence was removed from the Licensing Act 2003 by the Deregulation Act 2015. While personal licences issued before the 2015 Act have expiry dates, these licences will remain valid and such dates no longer have an effect. 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

- 4.29 The holder of the licence is required by the 2003 Act to notify the licensing authority of any changes to a holder’s 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.
- 4.30 The 2003 Act authorises the provision and receipt of such personal information to such agencies for the purposes of that Act.

Specification of new designated premises supervisors

- 4.31 Every premises licence that authorises the sale of alcohol must specify a DPS. This will normally be the person who has been given day to day responsibility for running the premises by the premises licence holder. The only exception is for community premises which have successfully made an application to remove the usual mandatory conditions set out in the 2003 Act. Guidance on such applications is set out in paragraphs 4.52 to 4.65 of this Guidance.
- 4.32 The Government considers it essential that police officers, fire officers or officers of the licensing authority can identify immediately the DPS so that any problems can be dealt with swiftly. For this reason, the name of the DPS and contact details must be specified on the premises licence and this must be held at the premises and displayed in summary form. The DPS’ personal address should not be included in the summary form in order to protect their privacy.
- 4.33 To specify a DPS, the premises licence holder should normally submit an application to the licensing authority (which may include an application for immediate interim effect) with:
- a form of consent signed by the individual concerned to show that they consent to taking on this responsible role, and

- the relevant part (Part A) of the licence.
- 4.34 If they are applying in writing, they must also notify the police of the application. If the application is made electronically via GOV.UK or the licensing authority's own electronic facility, the licensing authority must notify the police no later than the first working day after the application is given.
- 4.35 The premises licence holder must notify the existing DPS (if there is one) of the application on the same day as the application is given to the licensing authority. This requirement applies regardless of whether the application was given by means of an electronic facility, or by some other means.
- 4.36 The general guidance in Chapter 8 on electronic applications applies in respect of new applications.
- 4.37 Only one DPS may be specified in a single premises licence, but a DPS may supervise two or more premises as long as the DPS is able to ensure that the licensing objectives are properly promoted and that each premises complies with the 2003 Act and conditions on the premises licence.
- 4.38 Where there are frequent changes of DPS, the premises licence holder may submit the form in advance specifying the date when the new individual will be in post and the change will take effect.

Police objections to new designated premises supervisors

- 4.39 The police may object to the designation of a new DPS where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. The police can object where, for example, a DPS is first specified in relation to particular premises and the specification of that DPS in relation to the particular premises gives rise to exceptional concerns. For example, where a personal licence holder has been allowed by the courts to retain their licence despite convictions for selling alcohol to children (a relevant offence) and then transfers into premises known for underage drinking.
- 4.40 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 forward their arguments. The 2003 Act provides that the applicant may apply for the individual to take up post as DPS immediately and, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must restrict its consideration to the issue of crime and disorder and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected.
- 4.41 The portability of personal licences between premises is an important concept under the 2003 Act. It is expected that police objections would arise in only genuinely exceptional circumstances. If a licensing authority believes that the police are routinely objecting to the designation of new premises supervisors on grounds which are not exceptional, they should raise the matter with the chief officer of police as a matter of urgency.

Police objections to existing designated premises supervisors

4.42 The 2003 Act also provides for the suspension and forfeiture of personal licences by the courts and licensing authorities following convictions for relevant offences, including breaches of licensing law. The police can at any stage after the appointment of a DPS seek a review of a premises licence on any grounds relating to the licensing objectives if problems arise relating to the performance of a DPS. 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 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. It is expected that such hearings should be rare and genuinely exceptional.

Convictions and liaison with the courts

4.43 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 is 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).

4.44 When the licensing authority receives such a notification, it should contact the holder and request the licence so that the necessary action can be taken. The holder must then produce the relevant 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 they do not respond promptly. The licensing authority should record the details of the conviction, endorse them on the licence, together with any period of suspension and then return the licence to the holder. If the licence is declared forfeit, it should be retained by the licensing authority.

Licensing authority powers to revoke or suspend personal licences

4.45 The Policing and Crime Act 2017 gives licensing authorities the power to revoke or suspend personal licences, with effect from 6 April 2017. This is a discretionary power; licensing authorities are not obliged to give consideration to all personal licence holders subject to convictions for relevant offences, foreign offences or civil penalties for immigration matters. When a licensing authority has granted a personal licence and becomes aware that the licence holder has been convicted of a relevant offence or foreign offence or been required to pay an immigration penalty, a licensing authority may revoke the licence or suspend it for a period of up to six months. This applies to convictions received and civil immigration penalties which a person has been required to pay at any time before or after the licence was granted, as long as the conviction was received after 6 April 2017, or the requirement to pay the civil penalty arose after 6 April 2017. Only magistrates' courts can order the forfeiture or suspension of a personal licence for convictions received prior to 6 April 2017. The process which must be undertaken by the licensing authority to suspend or revoke a personal licence is set out at section 132A of the 2003 Act. The decision to revoke or suspend a personal licence

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must be made by the licensing committee or sub-committee, but the actions required before making a final decision may be made by a licensing officer.

- 4.46 The licensing authority may not take action if the licence holder has appealed against the conviction or the sentence imposed in relation to the offence, until the appeal is disposed of. Where an appeal is not lodged, the licensing authority may not take action until the time limit for making an appeal has expired.
- 4.47 If a licensing authority is considering revoking or suspending a personal licence, the authority must give notice to the licence holder. This notice must invite the holder to make representations about the conviction, any decision of a court in relation to the licence, or any decision by an appellate court if the licence holder has appealed such a decision. The licence holder may also decide to include any other information, for example, about their personal circumstances. The licence holder must be given 28 days to make their representation, beginning on the day the notice was issued. The licensing authority does not need to hold a hearing to consider the representations. Before deciding whether to revoke or suspend the licence the licensing authority must consider any representations made by the licence holder, any decisions made by the court or appellate court in respect of the personal licence of which the licensing authority is aware, and any other information which the licensing authority considers relevant. The licensing authority may not be aware of whether the court considered whether to revoke or suspend the licence, and there is no obligation on the licensing authority to find this out before making a decision themselves. Where the court has considered the personal licence and decided not to take action, this does not prevent the licensing authority from deciding to take action itself. Licensing authorities have different aims to courts in that they must fulfil their statutory duty to promote the licensing objectives, and therefore it is appropriate for the licensing authority to come to its own decision about the licence.
- 4.48 If the licensing authority, having considered a suspension and revocation and subsequently considered all the information made available to it, proposes not to revoke the licence it must give notice to the chief officer of police in the licensing authority's area, and invite the chief officer to make representations about whether the licence should be suspended or revoked, having regard to the prevention of crime. The chief officer may make representations within the period of 14 days from the day they receive the notice from the licensing authority. Any representations made by the chief officer of police must be taken into account by the licensing authority in deciding whether to suspend or revoke the licence. Convictions may come to light via police in another area, for example if the personal licence holder no longer lives in the area of the licensing authority which issued the licence, or if the offence took place in another police force area. In this instance it would be good practice for the police providing the information to notify the police force in the licensing authority area, because it is the local chief officer who must provide representations if the licensing authority proposes not to revoke the licence. Where the licence holder is convicted of immigration offences or has been required to pay a civil penalty for immigration matters, the licensing authority should notify Home Office Immigration Enforcement and allow representations to be made in the same way.

- 4.49 The licensing authority must notify the licence holder and the chief officer of police of the decision made (even if the police did not make representations). The licence holder may appeal the licensing authority's decision to revoke or suspend their personal licence. A decision to revoke or suspend the licence does not take effect until the end of the period allowed for appealing the decision (21 days); or if the decision is appealed against, until the appeal is disposed of.
- 4.50 If the personal licence holder is a DPS, the licensing authority may notify the premises licence holder once the decision to revoke or suspend the licence has been made if it becomes necessary to do so in order for the licensing authority to be able to carry out their functions. The licensing authority may also notify any person who has declared an interest in the premises under section 178 of the 2003 Act if it becomes necessary to do so in order for the licensing authority to be able to carry out their functions. The licensing authority may invite the premises licence holder to make representations about the personal licence holder before deciding whether to revoke or suspend the licence; this is not a legal requirement and may not be appropriate in all circumstances.

Relevant offences

- 4.51 Relevant offences are set out in Schedule 4 to the 2003 Act. If a person has been required to pay a civil penalty for immigration matters on or after 6 April 2017, this may be taken into consideration in the same way as a relevant offence. Offences added to the list of relevant offences with effect from 6 April 2017 may only be taken into consideration if the conviction was received on or after 6 April 2017.

Disapplication of certain mandatory conditions for community premises

- 4.52 The 2003 Act was amended in 2009 to allow certain community premises which have, or are applying for, a premises licence that authorises alcohol sales to also apply to include the alternative licence condition in sections 25A(2) and 41D(3) ("the alternative licence condition") of that Act in the licence instead of the usual mandatory conditions in sections 19(2) and 19(3). Such an application may only be made if the licence holder is, or is to be, a committee or board of individuals with responsibility for the management of the premises (the "management committee"). If such an application is successful, the effect of the alternative licence condition will be that the licence holder (i.e. the management committee) is responsible for the supervision and authorisation of all alcohol sales authorised by the licence. All such sales will have to be made or authorised by the licence holder. There will be no requirement for a DPS or for alcohol sales to be authorised by a personal licence holder.
- 4.53 Community premises are defined as premises that are or form part of a church hall, chapel hall or other similar building; or a village hall, parish hall or community hall or other similar building.
- 4.54 The process requires the completion of a form which is prescribed in regulations made under the 2003 Act. Where the management committee of a community premises is applying for authorisation for the sale of alcohol for the first time, it should include the form with the new premises licence application or the premises licence variation application. No extra payment is required beyond the existing fee for a new application or a variation.

- 4.55 Where a community premises already has a premises licence to sell alcohol, but wishes to include the alternative licence condition in place of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act, it should submit the form on its own together with the required fee.

Definition of community premises

- 4.56 In most instances, it should be self evident whether a premises is, or forms part of a church hall, chapel hall or other similar building; or a village hall, parish hall, community hall or other similar building.
- 4.57 Licensing authorities may have previously taken a view on how to determine whether a premises meets the definition of community premises for the purpose of the fee exemptions set out in regulation 9(2)(b) of the Licensing Act 2003 (Fees) Regulations 2005 (SI 2005/79). As the criteria are the same, premises that qualify for these fee exemptions for regulated entertainment will also be “community premises” for present purposes.
- 4.58 Where it is not clear whether premises are “community premises”, licensing authorities will need to approach the matter on a case-by-case basis. The main consideration in most cases will be how the premises are predominately used. If they are genuinely made available for community benefit most of the time, and accessible by a broad range of persons and sectors of the local community for purposes which include purposes beneficial to the community as a whole, the premises will be likely to meet the definition.
- 4.59 Many community premises such as school and private halls are available for private hire by the general public. This fact alone would not be sufficient for such halls to qualify as “community premises”. The statutory test is directed at the nature of the premises themselves, as reflected in their predominant use, and not only at the usefulness of the premises for members of the community for private purposes.
- 4.60 If the general use of the premises is contingent upon membership of a particular organisation or organisations, this would strongly suggest that the premises in question are not a “community premises” within the definition. However, the hire of the premises to individual organisations and users who restrict their activities to their own members and guests would not necessarily conflict with the status of the premises as a “community premises”, provided the premises are generally available for use by the community in the sense described above. It is not the intention that qualifying clubs, which are able to apply for a club premises certificate, should instead seek a premises licence with the removal of the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to the supply of alcohol.

Management of the premises

- 4.61 Sections 25A(1) and 41D(1) and (2) of the 2003 Act allow applications by community premises to apply the alternative licence condition rather than the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act only where the applicant for the licence is the management committee of the premises in question. In addition, sections 25A(6) and 41D(5) require the licensing authority to be satisfied that the arrangements for the management of the premises by the committee or board are sufficient to ensure the adequate supervision of the supply of alcohol on the premises.

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- 4.62 The reference to a “committee or board of individuals” is intended to cover any formally constituted, transparent and accountable management committee or structure. Such a committee should have the capacity to provide sufficient oversight of the premises to minimise any risk to the licensing objectives that could arise from allowing the responsibility for supervising the sale of alcohol to be transferred from a DPS and personal licence holder or holders. This could include management committees, executive committees and boards of trustees.
- 4.63 The application form requires applicants to set out how the premises is managed, its committee structure and how the supervision of alcohol sales is to be ensured in different situations (e.g. when the hall is hired to private parties) and how responsibility for this is to be determined in individual cases and discussed within the committee procedure in the event of any issues arising. The application form requires that the community premises submit copies of any constitution or other management documents with their applications and that they provide the names of their key officers. Where the management arrangements are less clear, licensing authorities may wish to ask for further details to confirm that the management board or committee is properly constituted and accountable before taking a decision on whether to grant the application (subject to the views of the police). Community premises may wish to check with the licensing authority before making an application. The management committee is strongly encouraged to notify the licensing authority if there are key changes in the committee’s composition and to submit a copy to the chief officer of police. A failure to do so may form the basis of an application to review the premises licence, or be taken into account as part of the consideration of such an application.
- 4.64 As the premise licence holder, the management committee will collectively be responsible for ensuring compliance with licence conditions and the law (and may remain liable to prosecution for one of the offences in the 2003 Act) although there would not necessarily be any individual member always present at the premises. While overall responsibility will lie with the management committee, where the premises are hired out the hirer may be clearly identified as having responsibility for matters falling within his or her control (e.g. under the contract for hire offered by the licence holder), much in the same way that the event organiser may be responsible for an event held under a Temporary Event Notice. Where hirers are provided with a written summary of their responsibilities under the 2003 Act in relation to the sale of alcohol, the management committee is likely to be treated as having taken adequate steps to avoid liability to prosecution if a licensing offence is committed.
- 4.65 As indicated above, sections 25A(6) and 41D(5) of the 2003 Act require the licensing authority to consider whether the arrangements for the management of the premises by the committee are sufficient to ensure adequate supervision of the supply of alcohol on the premises. Where private hire for events which include the sale of alcohol is permitted by the licence, it would be necessary to have an effective hiring agreement. Licensing authorities may wish to consider model hiring agreements that have been made available by organisations such as ACRE and Community Matters. Such model agreements can be revised to cater for the circumstances surrounding each hire arrangement; for example to state that the hirer is aware of the licensing objectives and offences in the 2003 Act and will ensure that it will take all appropriate steps to ensure that no offences are committed during the period of the hire.

Police views

4.66 In exceptional circumstances, the chief officer of police for the area in which the community premises is situated can object to a request for inclusion of the alternative licence condition on the grounds of crime and disorder, and any responsible authority or other person can seek reinstatement of the mandatory conditions through a review of the licence (as provided in section 52A of the 2003 Act). The police will want to consider any history of incidents at an establishment in light of the actual or proposed management arrangements, including the use of appropriate hire agreements. If the chief officer of police issues a notice seeking the refusal of the application to include the alternative licence condition, the licensing authority must hold a hearing in order to reach a decision on whether to grant the application.

Appeals

4.67 Where the chief officer of police has made relevant representations against the inclusion of the alternative licence condition, or given a notice under section 41D(6) which was not withdrawn, the chief officer of police can appeal the decision of the licensing authority to allow the inclusion of the alternative licence condition. Similarly, a community premises can appeal a decision by the licensing authority to refuse to include the alternative licence condition following a hearing triggered by relevant representations or by a notice given under section 41D(6). Following a review of the licence in which the mandatory conditions are reinstated, the licence holder may appeal against the decision. If the alternative licence condition is retained on review, the applicant for the review or any person who made relevant representations may appeal against the decision.

5. Who needs a premises licence?

- 5.1 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 defined in section 1 of the 2003 Act.

Relevant parts of Act

- 5.2 In determining whether any premises should be licensed, the following parts of the 2003 Act are relevant:

Relevant part of Act	Description
Section 1	Outlines the licensable activities
Part 3	Provisions relating to premises licences
Part 4	Provisions for qualifying clubs
Section 173	Activities in certain locations which are not licensable
Section 174	Premises that may be exempted on grounds of national security
Section 175	Exemption for incidental non-commercial lottery (e.g. a minor raffle or tombola)
Section 176	Prohibits the sale of alcohol at motorway service areas; and restricts the circumstances in which alcohol may be sold at garages
Section 189	Special provision in relation to the licensing of vessels, vehicles and moveable structures
Section 190	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, the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract
Section 191	Defines “alcohol” for the purposes of the 2003 Act
Section 192	Defines the meaning of “sale by retail”
Section 193	Defines among other things “premises”, “vehicle”, “vessel” and “wine”
Schedules 1 and 2	Provision of regulated entertainment and provision of late night refreshment

- 5.3 Section 191 provides the meaning of “alcohol” for the purposes of the 2003 Act. 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 2003 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.
- 5.4 The definition of alcohol was amended by the Policing and Crime Act 2017 to include alcohol “in any state”. This is to make it clear that products such as powdered and vaporised alcohol fall within the definition provided by the 2003 Act.

Premises licensed for gambling

5.5 Gambling is the subject of separate legislation and licensing authorities should not duplicate any conditions imposed by this legislation when granting, varying or reviewing licences that authorise licensable activities under the 2003 Act. When making a licence application, the applicant may, in detailing the steps to be taken in promoting the licensing objectives, refer to the statutory conditions in respect of their gambling licence (where relevant). In addition, any conditions which are attached to premises licences should not prevent the holder from complying with the requirements of gambling legislation or supporting regulations. Further information about the Gambling Act 2005 can be found on the GOV.UK website.

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

- 5.6 Outdoor sports stadia are regulated by separate legislation and sports events taking place at outdoor stadia do not fall within the definition of the provision of regulated entertainment under the 2003 Act, with the exception of boxing or wrestling entertainment (see 16.49-16.51). Licensing authorities should therefore limit their consideration of applications for premises licences to activities that are licensable under the 2003 Act.
- 5.7 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 may 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.
- 5.8 Licensing authorities should be aware that paragraphs 98 and 99(c) of Schedule 6 to the 2003 Act and the repeals of section 2(1A) and section 5A of the Sporting Events (Control of Alcohol etc.) Act 1985 have not been commenced because their effect would have been different from that which Parliament had intended.

Sporting events at stadia with retractable roofs

5.9 A sporting event at a stadium or sports ground with a roof that opens and closes does not fall within the definition of an “indoor sporting event” under the 2003 Act. As a result, indoor sporting events taking place in these stadia are not ‘regulated entertainment’ and are not licensable under the 2003 Act.

Vessels

- 5.10 The 2003 Act applies to vessels (including ships and boats) as if they were premises. A vessel which is not permanently moored or berthed is treated 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 for a vessel is therefore the licensing authority for the area in which it is usually moored or berthed.
- 5.11 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.

- 5.12 If a vessel is not permanently moored and carries more than 12 passengers it is a passenger ship and will be subject to safety regulation by the Maritime and Coastguard Agency (MCA).
- 5.13 When a licensing authority receives an application for a premises licence in relation to a vessel, it should consider the promotion of the licensing objectives, but 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.
- 5.14 If the MCA is satisfied that the vessel complies with Merchant Shipping standards for a passenger ship, the premises should normally be accepted as meeting the public safety objective. In relation to other public safety aspects of the application, representations made by the MCA on behalf of the Secretary of State should be given particular weight.
- 5.15 If a vessel, which is not permanently moored and carries no more than 12 passengers, goes to sea, it will be subject to the Code of Practice for the Safety of Small Commercial Sailing Vessels. This code sets the standards for construction, safety equipment and manning for these vessels and MCA will be able to confirm that it has a valid safety certificate.
- 5.16 If a vessel carries no more than 12 passengers and does not go to sea, it may be regulated or licensed by the competent harbour authority, navigation authority or local authority. The recommended standards for these vessels are set out in the (non-statutory) Inland Waters Small Passenger Boat Code, which provides best practice guidance on the standards for construction, safety equipment and manning. Some authorities may use their own local rules. MCA has no direct responsibility for these vessels and will not normally comment on a premises licence application.

International airports and ports

- 5.17 Under the 2003 Act, the Secretary of State may 'designate' a port, hoverport or airport with a substantial amount of international traffic so that an activity carried on there is not licensable. The Secretary of State may also preserve existing designations made under earlier legislation.
- 5.18 Areas at designated ports which are "airside" or "wharveside" are included in the exemption in the 2003 Act from the licensing regime. The non-travelling public does not have access to these areas and they are subject to stringent bye-laws. The exemption allows refreshments to be provided 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

- 5.19 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 for the sale of alcohol from a parked or stationary vehicle. 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.
- 5.20 The provision of any entertainment on premises consisting of or forming part of any vehicle while it is in motion and not permanently or temporarily parked is not regulated entertainment for the purposes of the 2003 Act.

Trains and aircraft

- 5.21 Railway vehicles and aircraft engaged on journeys are exempted from the requirement to have an authorisation to carry on licensable activities (although a magistrates' court can make an order to prohibit the sale of alcohol on a railway vehicle if this is appropriate to prevent disorder). Licensing authorities should note that some defunct aircraft and railway carriages remain in a fixed position and are used as restaurants and bars. These premises are subject to the provisions of the 2003 Act.

Garages and motorway service areas

- 5.22 Section 176 of the 2003 Act prohibits the sale or supply of alcohol at motorway service areas (MSAs) and from premises which are used primarily as a garage, or are part of premises used primarily as a garage. Premises are used primarily as a garage if they are used for one or more of the following:
- the retailing of petrol;
 - the retailing of derv (diesel);
 - the sale of motor vehicles; and
 - the maintenance of motor vehicles.
- 5.23 It is for the licensing authority to decide, based on the licensing objectives, whether it is appropriate for that premises to be granted a licence, taking into account the documents and information listed in section 17(3) and (4) which must accompany the application.
- 5.24 If a licence is granted in respect of a premises and the primary use of that premises subsequently changes (for example, the primary use becomes that of a garage rather than a shop) it would no longer be legal to sell alcohol on that premises. If a relevant representation is made, the licensing authority must decide whether or not the premises are used primarily as a garage. The licensing authority may ask the licence holder to provide further information to help establish what the primary use of the premises is.

Large scale time-limited events requiring premises licences

- 5.25 Licensing authorities should note that a premises licence may be sought for a short, discrete period. The 2003 Act provides that a temporary event notice is subject to various limitations (see Chapter 7 of this Guidance). The temporary provision of licensable activities that fall outside these limits will require the authority of a premises licence if the premises are currently unlicensed for the activities involved.

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- 5.26 The procedures for applying for and granting such a licence are identical to those for an unlimited duration premises licence except that it should be stated on the application that the applicant's intention is that the period of the licence should be limited. Licensing authorities should clearly specify on such a licence when it comes into force and when it ceases to have effect. If the sale of alcohol is involved, a personal licence holder must be specified as the designated premises supervisor.

6. Club premises certificates

6.1 This Chapter covers the administration of the processes for issuing, varying, and reviewing club premises certificates and other associated procedures.

General

6.2 Clubs are organisations where members have joined together for particular social, sporting or political purposes. They may then combine to buy alcohol in bulk as members of the organisation to supply in the club.

6.3 Technically the club only sells alcohol by retail at such premises to guests. Where members purchase alcohol, there is no sale (as the member owns part of the alcohol stock) and the money passing across the bar is merely a mechanism to preserve equity between members where one may consume more than another.

6.4 Only 'qualifying' clubs may hold club premises certificates. In order to be a qualifying club, a club must have at least 25 members and meet the qualifying conditions set out in paragraph 6.9. The grant of a club premises certificate means that a qualifying club is entitled to certain benefits. These include:

- the authority to supply alcohol to members and sell it to guests on the premises to which the certificate relates without the need for any member or employee to hold a personal licence;
- the authority to provide late night refreshment to members of the club without requiring additional authorisation;
- more limited rights of entry for the police and authorised persons because the premises are considered private and not generally open to the public; and
- exemption from orders of the magistrates' court for the closure of all licensed premises in an area when disorder is happening or expected.

6.5 Qualifying clubs should not be confused with proprietary clubs, which are clubs run commercially by individuals, partnerships or businesses for profit. These require a premises licence and are not qualifying clubs.

6.6 A qualifying club will be permitted under the terms of a club premises certificate to sell and supply alcohol to its members and their guests only. Instant membership is not permitted and members must wait at least two days between their application and their admission to the club. A qualifying club may choose to apply for a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public, including the sale of alcohol to them. However, an individual on behalf of a club may give temporary event notices. See Chapter 7.

6.7 The 2003 Act does not prevent visitors to a qualifying club being supplied with alcohol as long as they are 'guests' of any member of the club or the club collectively, and nothing in the 2003 Act prevents the admission of such people as guests without prior notice. The 2003 Act does not define "guest" and whether or not somebody is a genuine guest would in all cases be a question of fact.

6.8 There is no mandatory requirement under the 2003 Act for guests to be signed in by a member of the club. However, a point may be reached where a club is providing

commercial services to the general public in a way that is contrary to its qualifying club status. It is at this point that the club would no longer be conducted in “good faith” and would no longer meet “general condition 3” for qualifying clubs in section 62 of the 2003 Act. Under the 2003 Act, the licensing authority must decide when a club has ceased to operate in “good faith” and give the club a notice withdrawing the club premises certificate. The club is entitled to appeal against such a decision to a magistrates’ court. Unless the appeal is successful, the club would need to apply for a premises licence to authorise licensable activities taking place there.

Qualifying conditions

6.9 Section 62 of the 2003 Act sets out five general conditions which a relevant club must meet to be a qualifying club. Section 63 also sets out specified matters for licensing authorities to enable them to determine whether a club is established and conducted in good faith – the third qualifying condition. Section 64 sets out additional conditions which only need to be met by clubs intending to supply alcohol to members and guests. Section 90 of the 2003 Act gives powers to the licensing authority to issue a notice to a club withdrawing its certificate where it appears that it has ceased to meet the qualifying conditions. There is a right of appeal against such a decision.

Associate members and guests

6.10 As well as their own members and guests, qualifying clubs are also able to admit associate members and their guests (i.e. members and guests from another ‘recognised club’ as defined by section 193 of the 2003 Act) to the club premises when qualifying club activities are being carried on without compromising the use of their club premises certificate.

Applications for the grant or variation of club premises certificates

6.11 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those for a premises licence. Clubs may also use the minor variation process to make small changes to their certificates as long as these could have no adverse impact on the licensing objectives. Licensing authorities should refer to Chapter 8 of this Guidance on the handling of such applications. Licensing authorities do not have to satisfy themselves that applicants for club premises certificates are entitled to work in the UK before issuing a club premises certificate. However, they will commit a criminal offence if they work illegally in the UK.

6.12 In addition to a plan of the premises and a club operating schedule, clubs must also include the rules of the club with their application (as well as making a declaration to the licensing authority in accordance with regulations made under the 2003 Act). On notifying any alteration to these rules to the licensing authority, the club is required to pay a fee set down in regulations. Licensing authorities cannot require any changes to the rules to be made as a condition of receiving a certificate unless relevant representations have been made. However, if a licensing authority is satisfied that the rules of a club indicate that it does not meet the qualifying conditions in the 2003 Act, a club premises certificate should not be granted.

Steps needed to promote the licensing objectives

- 6.13 Club operating schedules prepared by clubs, must include the steps it intends to take to promote the licensing objectives. These will be translated into conditions included in the certificate, unless the conditions have been modified by the licensing authority following consideration of relevant representations. Guidance on these conditions is given in Chapter 10 of this Guidance.

7. Temporary Event Notices (TENs)

7.1 This Chapter covers the arrangements in Part 5 of the 2003 Act for the temporary carrying on of licensable activities which are not authorised by a premises licence or club premises certificate.

General

7.2 The system of permitted temporary activities is intended as a light touch process, and as such, the carrying on of licensable activities does not have to be authorised by the licensing authority on an application. Instead, a person wishing to hold an event at which such activities are proposed to be carried on (the “premises user”) gives notice to the licensing authority of the event (a “temporary event notice” or “TEN”).

7.3 The TEN must be given to the licensing authority in the form prescribed in regulations made under the 2003 Act. The form requires the user to describe key aspects of the proposed event, including the general nature of the premises and the event, the licensable activities intended to be carried on at the proposed event, including whether they will include any relevant entertainment as defined in Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (i.e. displays of nudity designed to sexually stimulate any member of the audience including, but not limited to, lap dancing and pole dancing). Under the 2003 Act ‘premises’ can mean any place. Events authorised under a TEN will therefore not always be in a building with a formal address and can take place, for example, in public parks and plots within larger areas of land. In all cases, the premises user should provide a clear description of the area in which they propose to carry on licensable activities, including whether the premises are, for example, an open field or a beer tent. Local authorities and “relevant persons” (see below) may wish to make enquiries where appropriate to satisfy themselves of the exact location for where a TEN is being given.

7.4 Unless it is sent electronically, it must be sent to the relevant licensing authority, to the police and “local authority exercising environmental health functions” (“EHA”) at least ten working days before the event. A premises user may also give a limited number of “late TENs” to the licensing authority less than 10 working days before the event to which they relate, although certain restrictions apply (see paragraphs 7.12-7.14). “Working day” under the 2003 Act means any day other than a Saturday, Sunday, Christmas Day, Good Friday or Bank Holiday. For limited purposes in relation to a TEN, the 2003 Act defines a “day” as a period of 24 hours beginning at midnight.

7.5 If a TEN is sent electronically via GOV.UK or the licensing authority’s own facility, the licensing authority must notify the police and EHA as soon as possible and no later than the first working day after the TEN is given.

7.6 The police or EHA (“relevant persons” for the purposes of TENs) may intervene to prevent such an event taking place by sending an objection to the licensing authority, which the licensing authority must consider on the basis of the statutory licensing objectives and decide whether the event should go ahead. A relevant person may also intervene by agreeing a modification of the proposed arrangements directly with the TENs user (see paragraph 7.36). If a relevant person sends an objection, this may

result in the licensing authority imposing conditions on a TEN but only where the venue at which the event is to be held has an existing premises licence or club premises certificate. When giving a TEN, the premises user should consider the promotion of the four licensing objectives. The licensing authority may only otherwise intervene if the statutory permitted limits on TENs would be exceeded (see paragraphs 7.15-7.22).

- 7.7 A TEN does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.

Standard and late temporary event notices

- 7.8 There are two types of TEN: a standard TEN and a late TEN. These are subject to different processes: a standard notice is given no later than ten working days before the event to which it relates; and a late notice is given not before nine and not later than five working days before the event.

Standard temporary event notices

- 7.9 “Ten working days” (and other periods of days which apply to other requirements in relation to TENs) exclude the day the notice is received and the first day of the event.
- 7.10 The police and EHA have a period of three working days from when they are given the notice to object to it on the basis of any of the four licensing objectives.
- 7.11 Although ten clear working days is the minimum possible notice that may be given, licensing authorities should publicise their preferences in terms of advance notice and encourage premises users to provide the earliest possible notice of events planned by them. Licensing authorities should also consider publicising a preferred maximum time in advance of an event by when TENs should ideally be given to them.

Late temporary event notices

- 7.12 Late TENs are intended to assist premises users who are required for reasons outside their control to, for example, change the venue for an event at short notice. However, late TENs may, of course, be given in any circumstances providing the limits specified at paragraph 7.15 are not exceeded.
- 7.13 Late TENs can be given up to five working days but no earlier than nine working days before the event is due to take place and, unless given electronically to the licensing authority, must also be sent by the premises user to the police and EHA. A late TEN given less than five days before the event to which it relates will be returned as void and the activities to which it relates will not be authorised.
- 7.14 A key difference between standard and late TENs is the process following an objection notice from the police or EHA. Where an objection notice is received in relation to a standard TEN the licensing authority must hold a hearing to consider the objection, unless all parties agree that a hearing is unnecessary. If the police, EHA or both give an objection to a late TEN, the notice will not be valid and the event will not go ahead as there is no scope for a hearing or the application of any existing licence conditions.

Limitations

- 7.15 A number of limitations are imposed on the use of TENs by the 2003 Act:
- the number of times a premises user may give a TEN is 50 times in a calendar year

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for a personal licence holder and five times in a calendar year for other people;

- the number of times a premises user may give a late TEN is limited to 10 times in a calendar year for a personal licence holder and twice for other people. Late TENs count towards the total number of permitted TENs (i.e. the limit of five TENs a year for non-personal licence holders and 50 TENs for personal licence holders). A notice that is given less than ten working days before the event to which it relates, when the premises user has already given the permitted number of late TENs in that calendar year, will be returned as void and the activities described in it will not be authorised.
- the number of times a TEN may be given for any particular premises is 15 times in a calendar year;
- the maximum duration of an event authorised by a TEN is 168 hours (seven days);
- the maximum total duration of the events authorised by TENs in relation to individual premises is 21 days in a calendar year;
- the maximum number of people attending at any one time is 499; and
- the minimum period between events authorised under separate TENs in relation to the same premises (not including withdrawn TENs) by the same premises user is 24 hours.

7.16 Any associate, relative or business partner of the premises user is considered to be the same premises user in relation to these restrictions. The 2003 Act defines an associate, in relation to the premises user, as being:

- the spouse or civil partner of that person;
- a child, parent, grandchild, grandparent, brother or sister of that person;
- an agent or employee of that person; or
- the spouse or civil partner of a person listed in either of the two preceding bullet points.

7.17 A person living with another person as their husband or wife, is treated for these purposes as their spouse. 'Civil partner' has its meaning in the Civil Partnership Act 2004.

7.18 A TEN that is given may be subsequently withdrawn by the TEN user by giving the licensing authority a notice to that effect no later than 24 hours before the beginning of the event period specified in the TEN. Otherwise, the TEN will be included within the limits of TENs allowed in a given calendar year, even if the event does not go ahead.

7.19 Once these limits have been reached, the licensing authority should issue a counter notice (permitted limits) if any more are given. Proposed activities that exceed these limits will require a premises licence or club premises certificate.

7.20 TENs may be given in respect of premises which already have a premises licence or club premises certificate to cover licensable activities not permitted by the existing authorisation.

7.21 In determining whether the maximum total duration of the periods covered by TENs at any individual premises has exceeded 21 days, an event beginning before midnight and continuing into the next day would count as two days towards the 21-day limitation.

7.22 There is nothing in the 2003 Act to prevent notification of multiple events at the same time, provided the first event is at least ten working days away (or five working days

away in the case of a late TEN). For example, an individual personal licence holder wishing to exhibit and sell beer at a series of farmers' markets may wish to give several notices simultaneously. However, this would only be possible where the limits are not exceeded in the case of each notice. Where the events are due to take place in different licensing authority (and police) areas, the respective licensing authorities and relevant persons would each need to be notified accordingly.

Who can give a temporary event notice?

Personal licence holders

7.23 A personal licence holder can give a TEN at any premises on up to 50 occasions in a calendar year. This limit is inclusive of any late TENs given in the same year. The use of each TEN must of course observe the limits described above, including the limit of 15 TENs in respect of each premises in a calendar year.

Non-personal licence holders

7.24 The 2003 Act provides that any individual aged 18 or over may give a TEN to authorise the carrying on of all licensable activities under the Licensing Act 2003, whether or not that individual holds a personal licence. Such an individual will not, therefore, have met the requirements that apply to a personal licence holder under Part 6 of the 2003 Act. Where alcohol is not intended to be sold, this should not matter. However, many events will involve a combination of licensable activities and the 2003 Act limits the number of notices that may be given by any non-personal licence holder to five occasions in a calendar year (inclusive of any late TENs in the same year). In every other respect, the Guidance and information set out in the paragraphs above applies.

Role of the licensing authority

7.25 The licensing authority must check that the limitations set down in Part 5 of the 2003 Act are being observed and intervene if they are not (see paragraph 7.15). For example, a TEN would be void unless there is a minimum of 24 hours between events notified by the same premises user, or an associate or someone who is in business with the relevant premises user in respect of the same premises. This is to prevent evasion of the seven day (or 168 hour) limit on such events and the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a TEN is treated as being from the same premises user if it is given by an associate.

7.26 Where the application is not within the statutory parameters described earlier, the licensing authority will issue a counter notice to the premises user.

7.27 Where the TEN is in order, the relevant fee paid and the event falls within the prescribed limits, the licensing authority will record the notice in its register and send an acknowledgement to the premises user (which may be given electronically). The licensing authority must do so, no later than the end of the first working day following the day on which it was received (or by the end of the second working day if it was received on a non-working day), unless an objection notice is received beforehand from the police or EHA on the basis of any of the four licensing objectives (see paragraphs below).

7.28 If the licensing authority receives an objection notice from the police or EHA that is not

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withdrawn, it must (in the case of a standard TEN only) hold a hearing to consider the objection unless all parties agree that this is unnecessary. The licensing committee may decide to allow the licensable activities to go ahead as stated in the notice. If the notice is in connection with licensable activities at licensed premises, the licensing authority may also impose one or more of the existing licence conditions on the TEN (insofar as such conditions are not inconsistent with the event) if it considers that this is appropriate for the promotion of the licensing objectives. If the authority decides to impose conditions, it must give notice to the premises user which includes a statement of conditions (a “notice (statement of conditions)”) and provide a copy to each relevant party. Alternatively, it can decide that the event would undermine the licensing objectives and should not take place. In this case, the licensing authority must give a counter notice.

- 7.29 Premises users are not required to be on the premises during the event authorised by the TEN, but they will remain liable to prosecution for certain offences that may be committed at the premises during the period covered by it. These include, for example, the offences of the sale of alcohol to a person who is drunk; persistently selling alcohol to children and allowing disorderly conduct on licensed premises.
- 7.30 In the case of an event authorised by a TEN, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.
- 7.31 Section 8 of the 2003 Act requires licensing authorities to keep a register containing certain matters, including a record of TENs received. Under Schedule 3 of the 2003 Act, the licensing authority must also keep a record of such matters including any notice of withdrawal of a TEN, any counter notice to a TEN given following an objection by a relevant person and any TEN received following modification. If requested to do so, a licensing authority must supply a person with a copy of the information contained in any entry in its register. Each licensing authority must also provide facilities for making the information contained in the entries in its register available for inspection by any person during office hours and without payment. Licensing authorities may wish to consider bringing TENs to the attention of local councillors and residents by making their register available online or including relevant details of a TEN when it is received, along with notice of licence applications on the authority's website. There is no requirement to record all the personal information given on a TEN.

Police and environmental health intervention

- 7.32 The system of permitted temporary activities gives police and EHAs the opportunity to consider whether they should object to a TEN on the basis of any of the licensing objectives.
- 7.33 If the police or EHA believe that allowing the premises to be used in accordance with the TEN will undermine the licensing objectives, they must give the premises user and the licensing authority an objection notice. The objection notice must be given within the period of three working days following the day on which they received the TEN.
- 7.34 Where a standard TEN was given, the licensing authority must consider the objection at a hearing before a counter notice can be issued. At the hearing, the police, EHA and the

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premises user may make representations to the licensing authority. Following the hearing, the licensing authority may decide to impose conditions which already apply to an existing premises licence or club premises certificate at the venue, or issue a counter notice to prevent the event going ahead. As noted above, there is no scope for hearings in respect of late TENs and if objections are raised by the police or EHA in relation to a late TEN, the notice will be invalid and the event will not go ahead.

- 7.35 Such cases might arise because of concerns about the scale, location, timing of the event or concerns about public nuisance – even where the statutory limits on numbers are being observed. The premises user who signs the form is legally responsible for ensuring that the numbers present do not exceed the permitted limit at any one time. In cases where there is reason to doubt that the numbers will remain within the permitted limit the premises user should make clear what the nature of the event(s) is and how they will ensure that the permitted persons limit will not be exceeded. For example, where notices are being given for TENs simultaneously on adjacent plots of land it may be appropriate for door staff to be employed with counters. In each case it is important that licensing authorities and relevant persons can consider whether they believe that the premises user intends to exceed the 499 person limit, or will be unable to control or know whether the limit will be exceeded. Where the planned activities are likely to breach the statutory limits or undermine the licensing objectives, it is likely to be appropriate for the police or EHA to raise objections.
- 7.36 However, in most cases, where for example, alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder, (such as at weddings with a cash bar or small social or sporting events) this should not usually give rise to the use of these powers.

Modification

- 7.37 As noted above, the police or EHA (as “relevant persons”) may contact the premises user to discuss their objections and try to come to an agreement which will allow the proposed licensable activities to proceed. The TEN can be modified (for example, by changing the details of the parts of the premises that are to be used for the event, the description of the nature of the intended activities or their duration). The other relevant person has to agree for the modification to be made. There is no scope under the 2003 Act for the modification of a late TEN.

Applying conditions to a TEN

- 7.38 The 2003 Act provides that only the licensing authority can impose conditions to a TEN from the existing conditions on the premises licence or club premises certificate at the venue. The licensing authority can only do so:
- if the police or the EHA have objected to the TEN;
 - if that objection has not been withdrawn;
 - if there is a licence or certificate in relation to at least a part of the premises in respect of which the TEN is given;
 - and if the licensing authority considers it appropriate for the promotion of the licensing objectives to impose one or more conditions.
- 7.39 This decision is one for the licensing authority alone, regardless of the premises user’s

views or willingness to accept conditions. The conditions must be notified to the premises user on the form prescribed by regulations.

Duty of premises users to keep and produce TENs

7.40 Where a TEN is not prominently displayed at the premises, the police and licensing officers have the right under sections 109(5) and (6) of the 2003 Act to request the premises user (or relevant nominated person who has the TEN in their custody) to produce the TEN for examination. If the police do not intervene when a TEN is given, they will still be able to rely on their powers of closure under the Anti-social Behaviour, Crime and Policing Act 2014³.

³ For further guidance on the closure power under the 2014 Act, please refer to:

www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

8. Applications for premises licences

Relevant licensing authority

- 8.1 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 where the greater part of the premises is situated. Where the premises is located equally in two or more areas, the applicant may choose but, in these rare cases, it is important that each of the licensing authorities involved maintain close contact.
- 8.2 Section 13 of the 2003 Act defines the parties holding important roles in the context of applications, inspection, monitoring and reviews of premises licences.

Authorised persons

- 8.3 The first group –“authorised persons”– are bodies empowered by the 2003 Act to carry out inspection and enforcement roles. The police and immigration officers are not included because they are separately empowered by the 2003 Act to carry out their duties.
- 8.4 For all premises, the authorised persons include:
- officers of the licensing authority;
 - fire inspectors;
 - inspectors with responsibility in the licensing authority’s area for the enforcement of the Health and Safety at Work etc Act 1974;
 - officers of the local authority exercising environmental health functions
- 8.5 Local authority officers will most commonly have responsibility for the enforcement of health and safety legislation, but the Health and Safety Executive is responsible for certain premises. In relation to 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 prescribe other authorised persons by means of regulations, but has not currently prescribed any additional bodies. If any are prescribed, details will be made available on the GOV.UK website.
- 8.6 Where an immigration officer has reason to believe that any premises are being used for a licensable activity, the officer may enter the premises with a view to seeing whether an offence under any of the Immigration Acts is being committed in connection with the licensable activity.

Responsible authorities

- 8.7 The second group –“responsible authorities”– are 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. These representations must still be considered ‘relevant’ by the licensing authority and relate to one or more of the licensing objectives. For all premises, responsible authorities include:
- the relevant licensing authority and any other licensing authority in whose area part of

the premises is situated;

- the chief officer of police;
- the local fire and rescue authority;
- the relevant enforcing authority under the Health and Safety at Work etc Act 1974;
- the local authority with responsibility for environmental health;
- the local planning authority;
- a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm;
- each local authority's Director of Public Health (DPH) in England⁴ and Local Health Boards (in Wales);
- the local weights and measures authority (trading standards); and
- Home Office Immigration Enforcement (on behalf of the Secretary of State).

8.8 The licensing authority should indicate in its statement of licensing policy which body it recognises to be competent to advise it on the protection of children from harm. This may be the local authority social services department, the Local Safeguarding Children Board or another competent body. This is important as applications for premises licences have to be copied to the responsible authorities in order for them to make any representations they think are relevant.

8.9 In relation to a vessel, 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 when being used for licensable activities; the Environment Agency; the Canal and River Trust; and the Secretary of State (who in practice acts through the Maritime and Coastguard Agency (MCA)). In practice, the Environment Agency and the Canal and River Trust only have responsibility in relation to vessels on waters for which they are the navigation statutory authority.

8.10 The MCA is the lead responsible authority for public safety, including fire safety, affecting passenger ships (those carrying more than 12 passengers) wherever they operate and small commercial vessels (carrying no more than 12 passengers) which go to sea. The safety regime for passenger ships is enforced under the Merchant Shipping Acts by the MCA which operates certification schemes for these vessels. Fire and rescue authorities, the Health and Safety Executive and local authority health and safety inspectors should normally be able to make "nil" returns in relation to such vessels and rely on the MCA to make any appropriate representations in respect of this licensing objective.

8.11 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 should be considered by the other responsible authorities concerned with public safety, including fire safety. Vessels carrying no more than 12 passengers which do not go to sea are not subject to MCA survey and certification, but may be licensed by the local port or navigation authority.

⁴ This change was made as a result of the commencement of measures in the Health and Social Care Act 2012 which amended the 2003 Act and further provision in the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

- 8.12 The Secretary of State may prescribe other responsible authorities by means of regulations. Any such regulations are published on the Government's legislation website: www.legislation.gov.uk.

Other persons

- 8.13 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be 'relevant', in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous and vexatious representations.
- 8.14 While any of these persons may act in their own right, they may also request that a representative makes the representation to the licensing authority on their behalf. A representative may include a legal representative, a friend, a Member of Parliament, a Member of the Welsh Government, or a local ward or parish councillor who can all act in such a capacity.

Who can apply for a premises licence?

- 8.15 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 (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.
- 8.16 "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 or determine the identity of the most appropriate person to hold the licence.
- 8.17 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. 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. 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 accountability.
- 8.18 A public house may be owned, or a tenancy held, jointly by a husband and wife, civil partners or other partnerships of a similar nature, and both may be actively involved in carrying on the licensable activities. In these cases, 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, would need to be made jointly.

- 8.19 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 apply and any such regulations are published on the Government's legislation website. There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises where a premises licence is already held.

Application forms

- 8.20 The Provision of Services Regulations 2009 require local authorities to ensure that all procedures relating to access to, or the exercise of, a service activity may be easily completed, at a distance and by electronic means. Electronic application facilities for premises licences may be found either on GOV.UK or the licensing authority's own website. It remains acceptable to make an application in writing.

Electronic applications

- 8.21 Applicants may apply using the licence application forms available on GOV.UK, or will be re-directed from GOV.UK to the licensing authority's own electronic facility if one is available. Applicants may also apply directly to the licensing authority's facility without going through GOV.UK.

Electronic applications using forms on gov.uk

- 8.22 GOV.UK will send a notification to the licensing authority when a completed application form is available for it to download from GOV.UK. This is the day that the application is taken to be 'given' to the licensing authority, even if it is downloaded at a later stage, and the application must be advertised from the day after that day (as for a written application). The licensing authority must acknowledge the application as quickly as possible, specifying the statutory time period and giving details of the appeal procedure.
- 8.23 The period of 28 consecutive days during which the application must be advertised on a notice outside the premises is, effectively, the statutory timescale by which the application must be determined (unless representations are made). This will be published on GOV.UK and must also be published on the licensing authority's own electronic facility if one exists. If no representations are made during this period, the licensing authority must notify the applicant as quickly as possible that the licence has been granted. The licensing authority must send the licence to the applicant as soon as possible after this, but the applicant may start the licensed activity as soon as they have been notified that the application is granted (subject to compliance with the conditions of the licence). The licence may be supplied in electronic or written format as long as the applicant is aware which document constitutes 'the licence'. If representations are made, the guidance in Chapter 9 applies.

Requirement to copy application to responsible authorities

- 8.24 The licensing authority must copy electronic applications, made via GOV.UK or its own facility, to responsible authorities no later than the first working day after the application

is given. However, if an applicant submits any part of their application in writing, the applicant will remain responsible for copying it to responsible authorities.

Applications via the local authority electronic application facility

8.25 Where applications are made on the licensing authority's own electronic facility, the application will be taken to be 'given' when the applicant has submitted a complete application form and paid the fee. The application is given at the point at which it becomes accessible to the authority by means of the facility. The licensing authority must acknowledge the application as quickly as possible, specifying the statutory time period and giving details of the appeal procedure.

'Holding' and 'deferring' electronic applications

8.26 The Government recommends (as for written applications) that electronic applications should not be returned if they contain obvious and minor errors such as typing mistakes, or small errors that can be rectified with information already in the authority's possession. However, if this is not the case and required information is missing or incorrect, the licensing authority may 'hold' the application until the applicant has supplied all the required information. This effectively resets the 28 day period for determining an application and may be done any number of times until the application form is complete. Licensing authorities must ensure that they notify the applicant as quickly as possible of any missing (or incorrect) information, and explain how this will affect the statutory timescale and advertising requirements.

8.27 If an application has been given at the weekend, the notice advertising the application (where applicable) may already be displayed outside the premises by the time that the licensing authority downloads the application. It is therefore recommended that, if a licensing authority holds an application, it should inform the applicant that the original (or if necessary, amended) notice must be displayed until the end of the revised period. The licensing authority should also advise the applicant that they should not advertise the application in a local newspaper until they have received confirmation from the licensing authority that the application includes all the required information. To ensure clarity for applicants, the Government recommends that licensing authorities include similar advice on their electronic application facilities (where these exist) to ensure that applicants do not incur any unnecessary costs.

8.28 If an applicant persistently fails to supply the required information, the licensing authority may refuse the application and the applicant must submit a new application.

8.29 Licensing authorities may also 'defer' electronic applications once if the application is particularly complicated, for example if representations are received and a hearing is required. This allows the licensing authority to extend the statutory time period for the determination of the application by such time as is necessary, including, if required, arranging and holding a hearing. Licensing authorities must ensure that applicants are informed as quickly as possible of a decision to defer, and the reasons for the deferral, before the original 28 days has expired.

Written applications

8.30 A written 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. For example, it would not be appropriate to send an application for premises

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which was not a vessel to the Maritime and Coastguard Agency. The application must be accompanied by:

- the required fee (details of fees may be viewed on the GOV.UK website);
- an operating schedule (see below);
- a plan of the premises in a prescribed form; 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 (DPS).

- 8.31 If the application is being made by an individual it should be accompanied by acceptable evidence of entitlement to work in the UK (this includes where the application is submitted electronically), as set out in the application form (see paragraph 4.8).
- 8.32 If the application is being made in respect of a community premises, it may be accompanied by the form of application to apply the alternative licence condition.
- 8.33 Guidance on completing premises licence, club premises certificate and minor variation forms can be found on the GOV.UK website. The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 contain provision about the prescribed form of applications, operating schedules and plans and are published on the legislation.gov.uk website.

Plans

- 8.34 Plans, for written and electronic applications, will not be required to be submitted in any particular scale, but they must be in a format which is “clear and legible in all material respects”, i.e. they must be accessible and provides sufficient detail for the licensing authority to be able to determine the application, including the relative size of any features relevant to the application. There is no requirement for plans to be professionally drawn as long as they clearly show all the prescribed information.

Beer gardens or other outdoor spaces

- 8.35 Applicants will want to consider whether they might want to use a garden or other outdoor space as a location from which alcohol will be consumed. The sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract. In scenarios where drink orders are taken by a member of staff in the garden or outdoor space and the member of staff then collects the drinks from the licensed premises and returns to deliver them to the customer this would be treated as an off-sale and any conditions that relate to off-sales would apply.
- 8.36 In such cases it will be not necessary to include the garden or other outdoor space on the plan as part of the area covered by the premises licence. However, it will be necessary for the applicant to include the garden or other outdoor space on the plan as part of the area covered by the premises licence if the intention is to provide a service whereby drinks are available for sale and consumption directly from that area (i.e. the provision of on-sales). This would apply in the case of an outdoor bar or a service whereby a member of staff who is in the garden or outdoor space carries with them drinks that are available for sale (without the need for the staff member to return to the licensed premises to collect them).
- 8.37 If the beer garden or other outdoor area is to be used for the consumption of off-sales only, there is no requirement to show it on the plan of the premises, but the prescribed

application form requires the applicant to provide a description of where the place is and its proximity to the premises.

Entitlement to work in the UK

- 8.38 Individuals applying for a premises licence for the sale of alcohol or late night refreshment must be entitled to work in the UK. From 6 April 2017 licensing authorities must be satisfied that an individual who applies for a premises licence is entitled to work in the UK. This includes applications made by more than one individual applicant. An application made by an individual without the entitlement to work in the UK must be rejected. This applies to applications which include the sale of alcohol and the provisions of late night refreshment, but does not include applications which apply to regulated entertainment only. For example, a person applying for a licence for a music venue who does not intend to sell alcohol or late night refreshment is not prohibited from applying for a licence on grounds of immigration status. However, they will commit a criminal offence if they work illegally.
- 8.39 The documents which may be relied on in support of an application demonstrating an entitlement to work in the UK are the same as for personal licence applicants see paragraph 4.8. Where there is sufficient evidence that the applicant is not resident in the UK there is no requirement that the applicant has an entitlement to work in the UK.
- 8.40 Where an applicant's permission to work in the UK is time-limited the licensing authority may issue a premises licence for an indefinite period, but the licence will become invalid when the immigration permission expires. The individual's entitlement to work in the UK may be extended or made permanent by the Home Office, and granting the licence for an indefinite period prevents the licensee from having to re-apply for a new licence. In the event that the Home Office cuts short or ends a person's immigration permission (referred to a curtailment or revocation), any licence issued on or after 6 April 2017 which authorises the sale of alcohol or provision of late night refreshment will automatically lapse. As with personal licences, the licensing authority is under no duty to carry out on going immigration checks to see whether a licence holder's permission to be in the UK has been brought to an end. For further details on entitlement to work see paragraphs 4.8 to 4.18.

Steps to promote the licensing objectives

- 8.41 In completing an operating schedule, applicants are expected to have regard to the statement of licensing policy for their area. They must also be aware of the expectations of the licensing authority and the responsible authorities as to the steps that are appropriate for the promotion of the licensing objectives, and to demonstrate knowledge of their local area when describing the steps they propose to take to promote the licensing objectives. Licensing authorities and responsible authorities are expected to publish information about what is meant by the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. However, applicants are also expected to undertake their own enquiries about the area in which the premises are situated to inform the content of the application.
- 8.42 Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:

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- the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;
 - any risk posed to the local area by the applicants' proposed licensable activities; and
 - any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.
- 8.43 Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.
- 8.44 It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives. For example, premises with close proximity to residential premises should consider what effect this will have on their smoking, noise management and dispersal policies to ensure the promotion of the public nuisance objective. Applicants must consider all factors which may be relevant to the promotion of the licensing objectives, and where there are no known concerns, acknowledge this in their application.
- 8.45 The majority of information which applicants will require should be available in the licensing policy statement in the area. Other publicly available sources which may be of use to applicants include:
- the Crime Mapping website;
 - Neighbourhood Statistics websites;
 - websites or publications by local responsible authorities;
 - websites or publications by local voluntary schemes and initiatives; and
 - on-line mapping tools.
- 8.46 While applicants are not required to seek the views of responsible authorities before formally submitting their application, they may find them to be a useful source of expert advice on local issues that should be taken into consideration when making an application. Licensing authorities may wish to encourage co-operation between applicants, responsible authorities and, where relevant, local residents and businesses before applications are submitted in order to minimise the scope for disputes to arise.
- 8.47 Applicants are expected to provide licensing authorities with sufficient information in this section to determine the extent to which their proposed steps are appropriate to promote the licensing objectives in the local area. Applications must not be based on providing a set of standard conditions to promote the licensing objectives and applicants are expected to make it clear why the steps they are proposing are appropriate for the premises.
- 8.48 All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives, as 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.

- 8.49 For some premises, it is possible that no measures will be appropriate to promote one or more of the licensing objectives, for example, because they are adequately covered by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that are proposed to promote each of the licensing objectives.

Variations

Introduction

- 8.50 Where a premises licence holder wishes to amend the licence, the 2003 Act in most cases permits an application to vary to be made rather than requiring an application for a new premises licence. The process to be followed will depend on the nature of the variation and its potential impact on the licensing objectives. Applications to vary can be made electronically via GOV.UK or by means of the licensing authority's own electronic facility following the procedures set out in Chapter 8 above.

Simplified processes

- 8.51 There are simplified processes for making applications, or notifying changes, in the following cases:
- a change of the name or address of someone named in the licence (section 33);
 - an application to vary the licence to specify a new individual as the designated premises supervisor (DPS) (section 37);
 - a request to be removed as the designated premises supervisor (section 41);
 - an application by a licence holder in relation to community premises authorised to sell alcohol to remove the usual mandatory conditions set out in sections 19(2) and 19(3) of the 2003 Act concerning the supervision of alcohol sales by a personal licence holder and the need for a DPS who holds a personal licence (sections 25A and 41D); and
 - an application for minor variation of a premises licence (sections 41A to 41C) or club premises certificate (sections 86A to 86C).
- 8.52 If an application to specify a new DPS or to remove the mandatory conditions concerning the supervision of alcohol sales is made electronically via GOV.UK or the licensing authority's own electronic facility, the authority must notify the police no later than the first working day after the application is given.
- 8.53 Where a simplified process requires the applicant (if they are not also the personal licence holder) to copy the application to the licence holder for information, this will apply regardless of whether the application is made in writing or electronically. Otherwise the general guidance set out above (paragraphs 8.21 to 8.28) on electronic applications applies.

Minor variations process

- 8.54 Variations to premises licences or club premises certificates that could not impact adversely on the licensing objectives are subject to a simplified 'minor variations' process. Under this process, the applicant is not required to advertise the variation in a newspaper or circular, or copy it to responsible authorities. However, they must display

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it on a white notice (to distinguish it from the blue notice used for full variations and new applications). The notice must comply with the requirements set out in regulation 26A of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005. In accordance with those regulations, the notice must be displayed for a period of ten working days starting on the working day after the minor variation application was given to the licensing authority.

- 8.55 On receipt of an application for a minor variation, the licensing authority must consider whether the variation could impact adversely on the licensing objectives. It is recommended that decisions on minor variations should be delegated to licensing officers.
- 8.56 In considering the application, the licensing authority must consult relevant responsible authorities (whether the application is made in writing or electronically) if there is any doubt about the impact of the variation on the licensing objectives and they need specialist advice, and take their views into account in reaching a decision. The application is unlikely to be relevant to all responsible authorities.
- 8.57 The licensing authority must also consider any relevant representations received from other persons within the time limit referred to below. As stated earlier in this Guidance, representations are only relevant if they clearly relate to the likely effect of the grant of the variation on the promotion of at least one of the licensing objectives; representations must be confined to the subject matter of the variation. In the case of minor variations, there is no right to a hearing (as for a full variation or new application), but licensing authorities must take any representations into account in arriving at a decision.
- 8.58 Other persons have ten working days from the 'initial day', that is to say, the day after the application is received by the licensing authority, to submit representations. The licensing authority must therefore wait until this period has elapsed before determining the application, but must do so at the latest within 15 working days, beginning on the first working day after the authority received the application, with effect either that the minor variation is granted or the application is refused.
- 8.59 If the licensing authority fails to respond to the applicant within 15 working days (see section 193 of the 2003 Act for the definition of working day), the application will be treated as refused and the authority must return the fee to the applicant forthwith. However, the licensing authority and the applicant may agree instead that the undetermined application should be treated as a new application and that the fee originally submitted will be treated as a fee for the new application.
- 8.60 Where an application is refused and is then re-submitted through the full variation process, the full 28 day notification period will apply from the date the new application is received and applicants should advertise the application and copy it to all responsible authorities (in accordance with the regulations applicable to full variations).
- 8.61 Minor variations will generally fall into four categories: minor changes to the structure or layout of premises; small adjustments to licensing hours; the removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions; and the addition of certain licensable activities. In all cases the overall test is whether the proposed variation could impact adversely on any of the four licensing objectives.

Changes to structure/layout

- 8.62 Many small variations to layout will have no adverse impact on the licensing objectives.

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However, changes to layout should be referred to the full variation process if they could potentially have an adverse impact on the promotion of the licensing objectives, for example by:

- increasing the capacity for drinking on the premises;
- affecting access between the public part of the premises and the rest of the premises or the street or public way, for instance, block emergency exits or routes to emergency exits; or
- impeding the effective operation of a noise reduction measure such as an acoustic lobby.

- 8.63 Licensing authorities will also need to consider the combined effect of a series of applications for successive small layout changes (for example, as part of a rolling refurbishment of premises) which in themselves may not be significant, but which cumulatively may impact adversely on the licensing objectives. This emphasises the importance of having an up-to-date copy of the premises plan available.
- 8.64 An application to remove a licensable activity should normally be approved as a minor variation. Variations to add the sale by retail or supply of alcohol to a licence are excluded from the minor variations process and must be treated as full variations in all cases.
- 8.65 For other licensable activities, licensing authorities will need to consider each application on a case by case basis and in light of any licence conditions put forward by the applicant.

Licensing hours

- 8.66 Variations to the following are excluded from the minor variations process and must be treated as full variations in all cases:
- to extend licensing hours for the sale or supply of alcohol for consumption on or off the premises between the hours of 23.00 and 07.00; or
 - to increase the amount of time on any day during which alcohol may be sold or supplied for consumption on or off the premises.
- 8.67 Applications to reduce licensing hours for the sale or supply of alcohol or, in some cases, to move (without increasing) the licensed hours between 07.00 and 23.00 will normally be processed as minor variations.
- 8.68 Applications to vary the time during which other licensable activities take place should be considered on a case-by-case basis with reference to the likely impact on the licensing objectives.

Licensing conditions

a) Imposed conditions

- 8.69 Licensing authorities cannot impose their own conditions on the licence through the minor variations process. If the licensing officer considers that the proposed variation would impact adversely on the licensing objectives unless conditions are imposed, they should refuse it.

b) Volunteered conditions

- 8.70 Applicants may volunteer conditions as part of the minor variation process. These conditions may arise from their own risk assessment of the variation, or from informal discussions with responsible authorities or the licensing authority.
- 8.71 For instance, there may be circumstances when the licence holder and a responsible authority such as the police or environmental health authority, agree that a new condition should be added to the licence (for example, that a nightclub adds the provision of late night refreshment to its licence to ensure a longer period of dispersal). Such a change would not normally impact adversely on the licensing objectives and could be expected to promote them by preventing crime and disorder or public nuisance. In these circumstances, the minor variation process may provide a less costly and onerous means of amending the licence than a review, with no risk to the licensing objectives. However, this route should only be used where the agreed variations are minor and the licence holder and the responsible authority have come to a genuine agreement. The licensing authority should be alive to any attempts to pressure licence or certificate holders into agreeing to new conditions where there is no evidence of a problem at the premises and, if there is any doubt, should discuss this with the relevant parties.

c) Amending or removing existing conditions

- 8.72 However, there may be some circumstances when the minor variation process is appropriate. Premises may change over time and the circumstances that originally led to the condition being attached or volunteered may no longer apply. For example, there may be no need for door supervision if a bar has been converted into a restaurant. Equally some embedded conditions may no longer apply.
- 8.73 Changes in legislation may invalidate certain conditions. Although the conditions do not have to be removed from the licence, licence holders and licensing authorities may agree that this is desirable to clarify the licence holder's legal obligations. There may also be cases where it is appropriate to revise the wording of a condition that is unclear or unenforceable. This would be acceptable as a minor variation as long as the purpose of the condition and its intended effect remain unchanged. Such a change could be expected to promote the licensing objectives by making it easier for the licence holder to understand and comply with the condition and easier for the licensing authority to enforce it.

Full variations process

- 8.74 Any other changes to the licence or certificate require an application to vary under sections 34 or 84 of the 2003 Act.
- 8.75 Licensing authorities may wish to consider whether there is any likely impact on the promotion of the licensing objectives in deciding whether there is a need for an application to vary in relation to features which are not required to be shown on the plan under section 17 of the 2003 Act, but have nevertheless been included, for example, moveable furniture (altering the position of tables and chairs) or beer gardens (installation of a smoking shelter that will not affect the use of exits or escape routes).
- 8.76 However, it should be noted that a section 34 application cannot be used to vary a licence so as to:

- extend a time limited licence;
- transfer the licence from one holder to another; or
- transfer the licence from one premises to another.

8.77 If an applicant wishes to make these types of changes to the premises licence, the applicant should make a new premises licence application under section 17 of the 2003 Act; or, to transfer the licence to another holder, an application under section 42 of the 2003 Act.

Relaxation of opening hours for local, national and international occasions

- 8.78 It should normally be possible for applicants for premises licences and club premises certificates to anticipate special occasions which occur regularly each year – such as bank holidays and St. George’s or St. Patrick’s Day – and to include appropriate opening hours in their operating schedules. Similarly, temporary event notices should be sufficient to cover other events which take place at premises that do not have a premises licence or club certificate.
- 8.79 However, exceptional events of local, national or international significance may arise which could not have been anticipated when the application was first made. In these circumstances, the Secretary of State may make a licensing hours order to allow premises to open for specified, generally extended, hours on these special occasions. This avoids the need for large numbers of applications to vary premises licences and club premises certificates. Typical events might include a one-off local festival or a Royal Jubilee.

Advertising applications

- 8.80 The requirements governing the advertisement of applications for the grant, variation or review of premises licences and club premises certificates are contained in Regulations 25 and 26 of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 which are published on the Government’s legislation website.
- 8.80 Applicants are required to:
- publish a notice in a local newspaper or, if there is none, in a local newsletter, circular or similar document circulating in the area in which the premises are situated; and
 - display a brief summary of the application on an A4 (or larger) size notice, on pale blue paper in a prominent position immediately on or outside the premises for at least 28 consecutive days (starting on the day after the day on which the application was given to the relevant licensing authority). The notice must be printed legibly in black ink or typed in black in size 16 font or larger.
 - ensure that the above notices contain the name of the applicant, postal addresses of the premises (or if there is no postal address a description of the premises sufficient to enable the location to be identified), relevant licensing authority and the date by which any representations in relation to the application need to be made to the licensing authority. They should also contain a statement of the relevant licensable activities or relevant qualifying club activities that it is proposed will be carried on at the premises, or in the case of an application to vary a premises licence or a club premises certificate the notices shall briefly describe the proposed variation.

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- 8.81 It is the responsibility of the applicant for putting the notice up, however licensing authorities should consider where the signs should be placed and advise the applicant where appropriate, to ensure people will see them, in particular if an application is likely to be of interest to the public. As prescribed in regulations, licensing authorities must also place a notice on their website outlining key details of the application as set out in regulations, including:
- the name of the applicant or club;
 - the postal address of the premises or club premises;
 - the postal address and, where applicable, the internet address where the relevant licensing authority's register is kept and where and when the record of the application may be inspected;
 - the date by which representations from responsible authorities or other persons should be received and how these representations should be made; and
 - that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.
- 8.82 The summary of the application should set out matters such as the proposed licensable activities and the proposed hours of opening and should be clearly displayed for the period during which representations may be made, together with information about where the details of the application may be viewed.
- 8.83 Licensing authorities in Wales should consider encouraging applicants to provide details in the alternative language (Welsh or English) to that of the main advertisement itself where the application may be viewed. Therefore, if an applicant publishes a notice in English they should be encouraged to provide a statement in Welsh as to where the application may be viewed, and vice versa. This would allow the reader of the notice to make enquiries to the licensing authority and find out the nature of the application.
- 8.84 Licensing authorities in Wales are also required to publish key information from licence applications in Welsh on their websites.
- 8.85 In the case of applications for premises licences involving internet or mail order sales, notices should be conspicuously displayed at the place where the alcohol is appropriated to the contract.
- 8.86 A vessel which is not permanently moored or berthed is treated as if it were a premises situated in a place where it is usually moored or berthed. The newspaper advertisement notice for such a vessel would need to be in relation to this place (where it is usually moored or berthed) and there is no provision requiring such advertising in other areas, for instance, if the vessel journeys through other licensing authority areas.
- 8.87 Arrangements should be put in place by the licensing authority for other parties to view a record of the application in the licensing register as described in Schedule 3 to the 2003 Act. Charges made for copies of the register should not exceed the cost of preparing such copies. Licensing authorities may wish to conduct random and unannounced visits to premises to confirm that notices have been clearly displayed and include relevant and accurate information.

Applications to change the designated premises supervisors

8.88 Chapter 4 covers designated premises supervisors and applications to vary a premises licence covering sales of alcohol by specifying a new designated premises supervisor. Chapter 4 covers applications by community premises to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act concerning the authorisation of alcohol sales by a personal licence holder and the need for a designated premises supervisor who holds a personal licence.

Provisional statements

8.89 Where premises are being or are about to be constructed, extended or otherwise altered for the purpose of being used for one or more licensable activities, investors may be unwilling to commit funds unless they have some assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed.

8.90 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.

8.91 Any person falling within section 16 of the 2003 Act can apply for a premises licence before new premises are constructed, extended or changed. This would be possible where clear plans of the proposed structure exist and the applicant is in a position to complete an operating schedule including details of:

- 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.

8.92 In such cases, the licensing authority would include in the licence the date upon which it would come into effect. A provisional statement will normally only be required when the information described above is not available.

8.93 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”. This will not be time limited, but the longer the delay before an application for a premises licence is made, the more likely it is that there will be material changes and that the licensing authority will accept representations. “Person” in this context includes a business.

8.94 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 appropriate for the promotion of the licensing objectives to:

- attach conditions to the licence;
- rule out any of the licensable activities applied for;
- refuse to specify the person nominated as premises supervisor; or

- reject the application.

It will then issue the applicant with a provisional statement setting out the details of that decision together with its reasons.

- 8.95 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.
- 8.96 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 other persons will be excluded in certain circumstances. These are where:
- the application for a licence is in the same form as the licence described in the provisional statement;
 - the 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 other person 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 proximity of those premises since the provisional statement was made.
- 8.97 Any decision of the licensing authority on an application for a provisional statement will not relieve an applicant of the need to apply for planning permission, building control approval of the building work, or in some cases both planning permission and building control.
- 8.98 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).

Transfers of premises licences

- 8.99 The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for a premises licence to be transferred to them. Where the application is made in writing, the applicant must give notice of the application to the chief officer of police in all cases, and the Home Office (Immigration Enforcement) if the licence authorises the sale of alcohol or provision of late night refreshment. Where it is made electronically via GOV.UK or the licensing authority's electronic facility, the licensing authority must notify the police and the Home Office (Immigration Enforcement) no later than the first working day after the application is given. However, the responsibility to notify the DPS remains with the applicant. Otherwise the general guidance on electronic applications set out in paragraphs 8.21 to 8.28 applies.
- 8.100 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process. Section 43 of the 2003 Act provides a mechanism which allows the transfer to come into immediate interim effect as soon as the licensing authority receives it, 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 or the Home Office

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(Immigration Enforcement) 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.

- 8.101 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. The Home Office (Immigration Enforcement) may object if it considers that granting the transfer would be prejudicial to the prevention of illegal working in licensed premises. Such objections are expected to be rare and arise because the police or the Home Office (Immigration Enforcement) have evidence that the business or individuals seeking to hold the licence, or businesses or individuals linked to such persons, are involved in crime (or disorder) or employing illegal workers.
- 8.102 Such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police or the Home Office (Immigration Enforcement) 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 it would raise the matter immediately with the chief officer of police or the Home Office (Immigration Enforcement).

Interim authorities

- 8.103 The 2003 Act provides special arrangements for the continuation of permissions under a premises licence when the holder of a licence dies suddenly, becomes bankrupt, mentally incapable or ceases to be entitled to work in the UK. In the normal course of events, the licence would lapse in such circumstances. However, 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, lessor or employees working at the premises in question; and could bring unnecessary disruption to customers' plans. The 2003 Act therefore provides for the licence to be capable of being reinstated in a discrete period of time in certain circumstances.
- 8.104 These circumstances arise only where a premises licence has lapsed owing to the death, incapacity or insolvency of the holder or where the holder ceases to be entitled to work in the UK. In such circumstances, an "interim authority" notice may be given to the licensing authority within 28 consecutive days beginning the day after the licence lapsed. Where applications are made in writing, the applicant must give notice of the application to the chief officer of police in all cases, and the Home Office (Immigration Enforcement) if the licence authorises the sale of alcohol or provision of late night refreshment. If an application is made electronically via GOV.UK or the licensing authority's electronic facility, the licensing authority must notify the police and the Home Office (Immigration Enforcement) no later than the first working day after the notice is given.
- 8.105 An interim notice may only be given either by a person with a prescribed interest in the premises as set out in the regulations made under the 2003 Act (which may be viewed on www.legislation.gov.uk, the Government's legislation 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

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insolvent, that person's insolvency practitioner). The person giving the interim authority notice must be entitled to work in the UK.

- 8.106 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 three months.
- 8.107 The interim authority notice ceases to have effect unless, by the end of the initial period of 28 consecutive days, a copy of the notice has been given to the chief officer of police and the Home Office (Immigration Enforcement). Within two working days of receiving the copy, 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. Similarly, the Home Office (Immigration Enforcement) may give a notice to the licensing authority if satisfied that the exceptional circumstances of the case are such that failure to cancel the interim authority would undermine the prevention of illegal working in licensed premises. In such circumstances, the licensing authority must hold a hearing to consider the objection notice and cancel the interim authority notice if it decides that it is appropriate to do so for the promotion of the crime prevention objective.
- 8.108 Licensing authorities should be alert to the need to consider the objection quickly. Under section 50 of the 2003 Act, where the premises licence lapses (because of death, incapacity or insolvency of the holder or because the holder is no longer entitled to work in the UK) 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 28 consecutive days of the lapse for the transfer of the licence to them with immediate effect pending the determination of the application. This will result in the licence being reinstated from the point at which the transfer application was received by the licensing authority. Where the application is made in writing, the person applying for the transfer must copy their application to the chief officer of police and the Home Office (Immigration Enforcement). If the application is made electronically the licensing authority must copy the application to the police and the Home Office (Immigration Enforcement).

Right of freeholders etc to be notified of licensing matters

- 8.109 A person (which will include a business or company) with a property interest in any premises situated in the licensing authority's area may give notice of their interest to the authority using a prescribed form and on payment of the relevant fee. The application may be made in writing or electronically via GOV.UK or the licensing authority's own facility, in which case the guidance at paragraphs 8.21 to 8.28 applies. Details of fees and forms are available on the GOV.UK website. It is entirely at the discretion of such persons whether they choose to register or not. It is not a legal requirement. Those who may take advantage of this arrangement include the freeholder or leaseholder, a legal mortgagee in respect of the premises, a person in occupation of the premises or any other person prescribed by the Secretary of State.
- 8.110 The notice will have effect for 12 months but a new notice can be given every year. While the notice has effect, if any change relating to the premises concerned has been made to the licensing register (which the licensing authority has a duty to keep under

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section 8 of the 2003 Act), the licensing authority must notify the person who registered an interest of the matter to which the change relates. The person will also be notified of their right under section 8 to request a copy of the information contained in any entry in the register. In cases relating to interim authority notices (see above), it is important that such communications are dealt with promptly.

9. Determining applications

General

- 9.1 When a licensing authority receives an application for a new premises licence or an application to vary an existing premises licence, it must determine whether the application has been made in accordance with section 17 of the 2003 Act, and in accordance with regulations made under sections 17(3) to (6), 34, 42, 54 and 55 of the 2003 Act. It must similarly determine applications for the grant of club premises certificates made in accordance with section 71 of the 2003 Act, and in accordance with regulations made under sections 71(4) to (7), 84, 91 and 92 of the 2003 Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with those regulations.

Where no representations are made

- 9.2 A hearing is not required where an application has been properly made and no responsible authority or other person has made a relevant representation or where representations are made and subsequently withdrawn. In these cases, the licensing authority must grant the application in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions under the 2003 Act. This should be undertaken as a simple administrative process by the licensing authority's officials who should replicate the proposals contained in the operating schedule to promote the licensing objectives in the form of clear and enforceable licence conditions. Licensing authorities should not hold hearings for uncontested applications, for example in situations where representations have been made and conditions have subsequently been agreed.

Where representations are made

- 9.3 Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant (see paragraphs 9.4 to 9.10 below), the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

Relevant, vexatious and frivolous representations

- 9.4 A representation is "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. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to

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the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

- 9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.
- 9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.
- 9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.
- 9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive 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. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.
- 9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them.

The role of responsible authorities

- 9.11 Responsible authorities under the 2003 Act are automatically notified of all new applications. While all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.

9.12 Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area⁵. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

Licensing authorities acting as responsible authorities

- 9.13 Licensing authorities are included in the list of responsible authorities. A similar framework exists in the Gambling Act 2005. The 2003 Act does not require responsible authorities to make representations about applications for the grant of premises licences or to take any other steps in respect of different licensing processes. It is, therefore, for the licensing authority to determine when it considers it appropriate to act in its capacity as a responsible authority; the licensing authority should make this decision in accordance with its duties under section 4 of the 2003 Act.
- 9.14 Licensing authorities are not expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority.
- 9.15 It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority.
- 9.16 The 2003 Act enables licensing authorities to act as responsible authorities as a means of early intervention; they may do so where they consider it appropriate without having to wait for representations from other responsible authorities. For example, the licensing

⁵ Police and Crime Commissioners are expected to have a central role working in partnership with local authorities, enforcement bodies and other local partners to decide on what action is needed to tackle alcohol-related crime and disorder in their areas. However, the Chief Officer of Police remains the named responsible authority under the 2003 Act.

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authority may (in a case where it has applied a cumulative impact policy) consider that granting a new licence application will add to the cumulative impact of licensed premises in its area and therefore decide to make representations to that effect, without waiting for any other person to do so.

- 9.17 In cases where a licensing authority is also acting as responsible authority in relation to the same process, it is important to achieve a separation of responsibilities within the authority to ensure procedural fairness and eliminate conflicts of interest. In such cases licensing determinations will be made by the licensing committee or sub committee comprising elected members of the authority (although they are advised by a licensing officer). Therefore, a separation is achieved by allocating distinct functions (i.e. those of licensing authority and responsible authority) to different officials within the authority.
- 9.18 In these cases, licensing authorities should allocate the different responsibilities to different licensing officers or other officers within the local authority to ensure a proper separation of responsibilities. The officer advising the licensing committee (i.e. the authority acting in its capacity as the licensing authority) must be a different person from the officer who is acting for the responsible authority. The officer acting for the responsible authority should not be involved in the licensing decision process and should not discuss the merits of the case with those involved in making the determination by the licensing authority. For example, discussion should not take place between the officer acting as responsible authority and the officer handling the licence application regarding the merits of the case. Communication between these officers in relation to the case should remain professional and consistent with communication with other responsible authorities. Representations, subject to limited exceptions, must be made in writing. It is for the licensing authority to determine how the separate roles are divided to ensure an appropriate separation of responsibilities. This approach may not be appropriate for all licensing authorities and many authorities may already have processes in place to effectively achieve the same outcome.
- 9.19 Smaller licensing authorities, where such a separation of responsibilities is more difficult, may wish to involve officials from outside the licensing department to ensure a separation of responsibilities. However, these officials should still be officials employed by the authority.

Health bodies acting as responsible authorities

- 9.20 Where a local authority's Director of Public Health in England (DPH)⁶ or Local Health Board (LHB) (in Wales) exercises its functions as a responsible authority, it should have sufficient knowledge of the licensing policy and health issues to ensure it is able to fulfil those functions. If the authority wishes to make representations, the DPH or LHB will need to decide how best to gather and coordinate evidence from other bodies which exercise health functions in the area, such as emergency departments and ambulance services.
- 9.21 Health bodies may hold information which other responsible authorities do not, but which would assist a licensing authority in exercising its functions. This information may

⁶ This change was made as a result of the commencement of measures in the Health and Social Care Act 2012 which amended the 2003 Act and further provision in the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

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be used by the health body to make representations in its own right or to support representations by other responsible authorities, such as the police. Such representations can potentially be made on the grounds of all four licensing objectives. Perhaps the most obvious example is where drunkenness leads to accidents and injuries from violence, resulting in attendances at emergency departments and the use of ambulance services. Some of these incidents will be reported to the police, but many will not. Such information will often be relevant to the public safety and crime and disorder objectives.

- 9.22 However, health bodies are encouraged to make representations in respect of any of the four licensing objectives without necessarily seeking views from other responsible authorities where they have appropriate evidence to do so. There is also potential for health bodies to participate in the licensing process in relation to the protection of children from harm. This objective not only concerns the physical safety of children, but also their moral and psychological well being.
- 9.23 Evidence relating to under 18s alcohol-related emergency department attendance, hospital admissions and underage sales of alcohol, could potentially have implications for both the protection of children from harm and the crime and disorder objectives. Health bodies can provide evidence to lead or support representations in relation to this objective. In relation to proxy purchases, data collected by health bodies could be used to inform other responsible authorities, including the police and licensing authorities, about a prevalence of proxy purchasing in a particular area. For example, the police could use this data to tackle instances of 'shoulder tapping' (where under 18s approach adults to buy alcohol on their behalf) and to suggest measures which retailers might be able to take to ensure, as far as possible, that they are not knowingly selling alcohol to an adult who is buying on behalf of a person aged under 18. Although less obvious, health bodies may also have a role to play in the prevention of public nuisance where its effect is prejudicial to health and where they hold relevant data.
- 9.24 DPHs and LHBs will need to consider how to collect anonymised information about incidents that relate to specific premises or premises in a particular area (for example, a cumulative impact zone). Many areas have already developed procedures for local information sharing to tackle violence, which could provide useful evidence to support representations. The College of Emergency Medicine has issued guidelines for information sharing to reduce community violence which recommends that data about assault victims should be collected upon admission to emergency departments, including the date, time and location of the assault – i.e. the name of the pub, club or street where the incident occurred. Sometimes, it may be possible to link ambulance callouts or attendances at emergency departments to irresponsible practices at specific premises, such as serving alcohol to people who are intoxicated or targeting promotions involving unlimited or unspecified quantities of alcohol at particular groups.

Home Office Immigration Enforcement acting as a responsible authority

- 9.25 The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or late night refreshment with effect from 6 April 2017. In effect this conveys the role of responsible authority to Home Office Immigration Enforcement who exercises the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it will do so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

Disclosure of personal details of persons making representations

- 9.26 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.
- 9.27 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.
- 9.28 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.
- 9.29 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.
- 9.30 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.

Hearings

- 9.31 The Licensing Act 2003 (Hearings) Regulations 2005 governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, where the applicant and all of the persons who made relevant representations have given notice to the authority that they consider a hearing to be unnecessary. Where this is the case and the authority agrees that a hearing is unnecessary, it must forthwith give notice to the parties that the hearing has been dispensed with. Notwithstanding those regulatory provisions, in cases where the licensing authority believes that a hearing is still necessary, it is recommended that the authority should, as soon as possible, provide the parties with reasons in writing for the need to hold the hearing. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.

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- 9.32 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. The 2005 Hearings Regulations permit licensing authorities to extend a time limit provided for by those Regulations for a specified period where it considers this to be necessary in the public interest. For example, if the application is amended at the last moment, the licensing committee should consider giving other persons time to address the revised application before the hearing commences. Where the authority has extended a time limit it must forthwith give a notice to the parties involved stating the period of the extension and the reasons for it.
- 9.33 The 2005 Hearings Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed and the representations may be withdrawn orally at that hearing. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.34 Applicants should be encouraged to contact responsible authorities and others, such as local residents, who may be affected by the application before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.
- 9.35 There is no requirement in the 2003 Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees in reaching more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. This local authority officer representing other responsible authorities may be a licensing officer, but only if this licensing officer is acting as a responsible authority on behalf of the licensing authority and has had no role in the licensing determination process. This is to ensure that the responsible authorities are represented by an independent officer separate from the licensing determination process.
- 9.36 As noted in paragraphs 9.13 to 9.19 above, where the licensing officer is acting as a responsible authority the relevant steps should be followed to ensure that this individual has no role in the decision making process regarding the licensing determination.
- 9.37 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.
- 9.38 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:

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- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

- 9.39 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.
- 9.40 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.
- 9.41 In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate.

Determining actions that are appropriate for the promotion of the licensing objectives

- 9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.
- 9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is

imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

Considering cases where licensing and planning applications are made simultaneously

- 9.45 Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

10. Conditions attached to premises licences and club premises certificates

General

- 10.1 This chapter provides further guidance in relation to conditions attached to premises licences and club premises certificates. General principles on licence conditions are set out in Chapter 1 (see paragraph 1.16).
- 10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by an unlimited fine or up to six months' imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.
- 10.3 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

Proposed conditions

- 10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.
- 10.5 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

Consistency with steps described in operating schedule

- 10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts.

Imposed conditions

- 10.8 The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations.
- 10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.

Proportionality

- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

Naming, packing and promotion in retail premises

- 10.11 The Government acknowledges that the irresponsible naming, packing or promotion of alcoholic drinks may contribute to alcohol related harms. Where there is direct evidence of specific incidents of irresponsible naming, packing or promotion of alcoholic drinks linked to the undermining of one of the licensing objectives, licensing authorities should, in the exercise of their licensing functions (in particular, in relation to an application for the grant, variation or review of a premises licence), consider whether it is appropriate to impose conditions on licences that require the licence holder to comply with the Portman Group's Retailer Alert Bulletins. This condition should be considered on a case by case basis and in the context of the promotion of the licensing objectives.
- 10.12 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 there has been compliance with the decision.

Hours of trading

- 10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.
- 10.14 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 10.15 Shops, stores and supermarkets should normally 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 good reasons, based on the licensing objectives, for restricting those hours.

The performance of plays

- 10.16 The 2003 Act provides that other than for the purposes of public safety, conditions must not be attached to premises licences or club premises certificates authorising the performance of a play⁷ which attempt to censor or modify the content of plays in any way. Any such condition would be ultra vires the 2003 Act.

Censorship

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

Major festivals and carnivals

- 10.18 Licensing authorities should publicise the need for the organisers of major festivals and carnivals to approach them at the earliest opportunity to discuss arrangements for licensing activities falling under the 2003 Act. For some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations

⁷ See chapter 15 for when a performance of a play is licensable.

within the premises. This would involve the preparation of a substantial operating schedule, and licensing authorities should offer advice and assistance about its preparation.

- 10.19 For other events, applications for many connected premises licences may be made which in combination will represent a single festival. It is important that licensing authorities should publicise the need for proper co-ordination of such arrangements and will need to ensure that responsible authorities are aware of the connected nature of the individual applications.
- 10.20 Local authorities should bear in mind their ability to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name.⁸ This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas where festivals and carnivals might take place.⁹ Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give performances in these places, although they would need the permission of the local authority to put on the event.

Fixed prices

- 10.21 Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area. This may be unlawful under current law. However, it is important to note that the mandatory conditions made under sections 19A and 73B of the 2003 Act prohibit a number of types of drinks promotions including where they give rise to a significant risk to any one of the four licensing objectives; the mandatory conditions also prohibit the sale of alcohol below the permitted price, as defined in paragraph 10.56.
- 10.22 Where licensing authorities are asked by the police, other responsible authorities or other persons to impose restrictions on promotions in addition to those restricted by the mandatory conditions, they should consider each application on its individual merits, tailoring any conditions carefully to cover only irresponsible promotions in the particular and individual circumstances of any premises where these are appropriate for the promotion of the licensing objectives. In addition, when considering any relevant representations which demonstrate a clear causal link between sales promotions or price discounting and levels of crime and disorder on or near the premises, it would be appropriate for the licensing authority to consider the imposition of a new condition prohibiting irresponsible sales promotions or the discounting of prices of alcoholic beverages at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice.

⁸ No licence is required for any entertainment provided by or on behalf of a local authority, see paragraphs 15.16-15.19

⁹ The register of public spaces: <https://www.gov.uk/government/publications/licensed-spaces-register>

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

- 10.23 Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with exceptionally high capacities, which are used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons. Previous research has demonstrated that the environment within such establishments can have a significant bearing on the likelihood of crime and disorder.
- 10.24 Where appropriate, conditions can be attached to premises licences for the promotion of the prevention of crime and disorder at such premises that require the premises to observe:
- a prescribed capacity;
 - an appropriate ratio of tables and chairs to customers based on the capacity; and
 - a requirement that security staff holding the appropriate SIA licence or exemption are present to control entry for the purpose of compliance with the capacity limit and to deny entry to individuals who appear drunk or disorderly or both.

Mandatory conditions in relation to the supply of alcohol

- 10.25 The 2003 Act provides for the following mandatory conditions to be included in every licence and/or club premises certificate in the circumstances specified.

Designated premises supervisor

- 10.26 The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or the personal licence has been suspended.
- 10.27 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. The requirements set out in relation to the designated premises supervisor and authorisation of alcohol sales by a personal licence holder do not apply to community premises in respect of which a successful application has been made to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (see Chapter 4 of this Guidance).
- 10.28 The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives.

Authorisation by personal licence holders

- 10.29 In addition, every premises licence that authorises the sale of alcohol must require that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. This in most instances will be the designated premises supervisor who must hold a valid personal licence. Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. This does not mean that the condition should require the presence of the designated premises supervisor or any other personal licence holder on the premises at all times.
- 10.30 Similarly, the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol but may be absent at times from the premises when a transaction takes place. However, the responsible personal licence holder may not be able to escape responsibility for the actions of anyone authorised to make sales.
- 10.31 “Authorisation” does not imply direct supervision by a personal licence holder of each sale of alcohol. The question arises as to how sales can be authorised. Ultimately, whether an authorisation has been given is a question of fact that would have to be decided by the courts on the evidence before it in the course of a criminal prosecution.
- 10.32 The following factors should be relevant in considering whether or not an authorisation has been given:
- the person(s) authorised to sell alcohol at any particular premises should be clearly identified;
 - the authorisation should have specified the acts which may be carried out by the person who is authorised to supply alcohol;
 - there should be an overt act of authorisation, for example, a specific written statement given to the individual who is authorised to supply alcohol; and
 - there should be in place sensible arrangements for the personal licence holder to monitor the activity that they have authorised on a reasonably regular basis.
- 10.33 It is strongly recommended that personal licence holders give specific written authorisations to individuals whom they are authorising to retail alcohol. A single written authorisation would be sufficient to cover multiple sales over an unlimited period. This would assist personal licence holders in demonstrating due diligence should issues arise with enforcement authorities; and would protect employees if they themselves are challenged in respect of their authority to sell alcohol.
- 10.34 Written authorisation is not a requirement of the 2003 Act and its absence alone could not give rise to enforcement action.
- 10.35 It must be remembered that while the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises.

Arrangements for the mandatory licence conditions

- 10.36 The mandatory conditions made under sections 19A and 73B of the 2003 Act (the conditions governing irresponsible promotions, dispensing alcohol directly into the mouth, provision of free tap water, age verification, small measures and the prohibition on sales of alcohol below the permitted price) do not have to be physically included in the licence or certificate but nonetheless will apply to every licence and certificate authorising the sale and supply of alcohol for consumption on the premises. The mandatory conditions set out in section 19 of the 2003 Act (the requirement for a DPS and for all sales to be made or authorised by a personal licence holder) do, however, have to be physically included in the licence. The mandatory licence conditions do not apply to activities (including the supply of alcohol) authorised by a temporary event notice.
- 10.37 Whereas the initial mandatory conditions in section 19 of the 2003 Act are set out in Annex 1 of the licence, the additional mandatory conditions made under section 19A of the 2003 Act are treated as if they were included in existing licences and certificates on the date that those conditions came into force.
- 10.38 Following their commencement, the mandatory conditions overrode any pre-existing conditions already included in a licence or certificate insofar as the mandatory conditions were identical to, or inconsistent with or more onerous than, any pre-existing conditions. It is not necessary to record on the face of existing licences and certificates the impact that the introduction of the mandatory conditions has had on pre-existing conditions.

Irresponsible promotions

- 10.39 Under this condition, the “responsible person” (defined in the 2003 Act as the holder of a premises licence, designated premises supervisor, a person aged 18 or over who is authorised to allow the sale or supply of alcohol by an under 18 or a member or officer of a club present on the club premises who can oversee the supply of alcohol) should be able to demonstrate that they have ensured that staff do not carry out, arrange or participate in any irresponsible promotions. An irresponsible promotion is one that fits one of the descriptions below (or is substantially similar), is carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises. The aim of the condition is to prohibit or restrict promotions which encourage people to drink more than they might ordinarily do and in a manner which undermines the licensing objectives.

Drinking games

- 10.40 Drinking games which require or encourage individuals to drink a quantity of alcohol within a time limit, or drink as much alcohol as possible within a time limit or otherwise, are prohibited. For example, this may include organised ‘drink downing’ competitions. This would not prevent the responsible person from requiring all drinks to be consumed or abandoned at, or before, the closing time of the premises. Nor does it necessarily prohibit ‘happy hours’ as long as these are not designed to encourage individuals to drink excessively or rapidly.

Large quantities of alcohol for free or a fixed price

10.41 Irresponsible promotions can include the provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted price, where there is a significant risk that such a promotion would undermine one or more of the licensing objectives. This includes alcohol provided to the public or to a group defined by a particular characteristic, for example, a promotion which offers women free drinks before a certain time or “all you can drink for £10”. Promotions can be designed with a particular group in mind (for example, over 65s). A common sense approach is encouraged, which may include specifying the quantity of alcohol included in it or not targeting a group which could become more vulnerable or present a greater risk of crime and disorder as a result of excessive alcohol consumption.

Prizes and rewards

10.42 The sale, supply or provision of free or discounted alcohol or any other item as a prize to encourage or reward the purchase and consumption of alcohol can be within the definition of an irresponsible promotion, where there is a significant risk that such a promotion would undermine one or more of the licensing objectives. This may include promotions under which free or discounted alcohol is offered as a part of the sale of alcohol, for example, “Buy one and get two free” and “Buy one cocktail and get a second cocktail for 25p”. This includes promotions which involve the provision of free or discounted alcohol within the same 24 hour period.

Posters and flyers

10.43 Irresponsible promotions can also include the sale or supply of alcohol in association with promotional materials on display in or around the premises, which can either be reasonably considered to condone, encourage or glamorise anti social behaviour or refer to the effects of drunkenness in any favourable manner.

Dispensing alcohol directly into the mouth

10.44 The responsible person (see paragraph 10.39) must ensure that no alcohol is dispensed directly into the mouth of a customer. For example, this may include drinking games such as the ‘dentist’s chair’ where a drink is poured continuously into the mouth of another individual and may also prevent a premises from allowing another body to promote its products by employing someone to dispense alcohol directly into customers’ mouths. An exception to this condition would be when an individual is unable to drink without assistance due to a disability.

Free potable water

10.45 The responsible person (see paragraph 10.39) must ensure that free potable water is provided on request to customers where it is reasonably available on the premises. What is meant by reasonably available is a question of fact; for example, it would not be reasonable to expect free tap water to be available in premises for which the water supply had temporarily been lost because of a broken mains water supply. However, it may be reasonable to expect bottled water to be provided in such circumstances.

Age verification

- 10.46 The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.39) to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and either a holographic mark or ultraviolet feature. The Home Office encourages licensed premises to accept cards bearing the Proof of Age Standards Scheme (PASS) hologram as their preferred proof of age, while acknowledging that many other forms of identification meet the requirements of the mandatory condition.
- 10.47 The premises licence holder or club premises certificate holder must ensure that staff (in particular, staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy which applies by the premises.
- 10.48 The designated premises supervisor (where there is one) must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. This means that the DPS has personal responsibility for ensuring that staff are not only aware of, but are also applying, the age verification policy.
- 10.49 It is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if premises have a policy that requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.
- 10.50 Licence holders should consider carefully what steps they are required to take to comply with the age verification requirements under the 2003 Act in relation to sales of alcohol made remotely. These include sales made online, by telephone and mail order sales, and alcohol delivery services. Each of these sales must comply with the requirements of the 2003 Act. The mandatory condition requires that age verification takes place before a person is served alcohol. Where alcohol is sold remotely (for example, online) or through a telephone transaction, the sale is made at this point but the alcohol is not actually served until it is delivered to the customer. Age verification measures (for example, online age verification) should be used to ensure that alcohol is not sold to any person under the age of 18. However, licence holders should also consider carefully what steps are appropriate to ensure that age verification takes place before the alcohol is served (i.e. physically delivered) to the customer to be satisfied that the customer is aged 18 or over. It is, therefore, the responsibility of the person serving or delivering the alcohol to ensure that age verification has taken place and that photo ID has been checked if the person appears to be less than 18 years of age.

Smaller measures

- 10.51 The responsible person (see paragraph 10.39) shall ensure that the following drinks, if sold or supplied on the premises, are available in the following measures:
- Beer or cider: ½ pint
 - Gin, rum, vodka or whisky: 25ml or 35ml
 - Still wine in a glass: 125ml

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- 10.52 As well as making the drinks available in the above measures, the responsible person must also make customers aware of the availability of these measures by displaying them on printed materials available to customers on the premises. This can include making their availability clear on menus and price lists, and ensuring that these are displayed in a prominent and conspicuous place in the relevant premises (for example, at the bar). Moreover, staff must make customers aware of the availability of small measures when customers do not request that they be sold alcohol in a particular measure.
- 10.53 This condition does not apply if the drinks in question are sold or supplied having been made up in advance ready for sale or supply in a securely closed container. For example, if beer is only available in pre-sealed bottles the requirement to make it available in 1/2 pints does not apply.
- 10.54 The premises licence holder or club premises certificate holder must ensure that staff are made aware of the application of this condition.

Ban on sales of alcohol below the permitted price

- 10.55 The relevant person (the holder of the premises licence, the designated premises supervisor (if any) in respect of such a licence, the personal licence holder who makes or authorises a supply of alcohol under such a licence, or any member or officer of a club present on the premises in a capacity which enables the member or officer to prevent the supply in question) shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 10.56 The permitted price is defined as the aggregate of the duty chargeable in relation to the alcohol on the date of its sale or supply and the amount of that duty multiplied by a percentage which represents the rate of VAT chargeable in relation to the alcohol on the date of its sale or supply. Detailed guidance on how to make this calculation and a calculator to determine permitted prices for each product are available on the Home Office website.
- 10.57 Where there is a change to the rate of duty or VAT applying to alcohol (for instance, following a Budget), the relevant person should ensure that the permitted price reflects the new rates within fourteen days of the introduction of the new rate.
- 10.58 It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.

Exhibition of films

- 10.59 The 2003 Act provides that where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (currently only the British Board of Film Classification (BBFC)) or by the licensing authority itself.
- 10.60 The effect of paragraph 5 of Schedule 1 to the 2003 Act is to exempt adverts from the

definition of regulated entertainment, but not exempt them from the definition of exhibition of a film. Since the above mandatory condition applies to ‘any film’, it is therefore applicable to the exhibition of adverts.

Door supervision

- 10.61 Under section 21 of the 2003 Act, when a condition is included in a premises licence that at specified times an individual must be present at the premises to carry out a security activity (as defined in section 21(3)(a) by reference to the Private Security Industry Act 2001 (“the 2001 Act”), the licence must include a condition requiring that individual to be licensed by the Security Industry Authority (“the SIA”) under the 2001 Act, or be entitled to carry out that activity by virtue of section 4 of the 2001 Act.
- 10.62 A premises licence need not require a person to hold a licence granted by the SIA if that person benefits from an exemption under section 4 of the 2001 Act. For example, certain employees benefit from an exemption when carrying out conduct in connection with a certified sports ground (section 4(6) to (12)). Furthermore, in certain circumstances persons benefit from an exemption where they operate under the SIA’s Approved Contractor Scheme (section 15).
- 10.63 Conditions under section 21 of the 2003 Act should only relate to individuals carrying out security activities defined by section 21(3)(a) of the 2003 Act. Therefore, they should only relate to an activity to which paragraph 2(1)(a) of Schedule 2 to the 2001 Act applies (certain manned guarding activities) and which is licensable conduct within the meaning of section 3(2) of that Act. The requirement does not relate to individuals performing non-security related activities, and section 21 should not be used in relation to any such activities.
- 10.64 Section 21 of the 2003 Act continues to ensure that a premises licence need not impose such a requirement in relation to those licensed premises which the 2001 Act treats as unlicensed premises. Those are:
- premises in respect of which there is in force a premises licence authorising a performance of a play or an exhibition of a film;
 - casinos or bingo halls licensed under the Gambling Act 2005;
 - premises where a club certificate is in force when activities are being carried on under the authority of that certificate.
- See paragraph 8(3) of Schedule 2 to the 2001 Act for full details.
- 10.65 It should be noted, however, that the 2001 Act will require contractors and a small number of employees (those managing/supervising and those supplied under contract) to be licensed as manned guards (rather than door supervisors) when undertaking licensable conduct on premises to which paragraph 8(3) of Schedule 2 to the 2001 Act applies.
- 10.66 It is therefore important that if a licensing authority intends that individuals must be present to carry out security activities (as defined by section 21(3)(a) of the 2003 Act) this should be explicit, as should the mandatory condition for those individuals to hold an SIA licence or be entitled to carry out that activity by virtue of section 4 of the 2001 Act. On the other hand, where a licensing authority intends that individuals must be present to carry out other activities (for example, activities related to safety or steward activities to organise, advise and direct members of the public), no mandatory condition

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should be imposed under section 21 of the 2003 Act. In all cases it is important when determining whether or not a condition is to be imposed under section 21 of the 2003 Act to consider whether the activities of any individual working in licensed premises fall within the definition of security activities in section 21(3)(a) of the 2003 Act. (Regardless of whether a condition is imposed under section 21 of the 2003 Act, under the 2001 Act the appropriate SIA licence must be held by any individual performing an activity for which they are licensable under that Act.)

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided that the licensing authority agrees and the applicant submits a subsequent hard copy of the application, if the licensing authority requires one. The licensing authority may also agree in advance that the application need not be given in hard copy. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder or the sexual exploitation of children. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

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- 11.7 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. 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.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 14 of this Guidance.
- 11.9 Representations must be made 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. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent hard copy, unless the licensing authority waives this requirement.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the licensing authority when the premises licence or certificate was 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 grant.

- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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 informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as 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 address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

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- 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;
- 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)¹⁰;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

- 11.20 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 that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.
- 11.21 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.
- 11.22 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 that impact upon the licensing objectives.
- 11.23 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. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, 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 appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

¹⁰ See chapter 15 in relation to the licensing of live and recorded music.

Reviews arising in connection with crime

- 11.24 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, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. 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. 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 beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should 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 licence holder 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 appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 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 illegal 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 employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Review of a premises licence following closure order or illegal working compliance order

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or an illegal working compliance order under section 38 of and Schedule 6 to the Immigration Act 2016. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than five working days before the first hearing day (there must be five clear working days between the giving of the notice and the start of the hearing).

Review of a premises licence following persistent sales of alcohol to children

11.29 The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate.

12. Summary reviews

- 12.1 Summary reviews can be undertaken when the police consider that the premises concerned are associated with serious crime or serious disorder (or both). The summary review process, set out under sections 53A-53D of the 2003 Act, allows interim conditions to be quickly attached to a licence and a fast track licence review. The provisions were inserted by section 21 of the Violent Crime Reduction Act 2006 and amended by sections 136-137 of the Policing and Crime Act 2017, including the addition of section 53D.
- 12.2 The powers apply only where a premises licence authorises the sale of alcohol. They do not apply in respect of other premises licences, or to premises operating under a club premises certificate. The powers are aimed at tackling serious crime and serious disorder, in particular (but not exclusively) the use of guns and knives. The powers complement the general procedures in the 2003 Act for tackling crime and disorder associated with licensed premises and should be reserved for the most serious matters which cannot be adequately or otherwise redressed unless urgent action is taken. Separate powers in the Anti-social Behaviour, Crime and Policing Act 2014 provide for the instant closure of premises by the police in some circumstances (in essence, disorder or nuisance). The consequent review of premises licences by the licensing authority is provided for by section 167 of the Licensing Act 2003.

Application for summary review

- 12.3 Section 53A of the 2003 Act sets out who may apply for an expedited review and the circumstances in which it can be used. The application is made by, or on behalf of, the chief officer of police and must be made in the form which is set out in Schedule 8A to the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005/42).
- 12.4 The completed application must be accompanied by a certificate issued by a senior officer of the rank of superintendent or above. The certificate is a formal note which identifies the licensed premises and includes a signed statement by the senior officer that in his/her opinion the premises are associated with serious crime, serious disorder or both. This form is not prescribed in legislation. However, a sample form which forces may wish to adopt is published on gov.uk.
- 12.5 The tests to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:
- (a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or
 - (b) Involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.
- 12.6 There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under section 12 of the Public Order Act 1986 in which it is also used.

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- 12.7 In deciding whether to sign a certificate, the senior officer should consider the following (as applicable):
- The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises. It is not expected that this power will be used as a first response to a problem and summary reviews triggered by a single incident are likely to be the exception.
 - The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?
 - Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in Part 4, Chapter 3 of the Anti-social Behaviour, Crime and Policing Act 2014, or section 38 of and Schedule 6 to the Immigration Act 2016, to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power)?
 - What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?
- 12.8 It is recommended that these points are addressed in the chief officer's application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will also have an opportunity later to make representations in relation to the full review. In appropriate circumstances the police might want to make representations to the licensing authority suggesting that they modify the conditions of the premises licence to require searches of customers for offensive weapons upon entry. Under the powers in sections 53A to 53D, this could be done on an interim basis pending a full hearing of the issues within the prescribed 28-day timeframe or for an appropriate period determined by the licensing authority.
- 12.9 Similarly, the power could, where appropriate, be used to reduce the risk of injury caused by glass by requiring the adoption of a safer alternative (but see paragraphs 12.15 and 12.16 below). However, it should always be borne in mind that the aim of the powers is to provide a selective tool, to be used proportionately.

The licensing authority and interim steps pending the review

- 12.10 Within 48 hours of receipt of the chief officer's application, the licensing authority must give the premises licence holder and responsible authorities a notice of the review and should include a copy of the application for review and a copy of the certificate, and must also consider whether it is necessary to take interim steps (place temporary conditions on the licence). When calculating the 48 hour period any non-working day can be disregarded¹¹.
- 12.11 The licensing authority may want to consult the police about the steps that it thinks are

¹¹ This means that, for example, if the application was received at 3pm on a Friday, the 48 hour period would cover the remaining 9 hours on that Friday and the remaining 39 hours starting on the Monday morning (provided it was not a bank holiday). In this case the licensing authority would have to decide on interim steps by 3pm on the Tuesday.

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necessary, pending the determination of the review, to address the immediate problems with the premises, in particular the likelihood of serious crime and/or serious disorder. The licensing authority may consider the interim steps without the holder of the premises licence having been given an opportunity to make representations. This does not, of course, mean that the licensing authority *cannot* afford such an opportunity if it thinks it appropriate and feasible to do so in all the circumstances.

12.12 The determination of interim steps is not a matter that may be delegated to an officer of the licensing authority. The relevant decisions are likely to be taken by a licensing sub-committee rather than the full committee. It should also be noted that there is no requirement for a formal hearing in order to take interim steps. This means that the relevant sub committee members can communicate by telephone or other remote means in order to reach a decision. A written record should always be produced as soon as possible after a decision is reached.

12.13 The interim steps that the licensing authority must consider taking are:

- the modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail from the scope of the licence;
- the removal of the designated premises supervisor from the licence; and
- the suspension of the licence.

Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

12.14 If the licensing authority decides to take steps at the initial interim stage:

- the decision takes effect immediately, or as soon after it as the licensing authority directs; but
- the licensing authority must give immediate notice of its decision and its reasons for doing so to the holder of the premises licence and the chief officer of police who made the application. The 2003 Act does not specify that the immediate notice has to be in writing. However, in an individual case the licensing authority may consider that the need for immediate communication at least initially requires a non-written approach, such as a telephone call. This may happen when, for example, the authority decides that the decision should have immediate effect. In such a case, the decision and the reasons for it should be explained clearly and in full to the licence-holder (or someone who may properly act for the licence-holder), and the call followed up as soon as possible with a written version of the decision and the reasons (for example, by email or fax) which is identical to, or not significantly different from, the version given by telephone.

12.15 The licensing authority, in deciding when its decision on interim steps should take effect, should consider the practical implications of compliance in relation to the premises. For example to comply with a modification of the conditions of a licence that requires employment of door supervisors, those running the premises may need some time to recruit appropriately qualified and accredited staff.

12.16 In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which would be difficult to remove if the outcome of the subsequent full review was to withdraw

or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring.

Making representations against the interim steps

- 12.17 The premises licence holder may make representations against the interim steps taken by the licensing authority. There is no time limit for the premises licence holder to make representations on the interim steps, although in practice this would at some point be superseded by the full review which would have to be completed within 28 days of the application being received by the licensing authority. On receipt of such representations, the licensing authority must (if the representations are not withdrawn) hold a hearing within 48 hours of their receipt. When calculating the 48 hour period, any non-working day can be disregarded. Where the licensing authority has already held a hearing to consider representations against the interim steps, the holder of the licence may only make further representations if there has been a material change in circumstances.
- 12.18 The licensing authority must give advance notice of the hearing to the premises licence holder and the chief officer of police. Given that these measures are designed to deal with serious crime and/or serious disorder on an interim basis only, the process is designed to avoid delay and, as such, significant portions of the Licensing Act 2003 (Hearings) Regulations 2005 (SI 2005/44) (which set out the usual processes governing the conduct of licensing authority hearings) do not apply in order to streamline the hearing process. One result of this is that the licensing authority cannot adjourn the hearing to a later date if the licence holder fails to attend at the scheduled time, as is the case under the normal review procedure. And as is the case with that procedure, the licence holder does not have to be present for the hearing to take place. In addition, there is no timescale for notifying the licence holder of the hearing under the modified process, providing the notification takes place before the hearing is held. However, it is imperative that the licence holder be given as much notice as is possible in the circumstances to afford the holder a maximum practicable opportunity to prepare for and attend the hearing. Licensing authorities should bear in mind that the usual principles of public law decision-making will apply to interim determinations, in a form that has regard to the statutory context of an expedited process.
- 12.19 At the hearing to consider representations against interim steps the licensing authority must:
- consider whether the interim steps are appropriate for the promotion of the licensing objectives; and
 - determine whether to withdraw or modify the steps taken.
- 12.20 When considering the case the licensing authority must take into account:
- the senior officer's certificate that accompanied the application;
 - the chief officer's representations (if any); and
 - any representations made by the premises licence holder.
- 12.21 There is no right of appeal to a magistrates' court against the licensing authority's

decision at this stage.

The review of the premises licence under section 53C

- 12.22 The licensing authority must hold a full review of the premises licence and determine the review within 28 days after the day of receipt of the chief officer's application. There can be no adjournment of the hearing or delay in reaching a determination beyond the end of the 28 day period. This must take place even if the chief officer asks to withdraw his application or representations. At the review hearing, the licensing authority must consider what steps are appropriate for the promotion of the licensing objectives taking into account any change in circumstances since any interim steps were imposed, consider any relevant representations, and review the interim steps already taken (if any).
- 12.23 In making its final determination the steps the licensing authority can take are:
- the modification of the conditions of the premises licence;
 - the exclusion of a licensable activity from the scope of the licence;
 - the removal of the designated premises supervisor from the licence;
 - the suspension of the licence for a period not exceeding 3 months; and
 - the revocation of the licence.
- 12.24 Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.
- 12.25 The licensing authority must:
- advertise the review inviting representations from any persons for no less than seven consecutive days, by notice as described in regulation 38 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 (SI 2005/42) and, if applicable, on the licensing authority's website (see regulation 38(1)(b) of the above). The relevant notices should be published on the day after the day of receipt of the chief officer's application.
 - advertise that any representations which the premises licence holder, responsible authority or any other person want the licensing authority to consider at the review hearing, should be submitted to the licensing authority within 10 working days of the advertisement of the review appearing.
 - give formal notice of the hearing no later than five working days before the day or first day on which the hearing is to be held to the premises licence holder and to every responsible authority.
- 12.26 A party shall give to the licensing authority a notice no later than two working days before the day or the first day on which the hearing is to be held stating –
- whether he intends to attend or be represented at the hearing;
 - whether he considers a hearing to be unnecessary.
 - whether he would like permission for any other person (other than the person he intends to represent him at the hearing) to appear at the hearing and, if so, explain on which points that person will be able to contribute.

- 12.27 The regulations relating to hearings are set out in the Licensing Act 2003 (Hearings) Regulations 2005 (S.I. 2005/44). They apply to final hearings under the section 53A(2)(b) in a similar way to hearings following closure orders under section 167 of the 2003 Act (it should be emphasised that the truncated version of the hearings regulations described in paragraph 12.18 above applies to interim hearings only). The issues they address include who can make representations and what those representations can be about. It is therefore possible for responsible authorities or any other persons to make representations in relation to any of the licensing objectives, not just crime and disorder. Similarly, where it is in the public interest, the regulations relating to the exclusion of individuals from hearings, or conducting the hearing in private, will apply.
- 12.28 The licensing authority must notify its decision and the reasons for making it to:
- the holder of the premises licence;
 - any person who made relevant representations; and
 - the chief officer of police who made the original application.

Review of the interim steps under section 53D

- 12.29 The licensing authority's determination does not have effect until the end of the 21 day period given for appealing the decision, or until the disposal of any appeal that is lodged (see below information on right of appeal). To ensure that there are appropriate and proportionate safeguards in place at all times, the licensing authority is required to review any interim steps that it has taken that are in place on the date of the hearing and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn. The review of the interim steps should take place immediately after the determination under section 53C has been reached. In making its decision, the licensing authority must consider any relevant representations made.
- 12.30 In conducting the review of the interim steps the licensing authority has the power to take any of the steps that were available to it at the initial stage (see paragraph 12.13). Any interim steps taken at the review hearing apply until—
- (a) the end of the period given for appealing against a decision made under section 53C (21 days),
 - (b) if the decision under section 53C is appealed against, the time the appeal is disposed of, or
 - (c) the end of a period determined by the relevant licensing authority (which may not be longer than the period of time for which such interim steps could apply under (a) or (b) above).

Right of appeal against review of interim steps decision

- 12.31 The licence holder or the chief officer of police may appeal against the decision made by the licensing authority concerning its review of the interim steps to a magistrates' court. The appeal must be made within 21 days of the appellant being notified of the licensing authority's decision and must be heard in full by the magistrates' court within 28 days beginning with the day on which the appellant lodged the appeal.

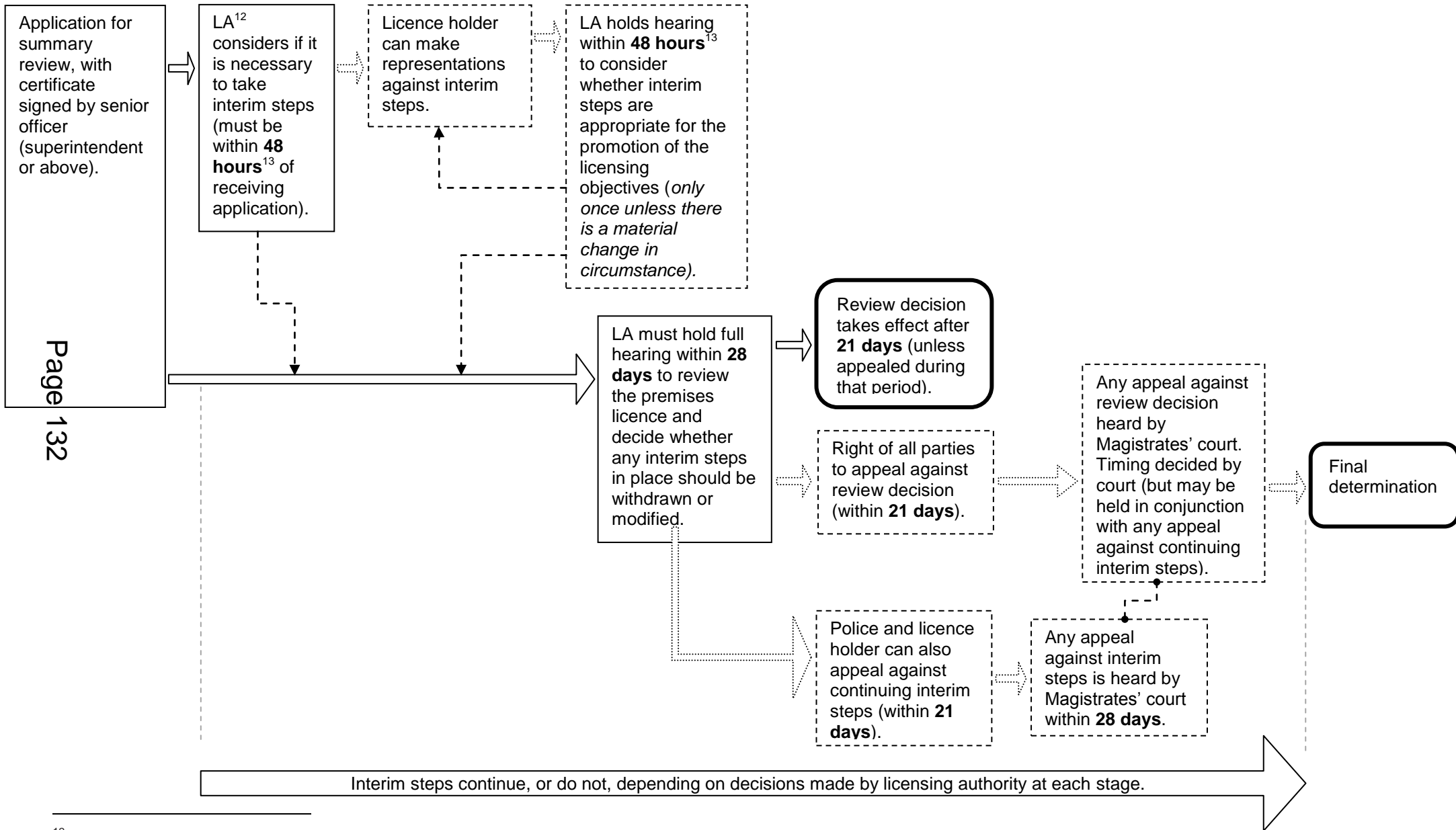
Right of appeal against final review decision

- 12.32 An appeal against the final review decision may be made to a magistrates' court within 21 days of the appellant being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.
- 12.33 The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the disposal of the appeal.
- 12.34 Where appeals are lodged both against the decision following the review of the interim steps and against the final determination, the courts may decide to consider the appeal against the final determination within the 28 day period, allowing the interim steps appeal to be disposed of at the same time.

Flow diagram of the summary review process

- 12.35 The following flow diagram summarises the process.

Summary review flowchart



¹² Licensing authority

¹³ Only working days count

13. Appeals

- 13.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

General

- 13.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.
- 13.3 An appeal has to be commenced by the appellant giving a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.
- 13.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police, the Home Office (Immigration Enforcement), or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.
- 13.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.
- 13.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.
- 13.7 On determining an appeal, the court may:
- dismiss the appeal;
 - substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
 - remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

All parties should be aware that the court may make an order for one party to pay another party's costs.

On any appeal, the court is not entitled to consider whether the licence holder should have been convicted of an immigration offence or been required to pay an immigration penalty, or whether they should have been granted by the Home Office permission to be in the UK. This is because separate rights exist to appeal these matters or to have an immigration decision administratively reviewed.

Licensing policy statements and Section 182 guidance

- 13.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.
- 13.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

Giving reasons for decisions

- 13.10 It is important that a licensing authority gives comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.
- 13.11 It is important that licensing authorities also provide all parties who were party to the original hearing, but not involved directly in the appeal, with clear reasons for any subsequent decisions where appeals are settled out of court. Local residents in particular, who have attended a hearing where the decision was subject to an appeal, are likely to expect the final determination to be made by a court.

Implementing the determination of the magistrates' courts

- 13.12 As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

Provisional statements

13.13 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

14. Statements of licensing policy

Introduction

The Licensing Act 2003

14.1 This chapter provides guidance on the development and preparation of local statements of licensing policy for publication by licensing authorities, the general principles that it is recommended should underpin them, and core content to which licensing authorities are free to add.

General

14.2 Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy at least every five years. Such a policy must be published before the authority carries out any function in respect of individual applications and notices made under the terms of the 2003 Act. During the five-year period, the policy must be kept under review and the licensing authority may make any revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the licensing objectives are being met. If the licensing authority determines and publishes its policy in this way, a new five-year period commences on the date it is published. Previously, licensing authorities were required to determine their licensing policies for each three-year period. Licensing policies published in respect of the three-year period that began on 7 January 2011 are to be treated as though they apply to a period of five years beginning at that date.

14.3 Where revisions to the section 182 Guidance are made by the Secretary of State, it will be for the licensing authority to determine whether revisions to its own licensing policy statement are appropriate.

Consultation on policies

14.4 Before determining its policy, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:

- the chief officer of police for the area;
- the fire and rescue authority for the area;
- each local authority's Director of Public Health in England (DPH)¹⁴ or Local Health Board in Wales for an area any part of which is in the licensing authority's area,
- persons/bodies representative of local premises licence holders;
- persons/bodies representative of local club premises certificate holders;
- persons/bodies representative of local personal licence holders; and
- persons/bodies representative of businesses and residents in its area.

14.5 The views of all these persons or bodies 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 that represent all parts of industry affected by the provisions of the

¹⁴ This change was made as a result of the commencement of measures in the Health and Social Care Act 2012 which amended the 2003 Act and further provision in the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

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2003 Act, but licensing authorities must make reasonable efforts to do so. Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons.

- 14.6 Subject to the statutory requirements, it is for each licensing authority to determine the extent of the consultation it should undertake, and whether any particular person or body is representative of the groups described in the 2003 Act. While it is clearly good practice to consult widely, this may not always be necessary or appropriate (for example, where a licensing authority has recently carried out a comprehensive consultation in relation to a revision to its policy made within five years of a full revision to it). As such, it may decide on a simple consultation with those persons listed.
- 14.7 However, licensing authorities should consider very carefully whether a full consultation is appropriate as a limited consultation may not allow all persons sufficient opportunity to comment on and influence local policy (for example, where an earlier consultation was limited to a particular part of the policy, such as a proposal to introduce a cumulative impact policy).
- 14.8 Fee levels are intended 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 will have to absorb those costs themselves.

Fundamental principles

- 14.9 All statements of policy should begin by stating the four licensing objectives, which the licensing policy should promote. In determining its policy, a licensing authority must have regard to this Guidance and give appropriate weight to the views of consultees.
- 14.10 While statements of policy may set out a general approach to making 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 person 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.
- 14.11 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.
- 14.12 Statements of policies should make clear that:
- licensing is about regulating licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act; and
 - conditions attached to various authorisations will be focused on matters which are within the control of individual licence holders and others with relevant authorisations, i.e. the premises and its vicinity.
- 14.13 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.

Licence conditions

- 14.14 Statements of licensing policy should reflect the general principles regarding licence conditions set out in Chapter 1 of this guidance.
- 14.15 Statements of licensing policy should include a firm commitment to avoid attaching conditions that duplicate other regulatory regimes as far as possible. Chapter 10 provides further detail on this issue.

Enforcement

- 14.16 The Government recommends that licensing authorities should establish and set out joint enforcement protocols with the local police and the other authorities and describe them in their statement of policy. This will clarify the division of responsibilities for licence holders and applicants, and assists enforcement and other authorities to deploy resources more efficiently.
- 14.17 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 for low risk premises or those that 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. Principles of risk assessment and targeted inspection (in line with the Regulators' Code) should prevail and, for example, inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are used efficiently and for example, are more effectively concentrated on problem premises. Licensing authorities should also remind operators of licensed premises that it is incumbent on them to provide appropriate training for their staff to ensure the promotion the licensing objectives.

Entertainment provision

- 14.18 Statements of licensing policy should set out the extent to which the licensing authority intends to facilitate a broad range of entertainment provision for enjoyment by a wide cross-section of the public. Statements of licensing policy should address what balance is to be struck between promoting the provision of entertainment and addressing concerns relevant to the licensing objectives. Licensing authorities should be conscious that licensing policy may inadvertently deter live music by imposing indirect costs of a disproportionate nature, for example a blanket policy that any pub providing live music entertainment must have door supervisors.

The need for licensed premises

- 14.19 There can be confusion about the difference between the “need” for premises 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 and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of

licensing policy.

The cumulative impact of a concentration of licensed premises

What is cumulative impact?

- 14.20 The concept of “Cumulative impact” has been described within this guidance and used by licensing authorities within their statements of licensing policy since the commencement of the 2003 Act. ‘Cumulative impact assessments’ were introduced in the 2003 Act by the Policing and Crime Act 2017, with effect from 6 April 2018. Cumulative impact is the potential impact on the promotion of the licensing objectives of a number of licensed premises concentrated in one area.
- 14.21 In some areas where the number, type or density of licensed premises, such as those selling alcohol or providing late night refreshment, is high or exceptional, serious problems of nuisance and disorder may arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport.
- 14.22 Queuing in itself may lead to conflict, disorder and anti-social behaviour. Moreover, large concentrations of people may also attract criminal activities such as drug dealing, pick pocketing and street robbery. Local services such as public transport, public lavatory provision and street cleaning may not be able to meet the demand posed by such concentrations of drinkers leading to issues such as street fouling, littering, traffic and public nuisance caused by concentrations of people who cannot be effectively dispersed quickly.
- 14.23 Variable licensing hours may facilitate a more gradual dispersal of customers from premises. However, in some cases, the impact on surrounding areas of the behaviour of the customers of all premises taken together will be greater than the impact of customers of individual premises. These conditions are more likely to arise in town and city centres, but may also arise in other urban centres and the suburbs, for example on smaller high streets with high concentrations of licensed premises.

Cumulative impact assessments

- 14.24 A cumulative impact assessment (CIA) may be published by a licensing authority to help it to limit the number or types of licence applications granted in areas where there is evidence to show that the number or density of licensed premises in the area is having a cumulative impact and leading to problems which are undermining the licensing objectives. CIAs relate to applications for new premises licences and club premises certificates and applications to vary existing premises licences and club premises certificates in a specified area.
- 14.25 Section 5A of the 2003 Act sets out what a licensing authority needs to do in order to publish a CIA and review it, including the requirement to consult with the persons listed in section 5(3) of the 2003 Act. The 2003 Act does not stipulate how the CIA should be used once published, because the requirements for determining applications for new licences or variations are the same in areas with a CIA as they are elsewhere, as set out in sections 18, 35, 72 and 85 of the Act. However, any CIA published by a licensing authority must be summarised in its statement of licensing policy. Under section 5(6D) a

licensing authority must also have regard to any CIA it has published when determining or revising its statement of licensing policy.

- 14.26 The CIA must include a statement saying that the licensing authority considers that the number of premises licences and/or club premises certificates in one or more parts of the area described is such that it is likely that granting further licences would be inconsistent with the authority's duty to promote the licensing objectives. As part of the publication a licensing authority must set out the evidential basis for its opinion.
- 14.27 CIAs may relate to premises licensed to carry on any licensable activity, including the sale of alcohol for consumption on or off the premises, and the provision of late night refreshment. This includes late night refreshment providers which are not licensed to sell alcohol. A CIA may relate to all premises licences and club premises certificates in the area described in the assessment or parts thereof, or only to premises of a particular kind described in the assessment. For example, it may be appropriate for the licensing authority to only include off-licences or nightclubs within the scope of its assessment. The licensing authority must make clear, when publishing its CIA, which premises types it applies to. CIAs do not apply to TENs; however it is open to the police and environmental health authority (as relevant persons) to refer to evidence published within a CIA when objecting to a TEN.
- 14.28 While the evidence underpinning the publication of a CIA should generally be suitable as the basis for a decision to refuse an application or impose conditions, it does not change the fundamental way that decisions are made under the 2003 Act. Each decision in an area subject to a CIA therefore still needs to be made on a case-by-case basis and with a view to what is appropriate for the promotion of the licensing objectives. Importantly, the publication of a CIA would not remove a licensing authority's discretion to grant applications for new licences or applications to vary existing licences, where the authority considers this to be appropriate in the light of the individual circumstances of the case.

Evidence of cumulative impact

- 14.29 As noted above, there must be an evidential basis for the decision to publish a CIA. Local Community Safety Partnerships and responsible authorities, such as the police and the environmental health authority, may hold relevant information which would inform licensing authorities when establishing the evidence base for publishing a CIA. Evidence of cumulative impact on the promotion of the licensing objectives needs to relate to the relevant problems identified in the specific area to be covered by the CIA. Information which licensing authorities may be able to draw on includes:
- local crime and disorder statistics, including statistics on specific types of crime and crime hotspots;
 - statistics on local anti-social behaviour offences;
 - health-related statistics such as alcohol-related emergency attendances and hospital admissions;
 - environmental health complaints, particularly in relation to litter and noise;
 - complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;
 - residents' questionnaires;
 - evidence from local and parish councillors; and
 - evidence obtained through local consultation.

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- 14.30 The licensing authority may consider this evidence, alongside its own evidence of the impact of licensable activities within its area, and consider in particular the times at which licensable activities are carried on. Information which may inform consideration of these issues includes:
- trends in licence applications, particularly trends in applications by types of premises and terminal hours;
 - changes in terminal hours of premises;
 - premises' capacities at different times of night and the expected concentrations of drinkers who will be expected to be leaving premises at different times.
- 14.31 Where existing information is insufficient or not readily available, but the licensing authority believes there are problems in its area resulting from the cumulative impact of licensed premises, it can consider conducting or commissioning a specific study to assess the position. This may involve conducting observations of the night-time economy to assess the extent of incidents relating to the promotion of the licensing objectives, such as incidences of criminal activity and anti-social behaviour, examples of public nuisance, specific issues such as underage drinking and the key times and locations at which these problems are occurring.
- 14.32 In order to identify the areas in which problems are occurring, information about specific incidents can be mapped and, where possible, a time analysis undertaken to identify the key areas and times at which there are specific issues.
- 14.33 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 may be satisfied that it is appropriate to publish a CIA. The CIA should also be considered alongside local planning policy and other factors which may assist in mitigating the cumulative impact of licensed premises, as set out in paragraph 14.46.

Steps to publishing a cumulative impact assessment

- 14.34 The steps to be followed in considering whether to publish a CIA are summarised below.
- Identify concern about crime and disorder; public safety; public nuisance or protection of children from harm in a particular location.
 - Consider whether there is good evidence that crime and disorder or nuisance are occurring, or whether there are activities which pose a threat to public safety or the protection of children from harm.
 - If there is evidence that such problems are occurring, identify whether these problems are being caused by the customers of licensed premises, or that cumulative impact is imminent.
 - Identify the boundaries of the area where problems are occurring (this can involve mapping where the problems occur and identifying specific streets or localities where such problems arise).
 - Consult those specified in section 5(3) of the 2003 Act. As with consultations in respect of the licensing policy statement as a whole, it is for each licensing authority to determine the extent of the consultation it should undertake in respect of a CIA (subject to the statutory requirements).
 - For the purposes of the consultation provide the persons specified in section 5(3) with the following information:
 - the reasons why it is considering publishing a CIA;

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- a general indication of the part or parts of its area which it is considering describing in the assessment;
- whether it considers that the assessment will relate to all premises licence and club premises certificate applications and variation applications, or only to those of a particular kind described.
- Subject to the outcome of the consultation, include and publish details of the CIA, including the evidence in support of the assessment and the particular kinds of premises the assessment relates to. Licensing authorities are not restricted to using general terms such as on-trade, off-trade and late night refreshment providers, and can apply their own descriptions such as vertical-drinking bars and night clubs if appropriate.
- Summarise the licensing authority's opinion in light of the evidence of cumulative impact (or any revision to an existing opinion) in the licensing policy statement and explain within the policy statement how the authority has had regard to any CIAs it has published under section 5A. The summary within the licensing policy statement should include, but is not limited to: the nature of the problems identified and the evidence for such problems; the geographical extent of the area covered by the assessment; the types of premises described in the assessment; and the types of applications for which it would likely be inconsistent with the licensing authority's duty to promote the licensing objectives to grant.

Reviewing the CIA

- 14.35 After publishing a CIA the licensing authority must, within three years, consider whether it remains of the opinion set out in the assessment. In order to decide whether it remains of this opinion it must again consult the persons listed in section 5(3). If having consulted with the statutory list of persons the licensing authority decides that it is no longer of the opinion set out in the CIA, it must publish a statement to that effect. The statement must make clear that any reference to the CIA in its licensing policy statement no longer applies. The licensing authority should remove any reference to the CIA within its licensing policy statement at the earliest opportunity.
- 14.36 If having consulted the licensing authority decides that it remains of the opinion set out in the assessment, it must revise the CIA to include a statement to that effect and set out the evidence as to why it remains of that opinion. It will be important for any evidence included in the revised CIA to be robust and relevant to the current problems described. This is likely to involve the collation of fresh or updated evidence of the kind described in the above section on evidence of cumulative impact. The licensing authority must also at this stage publish any other material change to the assessment. For example if the types of premises or area described in the assessment have changed due to a shift in the nature of the problems being experienced or where there is evidence of the emergence of a new type of problem.
- 14.37 In each case the three year period for reviewing a CIA begins with the original date of the publication of the CIA or the date that a CIA was last revised. Where a licensing policy statement as a whole is due for review, under the five year review period under section 5(4), and this occurs before the end of the three year CIA review period, licensing authorities may wish to use this as an opportunity to carry out a review of the evidence in support of the CIA. However, licensing authorities are free to carry out consultations and reviews of their CIAs (and/or licensing policy statements) at more regular intervals if they consider this to be appropriate.

- 14.38 As Cumulative Impact Policies were not part of the 2003 Act, there are no transitional provisions that apply to CIPs that were in place before 6 April 2018. However, any existing CIPs should be reviewed at the earliest practical opportunity to ensure they comply with the legislation. It is recommended that the review should take place within three years of the commencement of the legislation on CIAs or when the licensing policy statement is next due for review, whichever is sooner. This will ensure that any CIPs in place before the commencement of the provisions on CIAs adhere to the principles in the legislation (in particular concerning relevant evidence and consultation).

Effect of cumulative impact assessments

- 14.39 When publishing a CIA a licensing authority is required to set out evidence of problems that are being caused or exacerbated by the cumulative impact of licensed premises in the area described. The evidence is used to justify the statement in the CIA that it is likely that granting further premises licences and/or club premises certificates in that area (limited to a kind described in the assessment), would be inconsistent with the authority's duty to promote the licensing objectives.
- 14.40 In publishing a CIA a licensing authority is setting down a strong statement of intent about its approach to considering applications for the grant or variation of premises licences or club premises certificates in the area described. Having published a CIA a licensing authority must have regard to the assessment when determining or revising its statement of licensing policy. It is therefore expected that, in respect of each relevant application in the area concerned, the licensing authority will be considering whether it is appropriate to make a representation to its committee as a responsible authority in its own right. The CIA does not, however, change the fundamental way that licensing decisions are made. It is therefore open to the licensing authority to grant an application where it considers it is appropriate and where the applicant can demonstrate in the operating schedule that they would not be adding to the cumulative impact. Applications in areas covered by a CIA should therefore give consideration to potential cumulative impact issues when setting out the steps that will be taken to promote the licensing objectives. Where relevant representations are received and a licensing authority decides to grant an application it will need to provide the applicant, the chief officer of police and all parties who made relevant representations with reasons for granting the application and this should include any reasons for departing from their own policy.
- 14.41 The CIA must also stress that it does not relieve responsible authorities (or any other persons) of the need to make relevant representations where they consider it appropriate to do so for the promotion of the licensing objectives. Anyone making a representation may base it on the evidence published in the CIA, or the fact that a CIA has been published. It remains incumbent on all responsible authorities and other persons to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing. As with all licensing applications under the 2003 Act, if there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.
- 14.42 The absence of a CIA does not prevent any responsible authority or other person making representations on an application for the grant or variation 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. However, in each case it would be incumbent on the person

making the representation to provide relevant evidence of cumulative impact.

- 14.43 As noted above, CIAs may apply to the impact of a concentration of any licensed premises, including those licensed for the sale of alcohol on or off the premises, and premises licensed to provide late night refreshment. When establishing its evidence base for publishing a CIA, licensing authorities should be considering the contribution to cumulative impact made by different types of premises within its area, in order to determine the appropriateness of including different types of licensed premises within the CIA.

Limitations on special policies relating to cumulative impact

- 14.44 A CIA should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted. After receiving relevant representations in relation to 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 CIA 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 the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one or more of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.
- 14.45 CIAs should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises. Where the licensing authority has concerns about the effect of activities at existing premises between midnight and 6am on the promotion of the licensing objectives in a specific area, it may introduce an Early Morning Alcohol Restriction Order (EMRO) if there is sufficient evidence to do so (see chapter 17). The “cumulative impact” on the promotion of the licensing objectives of a concentration of 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.
- 14.46 CIAs must not impose quotas based on either the number of premises or the capacity of those premises. This is because quotas that indirectly have the effect of predetermining the outcome of any application would have no regard to the individual characteristics of the premises concerned.

Other mechanisms for controlling cumulative impact

- 14.47 Once away from the licensed premises, a minority of consumers will behave badly. 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 control;

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- 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, including best practise schemes such as Best Bar None, Pubwatch or BIDs;
- Community Protection Notices;
- the provision of CCTV surveillance in town centres, 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;
- the confiscation of alcohol from adults and children in designated areas;
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- prosecution for the offence of selling alcohol to a person who is drunk (or allowing such a sale);
- Raising a contribution to policing the late night economy through the Late Night Levy.
- Early Morning Alcohol Restriction Orders (see Chapter 17).

14.48 As part of its licensing policy statement, the licensing authority may also wish to consider the use of alternative approaches such as fixed closing times, staggered closing times and zoning. Such policy restrictions would need to be evidence-based and would be subject to the merits of each case in accordance with what is appropriate for the promotion of the licensing objectives. The licensing authority would be expected to justify the use of such measures as an appropriate means of managing problems in its area.

Public Spaces Protection Order

14.49 The Designated Public Place Order (DPPO) has been replaced by the Public Spaces Protection Order (PSPO) in the Anti-social Behaviour Crime and Policing Act 2014¹⁵. PSPOs can be used to restrict the drinking of alcohol in a public space where this has or is likely to have a detrimental effect on the quality of life on those in the locality, be persistent or continuing in nature, and unreasonable. Before making a PSPO, a council must consult the local police. DPPOs will continue to be valid for a period of three years following commencement of the PSPO in October 2014. Once that three year period expires, they will be treated as a PSPO and enforceable as such. Where a local authority occupies or manages premises, or where premises are managed on its behalf, and it licenses that place for alcohol sales, the PSPO will not apply when the licence is being used for alcohol sales (or 30 minutes after), but the place will be subject to the PSPO at all other times¹⁶. This allows local authorities to promote community events while still using a PSPO to tackle the problems of anti-social drinking.

14.50 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. Anyone making a representation that is genuinely aggrieved by a positive decision in favour of a local authority application by the licensing authority

¹⁵ For full guidance on the PSPO please see the statutory guidance on the 2014 Act:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

¹⁶ Licensed premises in general are exempt from the effect of a PSPO.

would be entitled to appeal to the magistrates' court and thereby receive an independent review of any decision.

Licensing hours

- 14.51 With regard to licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.
- 14.52 Statements of licensing policy should set out the licensing authority's approach regarding licensed opening hours and the strategy it considers appropriate for the promotion of the licensing objectives in its area. The statement of licensing policy should emphasise the consideration which will be given to the individual merits of an application. The Government recognises that licensed premises make an important contribution to our local communities, and has given councils a range of tools to effectively manage the different pressures that licensed premises can bring. In determining appropriate strategies around licensed opening hours, licensing authorities cannot seek to restrict the activities of licensed premises where it is not appropriate for the promotion of the licensing objectives to do so.

Children

- 14.53 It is an offence under the 2003 Act 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 TEN; and
 - 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 TEN.
- 14.54 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. This does not mean that children should automatically be admitted to such premises and the following paragraphs are therefore of great importance notwithstanding the offences under the 2003 Act. The expression 'exclusively or primarily' should be given its ordinary and natural meaning in the context of the particular circumstances.
- 14.55 Where it is not clear that the business is predominately for the sale and consumption of alcohol, operators and enforcement agencies should seek to clarify the position before enforcement action is taken. Mixed businesses may be more difficult to classify and in such cases operators and enforcement agencies should consult where appropriate

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about their respective interpretations of the activities taking place on the premises before any moves are taken which might lead to prosecution.

- 14.56 The 2003 Act does not automatically permit unaccompanied children under the age of 18 to have free access to premises where the consumption of alcohol is not the exclusive or primary activity 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 no presumption of giving children access but equally, no presumption of preventing their access to licensed premises. Each application and the circumstances of individual premises must be considered on their own merits.
- 14.57 A statement of licensing policy should not seek to limit the access of children to any premises unless it is appropriate for the prevention of physical, moral or psychological harm to them (please see Chapter 2). It may not be possible for licensing policy statements to anticipate every issue of concern that could arise in respect of children in relation to individual premises and therefore the individual merits of each application should be considered in each case.
- 14.58 A statement of licensing policy should make clear the range of alternatives which may be considered for limiting the access of children where that is appropriate for the prevention of harm to children. Conditions which may be relevant in this respect are outlined in paragraph 2.27.
- 14.59 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 appropriate, this should remain a matter for the discretion of the individual licence holder, club or premises user.
- 14.60 Venue operators seeking premises licences and club premises certificates should consider including such prohibitions and restrictions in their operating schedules particularly where their own risk assessments have determined that the presence of children is undesirable or inappropriate.

Responsible authority and children

- 14.61 A statement of licensing policy should indicate which body the licensing authority judges to be competent to act as the responsible authority in relation to the protection of children from harm. This may be the local authority social services department, the Local Safeguarding Children Board or other competent body as agreed locally. It would be practical and useful for statements of licensing policy to include descriptions of the responsible authorities in any area and appropriate contact details.

Children and cinemas

- 14.62 The statement of policy should make clear that in the case of premises giving film exhibitions¹⁷, the licensing authority will expect licence holders 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

¹⁷ See paragraphs 15.22-15.24 in relation to the licensing exemption for an exhibition of a film on community premises.

Classification or the licensing authority itself (see paragraphs 10.59 to 10.60).

Integrating strategies

- 14.63 It is recommended that statements of licensing 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, equality schemes, 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 licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

Planning and building control

- 14.64 The statement of licensing policy should indicate that planning permission, building control approval and licensing regimes will be properly separated to avoid duplication and inefficiency. The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa. However, as set out in chapter 9, licensing committees and officers should consider discussions with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.
- 14.65 There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.

Promotion of equality

- 14.66 A statement of licensing policy should recognise that the Equality Act 2010 places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity; and to foster good relations, between persons with different protected characteristics. The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 14.67 Public authorities are required to publish information at least annually to demonstrate their compliance with the Equality Duty. The statement of licensing policy should refer to this legislation, and explain how the Equality Duty has been complied with. Further guidance is available from Government Equalities Office and the Equality and Human Rights Commission.

Administration, exercise and delegation of functions

- 14.68 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 consisting of three members of the committee, or in

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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.

- 14.69 The 2003 Act does not prevent the development by a licensing authority of collective working practices with other parts of the local authority or other licensing authorities for work of a purely administrative nature, e.g. mail-outs. In addition, such administrative tasks may be contracted out to private businesses. But any matters regarding licensing decisions must be carried out by the licensing committee, its sub-committees or officers.
- 14.70 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, it is recommended that delegation should be approached in the following way:

Table: Recommended Delegation of Functions

Matters to be dealt with	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
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 representation 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 an objection to a temporary event notice	All cases	
Determination of application to vary premises licence at community premises to include alternative licence condition	If a police objection	All other cases
Decision whether to consult other responsible authorities on minor variation application		All cases
Determination of minor variation application		All cases

15. Licence fees

- 15.1 The 2003 Act requires a licensing authority to suspend a premises licence or club premises certificate if the annual fee is not paid when it is due. However, this does not apply immediately if the payment was not made before or at the time of the due date because of an administrative error, or because the holder disputed liability for the fee before or at the time of the due date. In either of these cases, there is a grace period of 21 days. This period is intended to allow the licensing authority and the licence or certificate holder an opportunity to resolve the dispute or error. If the dispute or error is not resolved during this 21-day period, the licence will be suspended.

Dispute

- 15.2 The 2003 Act describes a dispute as one relating to liability to pay the fee at all or relating to its amount. In either case, the licence or certificate holder must notify the licensing authority of the dispute on or before the date on which the fee to which it relates becomes due.

Administrative error

- 15.3 There is no definition of “administrative error” in the 2003 Act, but it can include an error on the part of the licensing authority, the licence or certificate holder, or any other person. Therefore, “administrative error” will be given its plain, ordinary meaning. An example might be where post has been misdirected.

Suspension

- 15.4 If a licensing authority suspends a licence or certificate, it must notify the holder in writing and specify the date on which the suspension takes effect; this date must be at least two working days after the day the authority gives the notice. It should be noted that this is the minimum period only, and licensing authorities should consider applying longer periods. The authority may wish to inform the police and other responsible authorities that the licence or certificate has been suspended.
- 15.5 A suspension ceases to have effect on the day on which the licensing authority receives payment of the outstanding fee from the licence or certificate holder. To enable the licence holder to demonstrate that the licence has been reinstated, the licensing authority is required to give the holder written acknowledgment of receipt as soon as practicable following receipt, and:
- a) if payment was received on a working day, no later than the end of the next working day, or
 - b) if payment was received on a day when the authority is not working, no later than the end of the second working day after the day on which the fee was received.
- 15.6 Licensing authorities may wish to consider requesting, in the notice of suspension mentioned above, that subsequent payment of the outstanding fee may be made in such manner as would most expeditiously bring it to the attention of the authority. The licensing authority may also wish to inform the police and other responsible authorities that the licence or certificate has been reinstated.

Effects of suspension

15.7 A premises licence or certificate that has been suspended does not have effect to authorise licensable activities. However, it can for example be subject to a hearing or, in the case of a premises licence, an application for transfer. The licence will nevertheless only be reinstated when the outstanding fee has been paid. Formally, the debt is owed by the holder who held the licence at the time it was suspended. However, it may be more likely in practice that the new holder will actually make the payment. The suspension of licences and certificates is only applicable to unpaid annual fees that become due after sections 55A and 92A of the 2003 Act came into force on 25 April 2012. In the case of a licence or certificate where more than one payment year has been missed (since the coming into force of sections 55A and 92A) payment of the outstanding fee in relation to each year will be required to reinstate the licence.

Additional fees for large scale events

- 15.8 It should be noted that premises licences for large scale events do not automatically attract the higher fee levels set out in the fee regulations made under the 2003 Act, which must be paid in addition to the standard application or variation fees when the premises licence relates to activities attracting the attendance of 5,000 or more. Venues that are permanent or purpose built or structurally altered for the activity are exempt from the additional fee.
- 15.9 Regulations prescribe that the additional fee for large scale events would not be payable where the premises is a structure which is not a vehicle, vessel or moveable structure, and has been constructed or structurally altered to allow:
- the proposed licensable activities to take place;
 - the premises to be modified temporarily, from time to time, if relevant for the proposed licensable activities;
 - the proposed number of people on the premises at any one time; and
 - the premises to be used in a manner which complies with the operating schedule.
- 15.10 The full details of where the additional fee is applicable can be found in regulations on the Government's legislation website – www.legislation.gov.uk.

16. Regulated entertainment

Types of regulated entertainment

- 16.1 Schedule 1 to the 2003 Act sets out what activities are regarded as the provision of regulated entertainment and when they are licensable and those activities which are not and therefore exempt from the regulated entertainment regime. Changes to regulated entertainment are due to take effect on 6 April 2015. Therefore, up until that date you should refer to chapter 16 of the guidance published in October 2014.
- 16.2 The descriptions of entertainment activities licensable under the 2003 Act are:
- a performance of a play;
 - an exhibition of a film;
 - an indoor sporting event;
 - a boxing or wrestling entertainment;
 - a performance of live music;
 - any playing of recorded music;
 - a performance of dance; and
 - entertainment of a similar description to a performance of live music, any playing of recorded music or a performance of dance.
- 16.3 To be licensable, one or more of these activities needs to be provided for the purpose (at least partly) of entertaining an audience; has to be held on premises made available for the purpose of enabling that activity; and must also either:
- take place in the presence of a public audience, or
 - where that activity takes place in private, be the subject of a charge made with a view to profit.
- 16.4 Guidance around what constitutes audiences and private events is at paragraphs 16.11-16.14.

Overview of circumstances in which entertainment activities are not licensable

- 16.5 There are a number of exemptions that mean that a licence (or other authorisation¹⁸) under the 2003 Act is not required. This Guidance cannot give examples of every eventuality or possible entertainment activity that is not licensable. However, the following activities are examples of entertainment which are not licensable:
- activities which involve participation as acts of worship in a religious context;
 - activities in places of public religious worship;
 - education – teaching students to perform music or to dance;
 - the demonstration of a product – for example, a guitar – in a music shop;
 - the rehearsal of a play or performance of music for a private audience where no charge is made with a view to making a profit;

¹⁸ The word 'licence' is typically used as a reference to all forms of authorisation

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- Morris dancing (or similar)¹⁹;
- Incidental music – the performance of live music or the playing of recorded music if it is incidental to some other activity²⁰;
- Incidental film – an exhibition of moving pictures if it is incidental to some other activity²¹;
- A spontaneous performance of music, singing or dancing;
- Garden fetes – or similar if not being promoted or held for purposes of private gain;
- Films for advertisement, information, education or in museums or art galleries;
- Television or radio broadcasts – as long as the programme is live and simultaneous;
- Vehicles in motion – at a time when the vehicle is not permanently or temporarily parked;
- Games played in pubs, youth clubs etc. (e.g. pool, darts and table tennis);
- Stand-up comedy; and
- Provision of entertainment facilities (e.g. dance floors)²².

16.6 As a result of deregulatory changes that have amended the 2003 Act²³, no licence is required for the following activities:

- Plays: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500.
- Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500²⁴.
- Films: no licence is required for ‘not-for-profit’ film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.
- Indoor sporting events: no licence is required for an event between 08.00 and 23.00 on any day, provided that those present do not exceed 1000.
- Boxing or wrestling entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
- Live music: no licence permission is required for:
 - a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises,

¹⁹ Including any live music or playing of recorded music as an integral part of a performance of Morris dancing, or similar activity.

²⁰ See paragraphs 16.57-16.61

²¹ See paragraphs 16.65-16.68

²² This was previously licensable under the 2003 Act until the commencement of the Live Music Act 2012.

²³ The Live Music Act 2012 (“2012 Act”) <http://www.legislation.gov.uk/ukpga/2012/2>; Licensing Act 2003 (Descriptions of Entertainment) (Amendment) Order 2013 (“2013 Order”) <http://www.legislation.gov.uk/uksi/2013/1578/contents/made>; The Legislative Reform (Entertainment Licensing) Order 2014 (“2014 Order”) <http://www.legislation.gov.uk/uksi/2014/3253/introduction/made>; and the Deregulation Act 2015 (“2015 Act”).

²⁴ But see paragraphs 16.47 -16.48 in relation to dances that is adult entertainment and remains licensable.

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provided that the audience does not exceed 500²⁵.

- a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace²⁶ that does not have a licence, provided that the audience does not exceed 500.
- a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
- a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school or (iii) the health care provider for the hospital.
- Recorded Music: no licence permission is required for:
 - any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500²⁷.
 - any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - any playing of recorded music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school proprietor or (iii) the health care provider for the hospital.
- Cross activity exemptions: no licence is required between 08.00 and 23.00 on any day, with no limit on audience size for:
 - any entertainment taking place on the premises of the local authority where the entertainment is provided by or on behalf of the local authority;
 - any entertainment taking place on the hospital premises of the health care provider where the entertainment is provided by or on behalf of the health care provider;
 - any entertainment taking place on the premises of the school where the entertainment is provided by or on behalf of the school proprietor; and
 - any entertainment (excluding films and a boxing or wrestling entertainment)

²⁵ Provided that a number of other important conditions are satisfied (see paragraphs 16.38-16.43).

²⁶ The Live Music Act 2012 provides that if premises are licensed under the 2003 Act, they cannot also be treated as a workplace for the purpose of the 2012 Act.

²⁷ Provided that a number of other important conditions are satisfied, see paragraphs 16.38-16.43.

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taking place at a travelling circus, provided that (a) it takes place within a moveable structure that accommodates the audience, and (b) that the travelling circus has not been located on the same site for more than 28 consecutive days.

- 16.7 The deregulatory changes mean that, for example, an indoor sporting event that takes place between 07.00 and 23.30 on a particular day is licensable in respect of activities taking place between 07.00-08.00 and 23.00-23.30. Similarly, where the audience for a performance of dance fluctuates, those activities are licensable if, and for so long as, the number of people in the audience exceeds 500. If organisers are uncertain as to audience sizes or if audience migration is likely²⁸, it might be easier and more flexible to secure an appropriate authorisation. Examples of where a Temporary Event Notice (TEN)²⁹ could still be required include if the activity is the playing of recorded music or the exhibition of a film that requires an authorisation; or if the entertainment is not authorised by an existing licence or certificate and its conditions.
- 16.8 Of course, anyone involved in the organisation or provision of entertainment activities – whether or not any such activity is licensable under the 2003 Act – must comply with any applicable duties that may be imposed by other legislation relevant to the event (e.g. in areas such as crime and disorder, fire, health and safety, noise, nuisance and planning).³⁰ Any such person should take steps to be aware of relevant best practice, and may find responsible authorities a useful source of expert support and advice.
- 16.9 The various effects of the changes made to entertainment licensing by the set of deregulatory changes between 2012 and 2015³¹ are described in greater detail in subsequent paragraphs:
- Music entertainment, see in particular paragraphs: 16.20-16.21; 16.26-16.33; and 16.36-16.44;
 - Plays, dance, and indoor sporting events, see in particular paragraphs: 16.34-16.35 and 16.45-16.48;
 - Local authority, hospital and school premises, see in particular paragraphs: 16.16-16.20
 - Community premises, see in particular paragraphs: 16.21-16.24 and 16.34-16.35
 - Circuses, see in particular paragraph 16.25
 - Boxing or wrestling entertainment, see in particular paragraphs: 16.49-16.51.

²⁸ See paragraph 16.12

²⁹ See chapter 7

³⁰ See paragraphs 16.70-16.72 in relation to other licensing regimes

³¹ An entertainment activity may meet the conditions of more than one exemption

General circumstances in which entertainment activities are licensable

16.10 An authorisation for regulated entertainment is always required for entertainment activities that take place before 08.00 or after 23.00, unless exempted under any other provision of the 2003 Act, as amended³².

Audience

16.11 For the purposes of regulated entertainment, the term “audience” refers to any person for whose entertainment (at least in part) any licensable activities are provided. An audience member need not be, or want to be, entertained: what matters is that an audience is present³³ and that the purpose of the licensable activity is (at least in part) intended to entertain any person present³⁴. The audience will not include performers, together with any person who contributes technical skills in substantial support of a performer (for example, a sound engineer or stage technician), during any associated activities. This includes setting up before the entertainment, reasonable breaks (including intervals) between activities and packing up thereafter. Similarly, security staff and bar workers will not form part of the audience while undertaking their duties.

16.12 More than one entertainment activity (or for a single activity, more than one performance or event) can be held concurrently, provided that the audience for each such performance or event does not exceed the threshold at which such a performance or event becomes licensable. In some circumstances, there will be a clear distinction between performances or events; for example, their taking place in separate rooms or on separate floors. However, organisers will have to ensure that audiences do not grow or migrate, so that the audience exceeds the relevant limit for any one performance or event at any time. If there is the possibility of audience migration, it might be easier and more flexible to secure an appropriate authorisation.

Private events

16.13 Events held in private are not licensable unless those attending are charged for the entertainment with a view to making a profit (including raising money for charity). For example, where a party is held for friends in a private dwelling featuring amplified live music, if a charge or contribution is made solely to cover the costs of the entertainment, the activity is not regulated entertainment. Similarly, any charge made to the organiser of a private event by musicians, other performers, or their agents does not of itself make that entertainment licensable – it would only do so if the guests attending were themselves charged by the organiser for that entertainment with a view to achieving a profit. The fact that this might inadvertently result in the organiser making a profit would be irrelevant, as long as there had not been an intention to make a profit.

16.14 Schedule 1 to the 2003 Act also makes it clear that before entertainment is regarded as

³² See examples at paragraph 16.5

³³ In some circumstances, such as un-ticketed live music events, a degree of judgement may be required as to whether persons are part of an audience. Factors to consider could include whether a person is within the perimeter of the premises, the audible range of the performance, and their visibility of the entertainment. In order to meet the definition of an entertainment activity in the 2003 Act, the activity must take place in the presence of an audience and be provided for the purpose, or for purposes which include the purpose of, entertaining that audience.

³⁴ For example, a darts championship competition hosted in part to entertain an audience could be a licensable activity, but a pub game of darts played for the enjoyment of the participants is not licensable.

being provided for consideration, a charge has to be:

- made by or on behalf of a person concerned with the organisation or management of the entertainment; and
- paid by or on behalf of some or all of the persons for whom the entertainment is provided.

Circumstances in which entertainment activities are no longer licensable

16.15 No licence is required for certain entertainment activities on specified premises, as follows:

Local authorities, hospital healthcare providers and school proprietors: cross-entertainment activity exemption

16.16 No licence is required for any entertainment provided by or on behalf of a local authority, health care provider, or school proprietor to the extent that it takes place on defined premises, between 08.00-23.00 on any day provided that:

- for entertainment provided by, or on behalf of, a local authority it takes place on premises in which that authority has a relevant property interest, or is in lawful occupation;
- for entertainment provided by, or on behalf of, a health care provider it takes place on any premises forming part of a hospital in which the provider has a relevant property interest, or is in lawful occupation; and
- for entertainment provided by, or on behalf of, a school proprietor it takes place on the premises of the school.

16.17 This Guidance cannot give examples of every eventuality where entertainment is not licensable under this exemption through being provided “by or on behalf of”. It will depend on the facts in each case. However, the following are examples of activities that are not usually considered to be licensable under this exemption:

- Any entertainment activity hosted by a local authority on their own premises, where there is a significant relationship between the local authority and the provider of the entertainment (e.g. principal and agent);
- Any entertainment activity organised on a local authority’s behalf on that local authority’s premises by a cultural trust in discharge of a local authority’s discretionary power to arrange entertainment provision and support for the arts, including festivals and celebrations.
- Any entertainment activity organised by a healthcare provider on their own hospital premises in partnership with a hospital charity;
- Any entertainment event on school premises organised by the Parent Teacher Association (PTA) to benefit the school.

16.18 It is for the local authority, health care provider or school proprietor to determine whether, and on what basis, they can (or wish) to provide entertainment activity under this exemption, including consideration of issues around fundraising, profit making, governance or use of public funds. However a pure hire of premises by a third party³⁵

³⁵ But see paragraph 16.20

does not constitute the provision of an entertainment event “on behalf of” a local authority, healthcare provider, or school proprietor and nor does commercial entertainment which the local authority³⁶ merely facilitates through providing a public space³⁷.

16.19 All the terms used in this exemption, such as “local authority”, “health care”, “health care provider”, “hospital”, “school”, “school premises”, “school proprietor”, “domestic premises” and “relevant property interest” are defined in the 2014 Order³⁸.

Local authority, hospital and school premises: third party music entertainment

16.20 No licence is required for a performance of live music or the playing of recorded music on local authority, hospital or school premises, that are not domestic premises, between 08.00-23.00 on any day provided that:

- it is performed in front of an audience of no more than 500 people; and
- a person concerned in the organisation or management of the music entertainment has obtained the prior written consent³⁹ of the local authority, health care provider or school proprietor (as appropriate) for that entertainment to take place. It is for these “trusted providers” to determine whether, or not, they wish to make their premises available for music entertainment by a 3rd party and on what terms they deem it appropriate.

Community premises: music entertainment

16.21 No licence is required for a performance of live music or the playing of recorded music on community premises⁴⁰, between 08.00-23.00 on any day provided that:

- the community premises are **not** authorised, by a premises licence or club premises certificate, to be used for the supply of alcohol for consumption on the premises⁴¹;
- the music entertainment is in the presence of an audience of no more than 500 people; and
- a person concerned in the organisation or management of the music entertainment has obtained the prior written consent⁴² of the management committee of the premises, or if there is no management committee, a person who has control of the premises in connection with the carrying on by that person of a trade, business or other undertaking, or failing that a person with a relevant property interest in the premises.

³⁶ Or healthcare provider or school proprietor.

³⁷ The exemption would similarly not apply, for example, to a commercial company operating on premises belonging to a local authority under a long term lease.

³⁸ See footnote 20

³⁹ This requirement is designed to ensure that those responsible for the premises hosting the entertainment have considered and approved the effect of the event on other users of their premises and the wider community.

⁴⁰ The definition of community premises is covered in paragraphs 4.56-4.60 of this Guidance. A community premises is likely to be multi-functional and ‘other similar building’ within the definition cannot be stretched to ordinarily include a public house, a bingo hall, or other business premises or private property.

⁴¹ Where a community premises is licensed for the supply of alcohol by a premises licence (or exceptionally a club premises certificate), then any performance of live music or the playing of recorded music on relevant alcohol licensed premises may be subject to the conditional deregulation described in paragraphs 16.26-16.33.

⁴² See footnote 36

Community premises: exhibition of film

- 16.22 No licence⁴³ is required for an exhibition of a film on community premises⁴⁴ between 08.00-23.00 on any day provided that:
- the film entertainment is not provided with a view to profit⁴⁵;
 - the film entertainment is in the presence of an audience of no more than 500 people;
 - the admission of children is subject to such restrictions as are necessary to comply with the recommendation issued by the BBFC or relevant licensing authority regarding the admission of children; and
 - a person concerned in the organisation or management of the exhibition of the film has obtained the prior written consent⁴⁶ of the management committee of the premises, or if there is no management committee, a person who has control of the premises in connection with the carrying on by that person of a trade, business or other undertaking, or failing that a person with a relevant property interest in the premises.
- 16.23 Under this exemption, one condition is that the film entertainment is not being provided with a view to profit⁴⁷. An entry charge does not of itself make the film entertainment licensable; it is whether the organiser intended to make a profit (that includes raising money for charity). A charge or contribution that is made solely to cover the costs of the film screening⁴⁸ is consistent with 'not being provided with a view to profit'. The 'not with a view to profit' condition applies solely to the activity of exhibiting the film under this exemption. A charge with a view to making a profit may legitimately be levied for any other activity or event that is distinct from film admission, such as the provision of refreshments, film talks, or a social event.
- 16.24 This community film exemption is also conditional on those responsible having in place operating arrangements that ensure that the age rating for the film is implemented by means of a suitable child admission policy⁴⁹. How this is achieved is a matter for the organisation or social group exhibiting the film. For example, they may operate a membership subscription scheme which pays for entry to all titles in a season and is limited to adults. It could be a children's film club with a policy of only showing films that are suitable for all by being rated 'U' by the BBFC. Alternatively, the organisers could sell tickets to the public and ensure that children are only permitted to attend in accordance with any age rating for the film – i.e. a door admissions policy linked to proof of age.

⁴³ However, see paragraph 16.70 in relation to copyright

⁴⁴ See footnote 37

⁴⁵ See paragraph 16.23

⁴⁶ See footnote 36

⁴⁷ 'not provided with a view to profit' is the inverse of 'with a view to profit' mentioned in paragraph 16.13

⁴⁸ Legitimate costs of a film screening would include overheads directly relevant to providing the film entertainment (e.g. premises hire, film hire, equipment etc.)

⁴⁹ See 3rd bullet point in paragraph 16.22

Travelling circuses

16.25 Where types of entertainment are present in a performance by a travelling circus⁵⁰ they will not be licensable provided that certain qualifying conditions are met⁵¹. The qualifying conditions are that:

- the entertainment is not an exhibition of a film or a boxing or wrestling entertainment;
- the entertainment takes place between 08.00 and 23.00 on the same day;
- the entertainment takes place wholly within a moveable structure and the audience present is accommodated wholly inside that moveable structure; and
- the travelling circus has not been located on the same site for more than 28 consecutive days.

Live music

16.26 Live music is licensable:

- where a performance of live music – whether amplified or unamplified – takes place before 08.00 or after 23.00 on any day;
- where a performance of amplified live music does not take place either on relevant licensed premises, or at a workplace that is not licensed other than for the provision of late night refreshment;
- where a performance of amplified live music takes place at a time when the relevant licensed premises are not open for the purposes of being used for the sale or supply of alcohol for consumption on the premises⁵²;
- where a performance of amplified live music takes place at relevant licensed premises, or workplaces⁵³, in the presence of an audience of more than 500 people⁵⁴; or
- where a licensing authority intentionally removes the effect of the deregulation provided for by the 2003 Act when imposing a condition on a premises licence or club premises certificate as a result of a licence review⁵⁵.

16.27 In any of the above circumstances, unless the performance of live music is appropriately authorised by a premises licence, club premises certificate or TEN, allowing it to take place could lead to enforcement action and, where relevant, a review of the alcohol licence or certificate.

16.28 A public performance of live unamplified music that takes place between 08.00 and 23.00 on the same day no longer requires a licence under the 2003 Act in any location. An exception to this is where a specific condition related to live music is included following a review of the premises licence or club premises certificate in respect of relevant licensed premises.

⁵⁰ 'Travelling circus' is defined in the 2014 Order as meaning a circus which travels from site to site for the purpose of giving performances. Musical entertainment at a travelling fairground is likely to be incidental to the main attractions and rides that are not themselves regulated entertainment.

⁵¹ There is no audience limit for this exemption, but the conditions are designed to ensure that deregulation does not have unintended consequences for the licensing objectives – e.g. only bona fide travelling circuses qualify.

⁵² See Chapter 3 of this Guidance

⁵³ See paragraph 16.31

⁵⁴ The 2014 Order substituted "500" for "200" that was in the 2012 Act

⁵⁵ See paragraphs 16.55-16.56

16.29 As a result of the amendments to the 2003 Act, section 177 of the 2003 Act now only applies to performances of dance⁵⁶.

Key terms used in relation to live music

- 16.30 Under the live music provisions, “music” includes vocal or instrumental music or any combination of the two. “Live music” is a performance of live music in the presence of an audience which it is intended to entertain. While a performance of live music can include the playing of some recorded music, ‘live’ music requires that the performance does not consist entirely of the playing of recorded music without any additional (substantial and continual) creative contribution being made. So, for example, a drum machine or backing track being used to accompany a vocalist⁵⁷ or a band would be part of the performance of amplified live music. The performance of a DJ who is merely playing tracks would not be classified as live music, but it might if he or she was performing a set which largely consisted of mixing recorded music in a live performance to create new sounds⁵⁸. There will inevitably be a degree of judgement as to whether a performance is live music (or recorded music) and organisers of events should check with their licensing authority if this consideration is relevant to whether the activity is authorised by a licence or certificate. In the event of a dispute about whether a performance is live music or not, it will be for the licensing authority initially and ultimately, for the courts to decide in the individual circumstances of any case.
- 16.31 A “workplace” is as defined in regulation 2(1) of the Workplace (Health, Safety and Welfare) Regulations 1992 and is anywhere that is made available to any person as a place of work. It is a very wide term which can include outdoor spaces, as well as the means of entry and exit.
- 16.32 A “relevant licensed premises” for the purposes of this chapter is one which is authorised to sell or supply alcohol for consumption on the premises by a premises licence or club premises certificate. Premises cannot benefit from the deregulation introduced by the 2012 Act by virtue of holding an authorisation for the sale or supply of alcohol under a TEN.⁵⁹

Recorded music

- 16.33 No licence is required for recorded music where it takes place on premises which are authorised by a premises licence or club premises certificate to be used for the supply of alcohol for consumption on the premises. However, recorded music remains licensable:
- where the playing of recorded music takes place before 08.00 or after 23.00 on any day;
 - where the playing of recorded music takes place at a time when the relevant licensed premises are not open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;⁶⁰
 - where the playing of recorded music takes place at relevant licensed premises in the

⁵⁶ See paragraph 2.13. Post the 2013 Order, Section 177 can be relevant to a performance of dance after 23.00 on any day

⁵⁷ Karaoke is generally classed as a performance of live music

⁵⁸ This would include ‘scratching’

⁵⁹ TENs are covered in chapter 7

⁶⁰ See Chapter 3 of this Guidance

presence of an audience of more than 500 people; and

- where a licensing authority intentionally removes the effect of the deregulation provided for by the 2003 Act (as amended).⁶¹

Plays and dance

16.34 No licence is required for a performance of a play or dance to the extent that certain qualifying conditions⁶² are satisfied. However a performance of a play or dance remains licensable:

- where the performance takes places before 08.00 or after 23.00 on any day; or
- where the performance takes place in the presence of an audience of more than 500 people.

Indoor Sport

16.35 No licence is required for an indoor sporting event to the extent that certain qualifying conditions⁶³ are satisfied. However an indoor sporting event remains licensable:

- where the event takes places before 08.00 or after 23.00 on any day;
- where the event takes place in the presence of more than 1000 spectators.

Licence conditions

Live Music or recorded music

16.36 Any existing licence conditions⁶⁴ (or conditions added on a determination of an application for a premises licence or club premises certificate⁶⁵) which relate to live music or recorded music remain in place, but are **suspended** between the hours of 08.00 and 23.00 on the same day where the following conditions are met:

- at the time of the music entertainment, the premises are open for the purposes of being used for the sale or supply of alcohol for consumption on the premises;
- if the music is amplified, it takes place before an audience of no more than 500 people; and
- the music takes place between 08.00 and 23.00 on the same day.

16.37 Whether a licence condition relates to live or recorded music will be a matter of fact in each case. In some instances, it will be obvious that a condition relates to music and will be suspended, for example “during performances of live music all doors and windows must remain closed”. In other instances, it might not be so obvious: for example, a condition stating “during performances of regulated entertainment all doors and windows must remain closed” would be suspended insofar as it relates to music between 08.00 and 23.00 on the same day to an audience of up to 500, but the condition would continue to apply if there was regulated entertainment after 23.00.

16.38 More general licence conditions (e.g. those relating to overall management of potential noise nuisance) that are not specifically related to the provision of entertainment (e.g.

⁶¹ This would be by way of imposing a condition on a premises licence or club premises certificate as a result of a licence review, see paragraphs 16.55-16.56

⁶² See paragraphs 16.6 and 16.45-16.48

⁶³ See paragraph 16.6.

⁶⁴ In relation to relevant licensed premises, see paragraph 16.32

⁶⁵ See paragraphs 16.39-16.40

signage asking patrons to leave quietly) will continue to have effect.

- 16.39 Chapter 9 of this Guidance sets out how a licensing authority must determine applications for a new licence or to vary an existing premises licence. Licence conditions imposed, in accordance with paragraphs 9.41 to 9.43, for live or recorded music activities will only apply if the activity meets the criteria of having more than 500 people present, and/or the activities are taking place between 23.00 and 08.00.
- 16.40 These conditions will, in effect, be suspended between 08.00 and 23.00 if a performance of live music or the playing of recorded music takes place before an audience of 500 people or fewer, but will remain on the face of the licence for when these activities may take place under other circumstances.
- 16.41 Where a performance of live music or the playing of recorded music on relevant licensed premises is not licensable, it remains possible for anyone to apply for a review of a licence or certificate, if there are appropriate grounds to do so.⁶⁶

Beer gardens

- 16.42 Beer gardens are often included as part of a premises licence or club premises certificate. Live amplified music that takes place in a beer garden is exempt from licensing requirements, provided the beer garden is included in the licence or certificate applying to the relevant licensed premises, and the performance takes place between 08.00 and 23.00 on the same day before an audience of 500 people or fewer.
- 16.43 Where a beer garden does not form part of the relevant licensed premises and so is not included in plans attached to a premises licence or club premises certificate, it is nevertheless very likely that it will be a workplace⁶⁷. Paragraph 12B of Schedule 1 to the 2003 Act says that a performance of live music in a workplace that does not have a licence (except to provide late night refreshment) is not regulated entertainment if it takes place between 08.00 and 23.00 on the same day in front of an audience of no more than 500 people. Note that the exemption in paragraph 12B does not apply to the playing of recorded music.
- 16.44 However, a licensing authority may, where justified⁶⁸, impose a licence condition that relates to the performance of live music in an unlicensed beer garden being served by any associated premises licence or club premises certificate. Provided such a condition is lawfully imposed, it takes effect in accordance with its terms.

Plays, dance and indoor sport

- 16.45 Where qualifying conditions are satisfied⁶⁹, any current licence condition that relates to a performance of a play or dance, or an indoor sporting event for which a licence is no longer required will (except in the circumstances described in the next paragraph) have no effect.
- 16.46 Where, however, these non-licensable activities take place at the same time as other

⁶⁶ See paragraphs 16.55-16.56 and chapter 11.

⁶⁷ A beer garden is one example of a potential workplace, see paragraph 16.31. Whether other outdoor spaces (such as seating adjacent to a premises, a smoking shelter, or a car park) constitute a workplace, part of the licensed premises, or neither, will be a matter of fact in each case.

⁶⁸ Including on a licence review

⁶⁹ See paragraph 16.6

activities for which a licence is required (e.g. the sale or supply of alcohol for consumption on the premises), conditions included in a licence may nevertheless apply to the non-licensable activities in the circumstances set out in paragraphs 16.52 and 16.53 (conditions relating to other non-licensable activities).

- 16.47 Dance that is sufficiently sexual in nature continues to be regulated. Performances of dance which are “relevant entertainment” within the meaning of the Local Government (Miscellaneous Provisions) Act 1982 (“the 1982 Act”) are not deregulated, regardless of the size of the audience or the time of day. “Relevant entertainment” is defined in the 1982 Act as a live performance or live display of nudity that, ignoring financial gain, can be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience.⁷⁰
- 16.48 In almost all cases where a performance of dance is potentially licensable as both the provision of **relevant** entertainment (under the 1982 Act) and **regulated** entertainment (under the 2003 Act), the 1982 Act disapplies the entertainment licensing regime in the 2003 Act in favour of its stricter regime for the control of sex establishments. However, an authorisation under the 2003 Act rather than the 1982 Act will continue to be required where:
- the premises are not licensed as a sex entertainment venue under the 1982 Act, and
 - relevant entertainment has been provided at those premises on no more than 11 occasions in any 12 month period, with none of those occasions lasting longer than 24 hours or taking place within a month of any other such occasion.

Boxing or wrestling entertainment and conditions relating to combined fighting sports

- 16.49 An indoor boxing or wrestling entertainment cannot also be an indoor sporting event, and any contest, exhibition or display that combines boxing or wrestling with one or more martial arts (‘combined fighting sports’) is – whether indoors or not – a boxing or wrestling entertainment.
- 16.50 Where a premises licence or club premises certificate purports to authorise a boxing or wrestling entertainment or combined fighting sports as an ‘indoor sporting event’, the 2013 Order provides that the authorisation will be treated as having authorised those activities as a boxing or wrestling entertainment. Those activities will continue to be subject to any relevant conditions attached to that authorisation.
- 16.51 A contest, exhibition or display of Greco-Roman wrestling, or of freestyle wrestling, between two participants (regardless of their sex) does not require a licence provided that certain qualifying conditions are met. They are that:
- it takes place in the presence of no more than 1,000 spectators;
 - it takes place between 08.00 and 23.00 on the same day; and
 - it take place wholly inside a building and the spectators present at that entertainment are accommodated wholly inside that building.

⁷⁰ Home Office Guidance is available at:

<http://webarchive.nationalarchives.gov.uk/20100413151441/http://crimereduction.homeoffice.gov.uk/crimereduction057a.pdf>

Conditions relating to other non-licensable activities

- 16.52 If appropriate for the promotion of the licensing objectives, and if there is a link to remaining licensable activities, conditions that relate to non-licensable activities can be added to or altered on that premises licence or club premises certificate at review following problems occurring at the premises. This has been a feature of licence conditions since the 2003 Act came into force. A relevant example could be the use of conditions relating to large screen broadcasts of certain sporting events which, combined with alcohol consumption, could create a genuine risk to the promotion of the licensing objectives. It is also not uncommon for licence conditions relating to the sale of alcohol to restrict access to outside areas, such as unlicensed beer gardens, after a certain time.
- 16.53 Similarly, while karaoke no longer needs licensing as the provision of entertainment facilities⁷¹ (and will generally be classed as a performance of live music⁷²) it might, for example, be possible on review to limit the use or volume of a microphone made available for customers on an ‘open-mic’ night (which encompasses more than just live music), if a problem had occurred because of customers purchasing alcohol for consumption on the premises becoming louder and less aware of causing noise nuisance later in the evening. Another example might be a condition restricting access to a dance floor at certain times, where the presence of customers in close proximity who had been consuming alcohol on the premises had led to serious disorder. In the first instance it is for the licensing authority to satisfy itself that a particular condition is appropriate and lawful in each case.

Removing licence conditions

- 16.54 A licence holder who wishes to remove conditions relating to activities that are no longer licensable⁷³ may apply to the licensing authority for a licence variation. In the course of considering such applications, licensing authorities should remove such conditions unless there are sufficiently serious and specific concerns about the effects of hosting deregulated entertainment activities along with the remaining licensable activities taking place in the premises.

Licence reviews: Live and recorded music

- 16.55 On a review of a premises licence or club premises certificate, section 177A(3) of the 2003 Act permits a licensing authority to lift the suspension⁷⁴ and give renewed effect to an existing condition relating to music. Similarly, under section 177A(4), a licensing authority may add a condition relating to music as if music were regulated entertainment, and as if that premises licence or club premises certificate licensed the music. In both instances the condition should include a statement that Section 177A does not apply to the condition.
- 16.56 An application for a review in relation to relevant premises can be made by a licensing

⁷¹ As a result of the 2012 Act

⁷² Karaoke is generally classed as a ‘performance of live music’, and provided that it is genuinely taking place, it is not likely to be classed as the ‘playing of recorded music’

⁷³ A licence holder may favour removal if the previously licensable activity has “grandfather” conditions that are out of date, or unclear. Where such a condition in relation to live or recorded music is suspended, then the licence holder may wish to avoid any prospect of the condition being given renewed effect (were a suspension to be lifted following a licence review).

⁷⁴ See paragraph 16.38.

authority, any responsible authority or any other person. Applications for review must still be relevant to one or more of the licensing objectives and meet a number of further requirements⁷⁵.

Incidental music

- 16.57 The performance of live music or playing of recorded music is not regulated entertainment under the 2003 Act if it is ‘incidental’ to another activity “which is not itself a description of entertainment falling within paragraph 2” of Schedule 1 to the 2003 Act.
- 16.58 The incidental music exemption can apply to an indoor sporting event or a performance of a play or dance for which no licence is required, as it takes place between 08.00 and 23.00 on the same day and before an audience which does not exceed the relevant limit. This is because such an activity is no longer a description of entertainment within the meaning of paragraph 2 of Schedule 1 to the 2003 Act. This means that, while a performance of live music or the playing of recorded music cannot be incidental to a boxing or wrestling entertainment⁷⁶ such music may be within the scope of the incidental music exemption for an indoor sporting event or performance of a play or dance for which no licence is required.
- 16.59 Whether or not music is “incidental” to another activity will depend on the facts of each case. In considering whether or not live or recorded music is incidental, one relevant factor could be whether, against a background of the other activities already taking place, the addition of music will create the potential to undermine the promotion of one or more of the four licensing objectives of the 2003 Act. Other factors might include some or all of the following:
- Is the music the main, or one of the main, reasons for people attending the premises and being charged?
 - Is the music advertised as the main attraction?
 - Does the volume of the music disrupt or predominate over other activities, or could it be described as ‘background’ music?
- 16.60 Conversely, factors which would not normally be relevant in themselves include:
- the number of musicians, e.g. an orchestra providing incidental music at a large exhibition;
 - whether musicians are paid;
 - whether the performance is pre-arranged; and
 - whether a charge is made for admission to the premises.
- 16.61 In any disputed case, it will be for the licensing authority initially and, ultimately, for the courts to consider whether music is “incidental” in the individual circumstances of any case.

⁷⁵ See Chapter 11 for more information about reviews under the 2003 Act.

⁷⁶ And as such, the music entertainment needs to be authorised under the 2003 Act. This would include music during a Greco-Roman or freestyle wrestling entertainment. While, depending on the circumstances, the Greco-Roman or freestyle wrestling may, or may not be licensable, it is still within the ‘description’ of a ‘wrestling entertainment’.

Busking

- 16.62 Busking or street performance is the practice of performing in public spaces for money. Performances are not limited to music or singing and can take the form of a wide range of activities that people find entertaining.
- 16.63 Busking is generally **not** licensable under the 2003 Act as:
- it often occurs in a place that is not a premises made available (at least in part) for the purposes of providing entertainment⁷⁷;
 - the entertainment is usually incidental to another activity, such as shopping or sightseeing, as there are few circumstances in which anyone would go out specifically to watch buskers; and
 - any unamplified live music is not licensable between 08.00 and 23.00⁷⁸.
- 16.64 Local authorities may have policies on busking, including codes of conduct or permit regimes and occasionally byelaws and legislation specific to a local authority – although many localities have no policy or restrictions.

Incidental film

- 16.65 An exhibition of a film within the meaning of paragraph 15 of Schedule 1 to the 2003 Act is not regulated entertainment if it is ‘incidental’ to another activity “which is not itself a description of entertainment falling within paragraph 2” of Schedule 1 to the 2003 Act.
- 16.66 The incidental film exemption can apply to an indoor sporting event or a performance of a play or dance for which no licence is required as it takes place between 08.00 and 23.00 on the same day before an audience which does not exceed the relevant limit. Such activities would no longer be a description of entertainment within the meaning of paragraph 2 of Schedule 1 to the 2003 Act. This means that, while any exhibition of moving pictures cannot be incidental to a boxing or wrestling entertainment⁷⁹, such film displays may be within the scope of the incidental film exemption for an indoor sporting event or performance of a play or dance for which no licence is required.⁸⁰
- 16.67 Whether or not an exhibition of moving pictures is “incidental” to another activity will depend on the facts of each case. In considering whether or not film is incidental, one relevant factor could be whether, against a background of the other activities already taking place, the addition of an exhibition of moving images will create the potential to undermine the promotion of one or more of the four licensing objectives of the 2003 Act. This would mean that if the BBFC or the relevant licensing authority has given an age rating to a film, video, or music video, then to qualify for the “incidental film” licensing exemption, the admission of children to the premises will need to be restricted in accordance with the appropriate age rating. But that is one aspect of one relevant factor. Other factors to consider in assessing whether film is incidental might include some or all of the following:

⁷⁷ See paragraph 16.3

⁷⁸ See paragraph 16.28

⁷⁹ And as such, the film display needs to be authorised under the 2003 Act. This would include moving pictures during a Greco-Roman or freestyle wrestling entertainment. While, depending on the circumstances, the Greco-Roman or freestyle wrestling may, or may not be licensable, it is still within the ‘description’ of a ‘wrestling entertainment’.

⁸⁰ For indoor sporting events, it takes place between 08.00 and 23.00 in front of an audience which does not exceed 1,000.

- Is the film the main, or one of the main, reasons for people attending the premises and being charged?
- Is the film advertised as the main attraction?
- Does the screening of the film predominate over other activities, or could it be described as ‘background’ images?
- Does the appearance of moving pictures within another entertainment activity, for which no licence is required (e.g. a performance of a play or dance⁸¹), undermine the promotion of the licensing objectives?

16.68 In any disputed case, it will be for the licensing authority initially and, ultimately, for the courts to consider whether film is “incidental” in the individual circumstances of any case.

Entertainment activity provided as part of childcare

16.69 Entertainment activity that is provided as part of childcare will generally not be licensable. This includes entertainment activity in a nursery or private home. In addition, paragraph 5 of Schedule 1 to the 2003 Act includes a licensing exemption for an exhibition of a film where the main purpose is to provide education. Education will generally include all forms of pre-school child and day care. Furthermore, an exhibition of a film, or the playing of live or recorded music, will generally be incidental to the activity of childcare and so the incidental music and film exemption in paragraph 7 of Schedule 1 will also apply⁸². This will generally be the case for any entertainment activity organised as part of wraparound childcare⁸³, including breakfast clubs, after school clubs or holiday clubs linked to the child’s school or based in the local community.

Other Licensing regimes

Copyright

16.70 The deregulation of licensing for the provision of entertainment under the 2003 Act does not remove the requirement for licences for the use of copyright works. Entertainment activities as described in paragraph 16.2 may require music and screening licences for example. The acquisition of such licences will make the entertainment compliant with the Copyright, Designs and Patents Act 1988.⁸⁴

Leafleting

16.71 The deregulation of entertainment licensing does not remove the prohibition on the unauthorised distribution of free printed matter in an area that has been designated under Schedule 3A of the Environmental Protection Act 1990⁸⁵. The organisers of the event or entertainment may need to obtain consent from the relevant principal litter authority before giving out free printed promotional material (leaflets, flyers, cards etc.) in a public place in certain areas.

⁸¹ See paragraph 16.34

⁸² See paragraphs 16.57-16.68

⁸³ Childcare for school aged children around traditional school hours

⁸⁴ Further information concerning how to acquire such licences can be found on <http://www.copyrightthub.co.uk>

⁸⁵ <http://www.legislation.gov.uk/ukpga/1990/43/schedule/3A>

Child performers

16.72 Child performance legislation⁸⁶ requires that a licence must be obtained from a child's home local authority before a child can take part in certain types of performance and activities. A licence may be required whether or not any payment is made for the child to perform. The deregulation of entertainment licensing does not alter the regulations on when children can take part in performances⁸⁷.

⁸⁶ Children and Young Persons Act 1993 and 1963; The Children (Performance) Regulations 1968 as amended.

⁸⁷ The Children (Performances) Regulations 1968

17. Early morning alcohol restriction orders

General

- 17.1 This chapter provides guidance to licensing authorities about Early Morning Alcohol Restriction Orders (“EMROs”). The power conferred on licensing authorities to make, vary or revoke an EMRO (or propose to take any of these steps) is set out in sections 172A to 172E of the 2003 Act. The exercise of the licensing authority’s functions may be delegated by its committee to a sub-committee, other than the decision to make, vary or revoke an EMRO (which is exercised by its full council). This power enables a licensing authority to prohibit the sale of alcohol for a specified time period between the hours of 12am and 6am in the whole or part of its area, if it is satisfied that this would be appropriate for the promotion of the licensing objectives.
- 17.2 EMROs are designed to address recurring problems such as high levels of alcohol-related crime and disorder in specific areas at specific times; serious public nuisance; and other instances of alcohol-related anti-social behaviour which is not directly attributable to specific premises.
- 17.3 An EMRO:
- applies to the supply of alcohol authorised by premises licences, club premises certificates and temporary event notices;
 - applies for any period beginning at or after 12am and ending at or before 6am. It does not have to apply on every day of the week, and can apply for different time periods on different days of the week;
 - applies for a limited or unlimited period (for example, an EMRO could be introduced for a few weeks to apply to a specific event);
 - applies to the whole or any part of the licensing authority’s area;
 - will not apply to any premises on New Year’s Eve (defined as 12am to 6am on 1 January each year);
 - will not apply to the supply of alcohol by those who provide hotel or similar accommodation to their residents between 12 am and 6am, provided the alcohol is sold at those times only through mini-bars and/or room service; and
 - will not apply to a relaxation of licensing hours by virtue of an order made under section 172 of the 2003 Act.

The EMRO process

- 17.4 An EMRO can apply to the whole or part of the licensing authority’s area. The area may, for example, comprise a single floor of a shopping complex or exclude premises which have clearly demonstrated to the licensing authority that the licensable activities carried on there do not contribute to the problems which form the basis for the proposed EMRO.
- 17.5 If the licensing authority already has a Cumulative Impact Policy (“CIP”) in its Licensing Policy Statement (see Chapter 14 of this Guidance), it should consider the relationship between the CIP and proposed EMRO area, and the potential overall impact on its local licensing policy.

- 17.6 Introducing an EMRO is a licensing function. Therefore, this is not the responsibility of a council's executive. The final decision to make an EMRO (or to vary or revoke one) must be made by the full council of the licensing authority. Any preceding steps, including advertising the proposed EMRO, holding hearings and making a determination to put before the full council for its final decision, are for the licensing committee of the licensing authority. The licensing committee may delegate these steps to the licensing sub-committee or officers as it sees fit.

Evidence

- 17.7 When establishing its evidence base for making an EMRO, a licensing authority⁸⁸ may wish to consider the approach set out in paragraphs 14.24 to 14.28 of this Guidance which includes indicative types of evidence, although this should not be considered an exhaustive list of the types of evidence which may be relevant. These matters are not necessarily determinative. They include but are not necessarily limited to:
- local crime and disorder statistics, including statistics on specific types of crime and crime hotspots, statistics on local anti-social behaviour offences,
 - environmental health complaints, particularly in relation to litter and noise;
 - complaints recorded by the local authority, which may include complaints raised by local residents or residents' associations;
 - residents' questionnaires;
 - trends in licence applications, particularly trends in applications by types of premises and terminal hours;
 - changes in terminal hours of premises;
 - capacities of different premises at different times of night and the expected concentrations of drinkers who will be expected to be leaving premises at different times.
- 17.8 Before a licensing authority makes a determination to recommend to the full council that it makes a proposed EMRO, it should be satisfied that it has sufficient evidence to demonstrate that making the EMRO would be appropriate for the promotion of the licensing objectives. The requirement to take an evidence-based decision to promote the licensing objectives should enable licensing authorities to draw on their experience from other licensing decisions they make under the 2003 Act, such as the determination of applications for the grant of premises licences. The licensing authority should consider evidence from partners, including from responsible authorities and local Community Safety Partnerships, alongside its own evidence, to determine whether an EMRO would be appropriate for the promotion of the licensing objectives.

⁸⁸ The final decision to make an EMRO (or to vary or revoke one) must be made by the full council of the licensing authority. However, all preceding steps, including advertising the proposed EMRO, holding hearings and making a determination to put before the full council for its final decision, are for the licensing committee of the licensing authority. The licensing committee may delegate these steps to the licensing sub-committee or officers as it sees fit.

Introducing an EMRO

17.9 An EMRO is a powerful tool which will prevent licensed premises in the area to which the EMRO relates from supplying alcohol during the times at which the EMRO applies. The licensing authority should consider whether other measures may address the problems that they have identified as the basis for introducing an EMRO. As set out in paragraphs 9.42-9.44 of this Guidance, when determining whether a step is appropriate to promote the licensing objectives, a licensing authority is not required to decide that no lesser step will achieve the aim. They should, however, consider whether taking that step is reasonable, justified and proportionate. The introduction of an EMRO may have far-reaching, wider impacts on the socio-economic circumstances in an area. In considering whether the introduction of an EMRO is an appropriate step to promote the licensing objectives, based on whether this is reasonable, justified and proportionate, a licensing authority may hold informal discussions early in the process with a range of interested partners; these include, but are not limited to, premises that may be affected by the introduction of the EMRO. Other measures that could be taken instead of making an EMRO might include:

- working in partnership with licensed premises on voluntary measures and encouraging the creation of business-led best practice schemes in the area;
- reviewing licences of specific problem premises;
- introducing a CIP;
- use of the new closure power in the Anti-social Behaviour, Crime and Policing Act 2014 which replaces section 161 of the 2003 Licensing Act. This new closure power can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder. Further guidance on this power can be found on the gov.uk website, under the Anti-social Behaviour, Crime and Policing Act: anti-social behaviour guidance;
- use of other mechanisms such as those set out in paragraph 14.40 of this Guidance

17.10 If the licensing authority has identified a problem in a specific area attributable to the supply of alcohol at two or more premises in that area, and has sufficient evidence to demonstrate that it is appropriate for the promotion of the licensing objectives, it can propose making an EMRO. The licensing authority should first decide on the matters which must be the subject of the proposal. These are:

- the days (and periods on those days) on which the EMRO would apply;
- the area to which the EMRO would apply;
- the period for which the EMRO would apply (if it is a finite period); and
- the date from which the proposed EMRO would apply.

In relation to the date when it plans to introduce the EMRO, the licensing authority should note that this may change when it is specified in the final order without the need to formally consult on the new date (as if it was a new proposal), provided it does not adversely affect any person as described in paragraph 17.21.

Advertising an EMRO

- 17.11 The proposed EMRO must be advertised. The licensing authority should include a short summary of the evidence and the manner in which representations can be made in the document, as well as the details of the proposed EMRO. The proposal must be advertised for at least 42 days (a reference in this Chapter to a period of “days” means a period comprising calendar days and not only working days). The licensing authority must publish the proposal on its website and in a local newspaper. If no newspaper exists, it must be published in a local newsletter, circular or similar document. The licensing authority must also send a notice of the proposal to all affected people in its area. They are:
- holders of (and applicants for) premises licences or club premises certificates to which the proposed EMRO would apply;
 - premises users in relation to TENs to which the proposed EMRO would apply;
 - those who have received a provisional statement in respect of a premises to which the proposed EMRO would apply.
- 17.12 Licensing authorities must, moreover, display a notice of the proposal in the area to which the EMRO would apply, in a manner which is likely to bring the proposal to the attention of those who may have an interest in it.
- 17.13 The licensing authority should also inform responsible authorities in its area and neighbouring licensing authorities of its proposal to make an EMRO. It may also like to consider what further steps could be taken, in any particular case, to publicise the proposal in order to draw it to the wider attention of any other persons who are likely to have an interest in it.

Representations

- 17.14 Those who are affected by a proposed EMRO, responsible authorities or any other person have 42 days (starting on the day after the day on which the proposed EMRO is advertised) to make relevant representations. To be considered a relevant representation, a representation must:
- be about the likely effect of the making of the EMRO on the promotion of the licensing objectives;
 - be made in writing in the prescribed form and manner, setting out the EMRO to which it relates and the nature of the representation;
 - be received within the deadline; and
 - if made by a person other than a responsible authority, not be frivolous or vexatious.
- Chapter 9 of this Guidance gives further advice on determining whether a representation is frivolous or vexatious. Representations can be made in relation to any aspect of the proposed EMRO. If a licensing authority decides that a representation is not relevant, it should consider informing the person who has made that representation.
- 17.15 Responsible authorities may wish to make representations, as may affected persons (as set out in the above paragraph).
- 17.16 Others may also wish to make representations about the proposed EMRO. These persons could include, but are not limited to:

- residents;
- employees of affected businesses;
- owners and employees of businesses outside the proposed EMRO area; and
- users of the late night economy.

Hearings

- 17.17 If a relevant representation or representations are received, the licensing authority must hold a hearing to consider them (unless the authority and anyone who has made representations agree that this is unnecessary). The licensing authority should consider, based on the number of relevant representations received by it and any other circumstances it considers appropriate, whether to hold the hearing over several days, which could be arranged to take place other than on consecutive working days.
- 17.18 As described in paragraph 17.6, a hearing to consider representations in relation to an EMRO may be held by the licensing committee, the licensing sub-committee or an officer of the licensing authority. It is recommended, however, that such hearings be conducted by the licensing committee or sub-committee.
- 17.19 Licensing committees or sub-committees⁸⁹ should be familiar with the hearing process as it has similarities with other processes under the 2003 Act. Further guidance on hearings can be found in Chapter 9 of this Guidance (paragraphs 9.31 to 9.41). However, licensing authorities should note the following key points in relation to a hearing about a proposed EMRO:
- the hearing must be commenced within 30 working days, beginning with the day after the end of the period during which representations may be made;
 - the hearing does not have to take place on consecutive working days, if an authority considers this to be necessary to enable it to consider any of the representations made by a party or if it considers this approach to be in the public interest;
 - a licensing committee or sub-committee must make its determination within 10 working days of the conclusion of the hearing;
 - the licensing committee or sub-committee is not required to notify those making representations of its determination; and
 - the licensing authority may give notices in relation to a hearing by electronic means provided it is satisfied that the text of the notice is capable of being accessed by the recipient, it is legible in all material respects and is capable of being reproduced in written form (e.g. printed by the recipient).
- 17.20 The licensing committee or sub-committee will determine the manner in which the hearing will be conducted in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. If a licensing committee or sub-committee determines that a representation is frivolous or vexatious, it must notify in writing the person who made the representation.
- 17.21 As a result of the hearing, the licensing committee or sub-committee has three options:
- to determine that the proposed EMRO is appropriate for promotion of the licensing

⁸⁹ This could also be done by a licensing officer, however, it is recommended that representations in relation to an EMRO are conducted by the licensing committee or sub-committee.

objectives;

- to determine that the proposed EMRO is not appropriate for the promotion of the objectives and therefore that the process should be ended;
- to determine that the proposed EMRO should be modified.

In the final case, if the authority proposes that the modified EMRO should differ from the initial proposal in relation to the area specified, any day not in the initial proposal or the period of any day specified, the authority should advertise what is in effect a new proposal to make an EMRO in the manner described above, so that further representations may be made. However, there will be cases in which it may be possible to modify the terms of a proposed EMRO without being required to formally consult. This may arise where the modified terms would not have a more adverse effect on any person (primarily, if not solely, licensed premises which will be subject of the EMRO) than the EMRO in the terms in which it was originally proposed. Such cases may include the following:

- the modification may shorten the period during which the EMRO would apply or reduce the number of days on which it applies, provided these periods were a part of the original proposal. For example, a change to an EMRO applying on Fridays and Saturdays to just applying on Saturdays may not require re advertisement and consultation of the EMRO design, whereas changing the days the EMRO applies on from Fridays and Saturdays to just Thursdays might reasonably be expected to require further consultation;
- the date on which the EMRO commences is later than that described in the original proposal;

Licensing authorities should consider very carefully in each case (including in relation to legality) whether further consultation on a proposed modification to the EMRO is necessary.

Final EMRO

- 17.22 If the licensing authority determines that the proposed EMRO is appropriate for the promotion of the licensing objectives, its determination must be put to the full council for its final decision. There is no time specified in legislation by which the full council must make this decision. This is intended to reflect the fact that the licensing authority may only meet in full council infrequently.
- 17.23 The matters set out in the final order must be no different from the matters set out in the proposal to make the order, subject to the caveat described above in paragraph 17.21. The order must be set out in the prescribed form and contain the prescribed content.
- 17.24 No later than 7 days after the day on which the EMRO is made, the licensing authority must send a notice to all affected persons of the EMRO, and make the order available for at least 28 days on its website and by displaying a notice in the EMRO area. A licensing authority should retain details of the EMRO on its website for as long as the EMRO is in force. It is recommended that the licensing authority advises neighbouring licensing authorities and the Secretary of State that the order has been made, the nature of the order and when (and for how long) it will take effect.
- 17.25 The licensing authority should monitor the effectiveness of the EMRO to ensure it continues to be appropriate for the promotion of the licensing objectives and periodically

review whether it is appropriate to continue to apply it. The licensing authority should consider setting out its policy in relation to reviewing EMROs (if any) in its statement of licensing policy.

- 17.26 The variation or revocation of an order requires the licensing authority to undertake the same process as that which applied on its introduction; that is after gathering the appropriate evidence, it advertises its new EMRO proposal, following the process set out above so that those affected and anyone else can make representations.
- 17.27 If an order applies for a finite period, the order will cease to apply on its last day. If the licensing authority wishes to introduce a further (new) EMRO, it must follow the full process for proposing a new EMRO.
- 17.28 Licensing authorities should update their statement of licensing policy (in accordance with section 5 of the 2003 Act) to include reference to the EMRO as soon as reasonably possible.

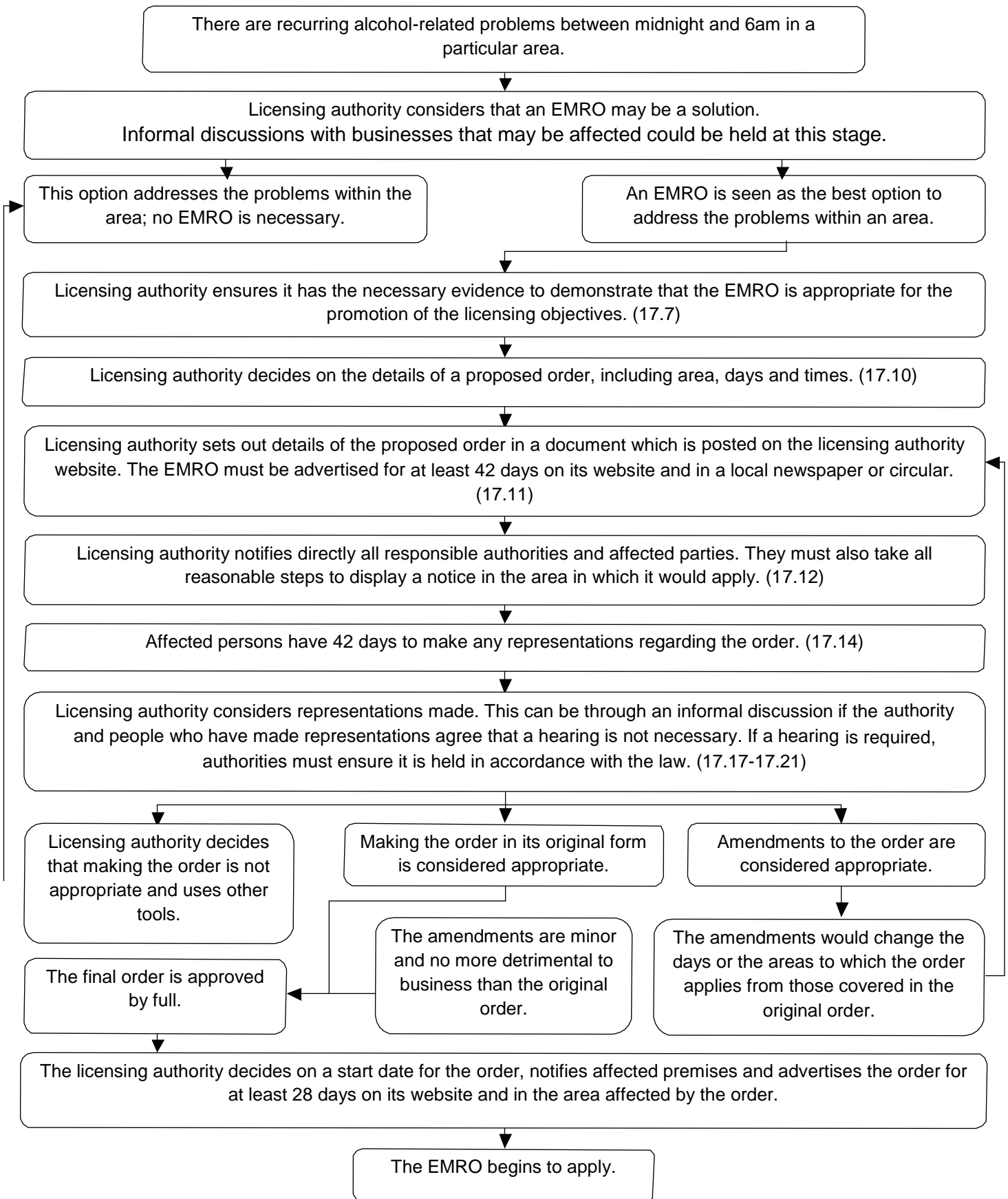
Exceptions to an EMRO

- 17.29 EMROs will not apply on New Year's Eve in recognition of its status as a national celebration. The supply of alcohol to residents through mini-bars and room service in premises with overnight accommodation will also not be subject to an EMRO.

Enforcement of EMROs

- 17.30 The sale or supply of alcohol in contravention of an EMRO is an 'unauthorised licensable activity' which is an offence under section 136 of the 2003 Act. Moreover, it may result in a closure notice being served on the premises under section 76 of the Anti-social Behaviour, Crime and Policing Act 2014 as a precursor to an application for a closure order under section 80 of that Act (which requires the constable or authority that issued the notice to apply to a magistrates' court not later than 48 hours after the service of the closure notice). This may alternatively, result in the licence being reviewed on crime prevention grounds. Further information on reviews can be found in Chapter 11 of this Guidance.
- 17.31 An EMRO overrides all authorisations to supply alcohol under the 2003 Act (including temporary event notices). It is immaterial whether an authorisation was granted before or after an EMRO was made as there are no authorisations that have the effect of authorising the sale of alcohol during the EMRO period, with the only exception being a licensing hours order made under section 172 of the 2003 Act.

EMRO Process Flowchart



Annex A – documents which demonstrate entitlement to work in the UK

Applicants may be asked to demonstrate that they have the right to work in the UK and are not subject to a condition preventing them from doing work relating to the carrying on of a licensable activity. They can do this by providing with their application, copies or scanned copies of the documents listed below (which do not need to be certified). The documents that demonstrate an entitlement to work in the licensing regime are based on existing prescribed document lists for checks undertaken by employers. They are set out in the following regulations: The Immigration (Restrictions on Employment) Order 2007 and the Immigration (Restrictions on Employment) (Codes of Practice and Amendment) Order 2014.

- An expired or current passport showing the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK. See note below about which sections of the passport must be provided].
- An expired or current passport or national identity card showing the holder, or a person named in the passport as the child of the holder, is a national of an European Economic Area country or Switzerland.
- A Registration Certificate or document certifying permanent residence issued by the Home Office to a national of a European Economic Area country or Switzerland.
- A Permanent Residence Card issued by the Home Office to the family member of a national of a European Economic Area country or Switzerland.
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder indicating that the person named is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK.
- A **current** passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.
- A **current** Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **full** birth or adoption certificate issued in the UK which includes the name(s) of at least one of the holder's parents or adoptive parents, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.

Appendix 3

- A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A **current** passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity .
- A **current** Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office to the holder which indicates that the named person can currently stay in the UK and is allowed to work relating to the carrying on of a licensable activity.
- A **current** Residence Card issued by the Home Office to a person who is not a national of an European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- A **current** Immigration Status Document containing a photograph issued by the Home Office to the holder with an endorsement indicating that the named person may stay in the UK, and is allowed to work and is not subject to a condition preventing the holder from doing work relating to the carrying on of a licensable activity. **when produced in combination with** an official document giving the person's permanent National Insurance number and their name issued by a Government agency or a previous employer.
- A Certificate of Application, **less than 6 months old**, issued by the Home Office under regulation 17(3) or 18A(2) of the Immigration (European Economic Area) Regulations 2006, to a person who is not a national of an European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence.
- Reasonable evidence that the person has an outstanding application to vary their permission to be in the UK with the Home Office, such as the Home Office acknowledgement letter or proof of postage evidence, or reasonable evidence that the person has an appeal or administrative review pending on an immigration decision, such as an appeal or administrative review reference number.
- Reasonable evidence that a person who is not a national of an European Economic Area state or Switzerland but who is a family member of such a national or who has derivative rights of residence in exercising treaty rights in the UK including:-
 - evidence of the applicant's own identity – such as a passport,
 - evidence of their relationship with the European Economic Area family member – e.g. a marriage certificate, civil partnership certificate or birth certificate, and
 - evidence that the European Economic Area national has a right of permanent residence in the UK or is one of the following if they have been in the UK for more than 3 months:
 - a) working e.g. employment contract, wage slips, letter from the employer,
 - b) self-employed e.g. contracts, invoices, or audited accounts with a bank,
 - c) studying e.g. letter from the school, college or university and evidence of sufficient

funds, or

d) self-sufficient e.g. bank statements.

Family members of European Economic Area nationals who are studying or financially independent must also provide evidence that the European Economic Area national and any family members hold comprehensive sickness insurance in the UK. This can include a private medical insurance policy, an EHIC card or an S1, S2 or S3 form.

Original documents must not be sent to licensing authorities. If the document copied is a passport, a copy of the following pages should be provided:-

- any page containing the holder's personal details including nationality;
- any page containing the holder's photograph;
- any page containing the holder's signature;
- any page containing the date of expiry; and
- any page containing information indicating the holder has permission to enter or remain in the UK and is permitted to work.

If the document is not a passport, a copy of the whole document should be provided.

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Premises Licence Review

Truth Nightclub (Formerly Bentley's of Clacton)

**5 Marine Parade East
Clacton-on-Sea
Essex
CO15 1PT**

Premises Licence Holder: Bentley's of Clacton Ltd

Registered Address: 22 Wenlock road, Hoxton, London, N1 7TA

Supplementary documentary information in support of review.

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Appendices

Appendix A – Prohibition Notice served by Tendring District Council’s Environmental Health Team

Appendix B – Witness Statement of Sergeant MOSS

Appendix C – Warning from Tendring District Council regarding increase in Covid-19 cases

Appendix D – Warning from Essex County Council regarding increase in Covid-19 cases

Appendix E – Screenshot from Premises Licence Holder’s social media

Appendix G – Graphic showing rise in Covid-19 cases among younger people

Video Evidence

Exhibit 1 – Recording from Snapchat showing Truth in operation as a nightclub on Friday the 14th of August.

Exhibit 2 – Recording from Bodyworn Footage of PC HALL on the 15th of August showing loud music inside the venue and a conversation with the Designated Premises Supervisor.

1.0 Background Details

1.1. Truth Nightclub is a licensed premises located on Marine Parade East in Clacton on Sea. It occupies the building formerly known as Bentley's.

1.2. The premises number is 18/00146/PREMVA and the current premises licence holder is Bentley's of Clacton Ltd, company number: 11163318. The sole director is Robert Mark Howard.

1.3. At time of writing, the Designated Premises Supervisor is Jenna Howard.

2.0 Circumstances leading to review

2.1 On Friday the 14th of August, the crime and disorder objective of the Licensing Act was undermined at Truth Nightclub in that, on its first night of reopening, the licence holder and Designated Premises Supervisor (DPS) immediately breached The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 in that it operated as a nightclub or otherwise operated as a venue which was open at night, provided music and had a dance floor or other space for dancing with music being played via a live-stream DJ.

2.2 Regulation 4(1) requires that a person responsible for carrying on a business or providing a service which is listed in Schedule 2 must cease to carry on that business or to provide that service during the emergency period.

2.3 Schedule 2 lists 1. Nightclubs, and 2.—(1) Dance halls, discotheques, and any other venue which— (a) opens at night, (b) has a dance floor or other space for dancing by members of the public (and for these purposes members of the venue in question are to be considered members of the public); (c) provides music, whether live or recorded, for dancing.

2.4 This is a criminal offence and one committed by the operators and licence holders of the venue as a calculated act.

2.5 By operating in this fashion they risked potential exposure of hundreds of people via the spreading of coronavirus. The current backdrop shows that Clacton was on the cusp of a local lockdown and remains a high-risk area – Essex Police have evidenced that the premises cannot be trusted to act to support any of the licensing objectives.

3.0 Reasons for Review

3.1 On Saturday the 15th of August, officers from Clacton Town Team - part of the community policing team, were patrolling licensed premises in the town as part of their regular duties. Officers had concerns raised to them by members of the public and staff from various other venues that Truth nightclub had operated in breach of the Health Protection Regulations 2020 the day previously (Friday the 14th), by opening as a nightclub for dancing.

3.2 Evidence obtained from social media shows the inside of the nightclub very busy, no social distancing and with loud music and people dancing. This video supported the suggestion the venue had operated as a night club and is available to hearing as Exhibit 1.

3.3 Officers attended the venue to share their concerns with staff, after initially denying that there was any issue at the club on Friday, once shown the video, door staff conceded that it was taken from inside the nightclub. This was evidenced by way of a witness statement from attending officer Sergeant Moss and confirms that there as indeed a breach on the Friday. This statement can be found under Appendix B.

3.4 On a further visit to the nightclub on Saturday the 15th, officers raised concerns over the management of the queue, which can be viewed as Exhibit 2 to be unmanaged and causing an obstruction on the pavement. This video also shows music being played at a high volume and people entering the dancefloor area of the club. Officers challenged the Designated Premises Supervisor (DPS) that the premises was indeed open as a nightclub and this was accepted by the DPS who stated that she "could not ask people to stop dancing as they were waiting for the bar".

3.5 This is simply not acceptable. Licensees have a responsibility to uphold the four licensing objectives and the operators of Truth have had over a month to prepare and learn from how the licensed trade has responded to the threat of COVID-19, and as such we can attest that opening in breach of the regulations over two consecutive days was a calculated act.

3.6 Nightclubs have been ordered to remain shut due to their high risk of spreading infectious diseases amongst patrons and with COVID-19 spreading faster amongst younger people as shown in Appendix G. These breaches therefore posed a serious risk to the club's visitors and their families.

3.7 These breaches were considered serious enough for Tendring District Council's Environmental Health Team to serve a prohibition notice on the venue on 20/08/2020. This action was necessary to prevent further risk to the public from Truth Nightclub. This notice is attached as Appendix A.

3.8 On Tuesday the 18th of August a meeting was held with the DPS at Clacton Police station. The seriousness of the matter was relayed and the DPS who, in mitigation, reported that there were people dancing while waiting for the bar. It was explained that Essex Police did not accept this as an excuse due to the amount of people dancing and the fact that the volume and presence of a live stream DJ indicated that the venue had deliberately opened as a nightclub.

3.9 It was explained to the DPS that the evidence gathered would be passed to Tendring District Council's Environmental Health Team. The DPS was also informed that Essex Police were considering a review and the seriousness of the matter was compounded due to the fact Clacton has been on the cusp of a local lockdown due to an uptick in COVID-19 cases. See Appendix C and D for warnings issued by Tendring District Council and Essex County Council regarding this increase.

3.10 In addition to this, in response to police attendance and advice given, the Premises Licence Holder took to social media in a clear disregard for authority and reported 'Truth nightclub opening with a power look' as well as abusing the police officers who attended to give advice on the Saturday evening and stating that he wishes to waste police time. The full media post has been attached as Appendix E. It is clear neither the DPS nor the Premises Licence Holder took their responsibilities seriously and have little regard for regulations that have been put in place to protect the most vulnerable in society. This indicates to us that the operators of this venue should not be allowed to continue to operate in this illegal and dangerous manner.

3.11 It is for these reasons Essex Police have proceeded with a review application.

4.0 Outcome Sought

4.1 The current premises licence does little to support the licensing objectives and, while full revocation of the premises licence is an option available to the sub-committee, we suggest that a series of new conditions would be effective in ensuring that the premises can continue to operate in a safe and compliant manner.

4.2 Essex Police are requesting these measures as a proportionate response to the seriousness of the events leading up to this review hearing. We ask that the sub-committee that the following be considered:

- 1) That the licence be suspended for a period of no less than three months;
- 2) That the current Designated Premises Supervisor be removed from the post;
- 3) That the authorisation for the provision of off-sales of alcohol be removed from the licence;
- 4) That the opening hours be reduced to close at 23:30 Monday to Thursday, and 00:30 Friday to Sunday;
- 5) That the licensable hours for the sale of alcohol be reduced to end at 23:00 Monday to Thursday and 00:00 Friday to Sunday;
- 6) That no regulated entertainment be authorised to take place past 23:00;
- 7) At any time the premises is trading past 23:00, and minimum of 4 SIA registered door supervisors shall be employed from 21:00 and until at least 30 minutes after the premises has closed;
- 8) The premises shall have installed and maintain a closed-circuit television surveillance (CCTV) system which at all times complies with the below requirements:

- i) CCTV will be provided in the form a recordable system, capable of providing pictures of evidential quality {in all lighting conditions} particularly facial recognition;
 - ii) CCTV cameras shall cover all entrances {and exits} and the areas where alcohol sales take place;
 - iii) Equipment must be maintained in good working order, be correctly time and date stamped, recordings must be kept in good working order and kept for a minimum period of {31} days;
 - iv) Upon the reasonable request of the police or licensing authority staff, within 48 hours viewable copies of recordings will be provided.
- 9) At all time while SIA registered door supervisors are present, at least one supervisor shall supervise any queue to enter the premises that forms outside the premises.

5.0 Case Law

5.1 Deterrence is an established part of the Licensing Act 2003 – see the cases of *R (Bassetlaw District Council) v Worksop Magistrates' Court*; [2008] WLR (D) 350 and *East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway)*, [2016] EWHC 1265 (Admin) where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime. This also forms part of the reason Essex Police has applied for a review of the premises licence.

5.2 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.

5.3 *R (Bassetlaw District Council) v Worksop Magistrates' Court*; [2008] WLR (D) 350.

5.4 This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority. The premises licence holder argued that they had a policy in place for checking the age of customers but this was not a perfect policy and had not been adhered to and that rather than revoke the licence, instead stringent conditions on proof of age should instead be imposed on the licence.

5.5 Issues considered in the *Bassetlaw* judgement included whether a licensing authority was restricted to remedial action (as opposed to punitive action such as revocation); and the precedence of wider considerations than those relating to an individual holder of a premises licence when certain criminal activities (as

specified in the Guidance) took place.

5.6 It specifically examined (and set aside in the case of ‘certain activities’) those parts of the Guidance now contained within paragraph 11.20 and 11.23, viz.

5.7 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 that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review. However, it will always be important that any detrimental financial impact that may result from a licensing authority’s decision is appropriate and proportionate to the promotion of the licensing objectives.

5.6 In her judgement, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

5.7 “Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.(...) However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable.”

5.8 *East Lindsey District Council v Abu Hanif (Trading as Zara’s Restaurant and Takeaway)*, [2016] EWHC 1265 (Admin)

5.9 This is a recent High Court decision (published April 2016) which related to the employment of an illegal worker and where a prosecution for such had not been instigated.

5.10 Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for a crime was not in place at the time of the licensing hearing. The case reaffirmed the principle that a responsible authority need not wait for the licensing objectives to be undermined, and that in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor.

5.11 It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee. Mr Justice Jay stated: *“The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part*

retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required.” (Paragraph 18)

5.12 Mr Justice Jay added: *“Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked.”* (Paragraph 18)
This case affirms the fact that the sub-committee are able to take measures to ensure that other premises are deterred from operating in such a way that the licensing objectives are not upheld.



Tendring District Council

The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (S.I. 2020: No.684), as amended¹

PROHIBITION NOTICE

20th August 2020

Part A

To: Mr. Robert Mark Howard and Jenna Howard

At: 5 Marine Parade E, Clacton-on-Sea CO15 1PS

Of: Bentleys of Clacton Ltd

Trading as: Pulse and Truth Nightclub and Dance Club

This Prohibition Notice is served under Regulation 7(2) of The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 (the Regulations) as amended and has immediate effect.

The Regulations impose certain restrictions to protect against the risks to public health arising from coronavirus. Failure to comply with the requirements of the Regulations, without reasonable excuse, is a criminal offence.

I, Carol Anne Archibald, designated as a relevant person for the purposes of the Regulations by Tendring District Council, have reasonable grounds for believing that you are contravening a requirement in the Regulations as set out in Part B below and that it is necessary and proportionate to issue this Prohibition Notice to prevent continued contravention of the requirement.

Part B. Contravention of the restrictions

Regulation contravened: Regulation 4(1)

Particulars of the offence

You have both failed, without reasonable excuse, to cease to carry on the business of a night and dancing club where dancing to music provided by a DJ was allowed and a gathering to form, without social distancing being in place and this businesses being listed not to open during the emergency period in paragraph 1 & 2 of Schedule 2 to the Regulations, , other than as permitted by Regulation 4(2) or 4(5)].

¹ S.I. 2020/684, as amended by S.I. 2020/719, S.I. 2020/788, S.I. 2020/800, S.I. 2020/822, S.I. 2020/824 and S.I. 2020/828



Part C. Action required

This Prohibition Notice requires that you immediately cease the activities giving rise to contravention of the Regulations. The activities must not resume before the end of the emergency period². The measures specified below must be taken to prevent continued contravention of the Regulations:

You must cease with immediate effect the operation of the business premises as a night club with dancing.

Part D. Consequences of non-compliance

Failure to comply with this Prohibition Notice, without reasonable excuse, is an offence punishable by a fine on summary conviction in a Magistrates Court.

Part E. Challenging this Prohibition Notice

There is no statutory right to appeal against this Prohibition Notice.

If you consider that the Notice should not have been issued or that the actions required of you are unreasonable or unjust, you can make representations to [*insert name of local authority*] in writing outlining your reasons for challenging the Notice, within [*insert number of days*] of the date on this Notice.

Your challenge will be processed in accordance with Tendring District Council's Complaint Procedure: <https://www.tendringdc.gov.uk/council/consultation-contact-and-complaints/how-complain>

Contact: 01255 686868

Alternatively, you may challenge this Notice by way of Judicial Review. Should you wish to pursue this option, you may wish to consult a lawyer to obtain independent legal advice.

This Notice remains in force even if you have raised a challenge.

Should the local authority's review of your challenge determine that the Notice should be revoked, you will be notified in writing that the Notice has been revoked.

Signed:

Date: 20th August 2020

Name in Capitals: CAROL ANNE ARCHIBALD

Name and Address of Local Authority:

Telephone: 01255 686753

Email: carchibald@tendringdc.gov.uk

²The Secretary of State will publish a direction terminating the emergency period as soon as they consider the restrictions or requirements set out in the Regulations are no longer necessary

WITNESS STATEMENT

Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN [] [] [] []

Statement of: Vanessa Kirsty MOSS Ds 956

Age if under 18: Over 18 (if over 18 insert 'over 18') Occupation: Detective Sergeant

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature:.....V. K. Moss..... (witness) Date: 17/08/2020

On Saturday 15th August 2020 I was on duty in full uniform Call Sign NN282 in company with PCSO Ladkin when upon information received, the information being a video uploaded on Snapchat the previous evening we attended TRUTH, Marine Parade East, Clacton-On-Sea. This video appeared to show party goers inside of Truth, dancing and not complying with current rules in relation to any social distancing.

At this location PCSO Ladkin saw a doorman he knows to be [REDACTED], I understand he is not the head doorman, but when PCSO Ladkin showed him the footage he confirmed that this footage was taken within TRUTH.

Another doorman came out he had a ginger beard and was trying to say they were complying with requirements and that licencing had been in and approved the level of their music, and that the video couldn't have been recorded there the evening before.

I explained that I was having to raise my voice to have a conversation outside and as this music was coming from within the premises felt it was too loud within the guidelines.

Both myself and PCSO Ladkin explained that they were not to open as a nightclub and that the music should be lowered.

Later that same evening, I re-attended TRUTH and the music had not reduced in volume, it was now after 2000hrs and PCSO Ladkin had finished his duty, and I was now in company of other officers including Pc Moyle and Pc Hall.

Pc Hall had his BWV recording when we asked the doorman with the ginger beard to ask the manager to make themselves known.

Signature: Signature witnessed by:

A white female with a dark bob came out and started to say they had done nothing wrong.

Pc Moyle explained our concerns.

You could clearly see through the doorway, that a DJ was running the decks and people were dancing.

The manager also said she couldn't ask people to sit when they were dancing, she was told that she would have to at least try.

In turn they did agree that they would turn the music down, however when there was no actual action taken by either of them, I intervened and explained that they needed to actually act and turn the music down, she did then go back inside and instruct someone to lower the volume.

When the music was lowered, we walked down Orwell Road, and those patrons in the beer garden shouted 'ARE WE BEING CLOSED DOWN?' there was no separate music being played outside.

The beer garden was full with most customers standing.

Throughout the evening including myself there were 6 officers patrolling the area, all other licenced premises had their queues in order and their music was at an appropriate volume. TRUTH however had to be advised several times about the queue spilling out across the pavement and keeping social distancing.

At approximately 0100hrs, some females in the queue asked us to intervene when they couldn't move back in the queue as some more intoxicated males behind them were oblivious to what was being asked of them.

Eventually after a short conversation they in fact chose to go home.

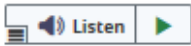
Shortly afterwards, a number of persons started to be ejected, and by 0130hrs most had spilled out onto Orwell Road, this area is not well lit and some were clearly wanting a fight.

One male was physically escorted by his friend and after further encouragement from me did leave. But there were others vomiting as they walked, staggered across the street.

During the evening a male calling himself Rob ASBO was asked to move his vehicle from double yellow lines at least twice. An Audi R8 colour blue Index was R88SBO, he also had a Green and Black Range Rover parked on double yellows, which showed as Grey when PNC'd. He purported to be the owner of TRUTH, his vehicles were registered to a London address.

Signature: Signature witnessed by:

Increase in number of cases of COVID-19 in Clacton and Harwich



Friday, 24 July, 2020

COVID-19 GUIDANCE

- Maintain social distancing
- Wear a mask - compulsory now for many shops and stores
- **DO NOT** go out if you have symptoms - and get a test
- Wash your hands regularly



We have seen the first signs of an increase in cases of COVID-19 in Clacton and Harwich.

We want to reassure residents that we are taking necessary action with our partners to understand this and put measures in place to ensure people remain safe. It is essential if this disease is to be controlled that people maintain social distancing measures and follow the **latest government advice**.

The latest data is available through the COVID-19 tracker tool. This shows a small increase in the numbers. Our detailed analysis and knowledge from the Essex and Southend Contact Tracing Service shows that this is mainly in young adults.

The Essex and Southend Contract Tracing Service is working to contact those who may be considered contacts and providing the necessary advice and support. We are also working locally with Tendring District Council's Health Protection team to target key areas and locations to provide specialist advice.

However, it is most important that people remember that COVID-19 is still with us and could increase again at any time unless we observe protective measures. People must stay two meters from each other if they are to avoid transmitting the disease. If this is not possible other measures such as wearing a face covering should be taken. Please continue to be vigilant with handwashing and if you do feel unwell you should isolate yourself and **get a test** via the NHS.

Councillor Neil Stock OBE, Tendring District Council Leader, said the authority is aware of an increase in Covid-19 cases in the area.

"We are working closely with our colleagues at both Essex County Council and Public Health England as part of the overall response," Cllr Stock said.

"We are asking residents to stick to the guidelines which are in place to protect us all. So keep washing your hands regularly, follow social distancing of two-metres, or one metre-plus where that is not possible, wear a face covering when out in public. If you have symptoms, then do not go out, and get yourself tested.

"This applies to everyone, of all ages and genders. If everyone sticks to these guidelines then we have the best possible chance of minimising transmission of coronavirus in our community. If people do not, then we face the potential of a local lockdown as we have seen previously in places like Leicester.

"I would advise people to follow our social media channels and check our website, or that of Essex County Council, for further updates."

Last updated on: 24/07/2020 - 17:13

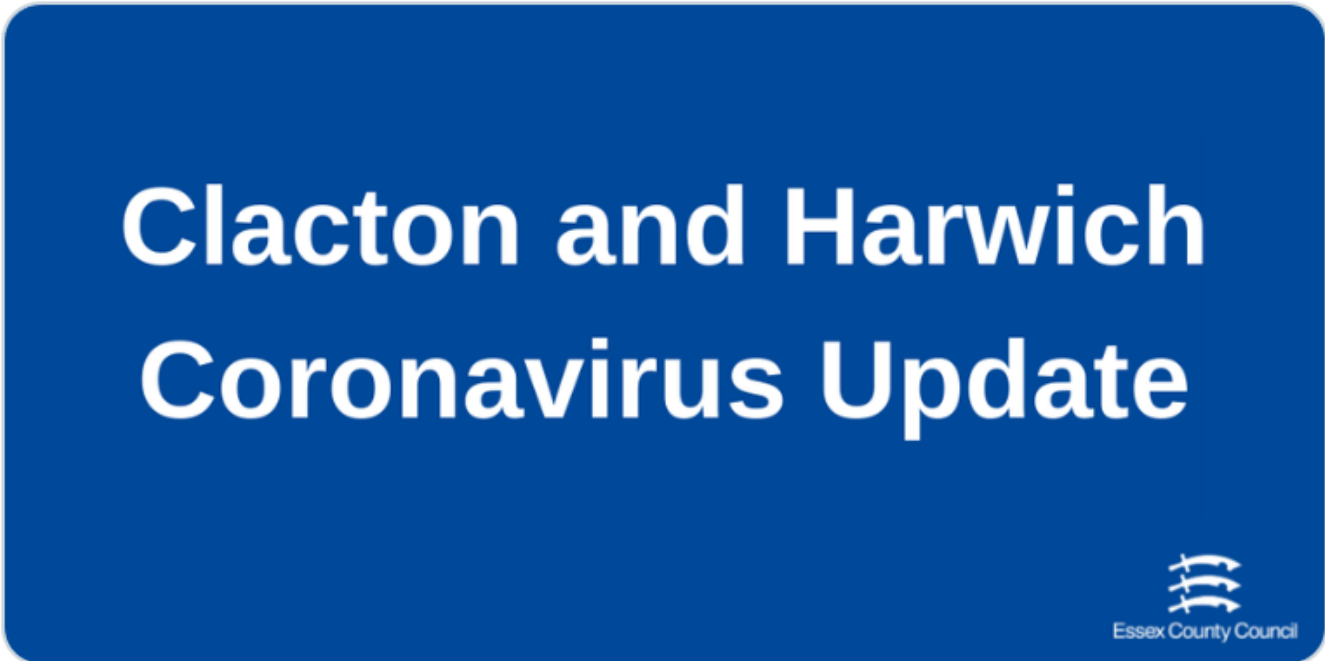
 **Tendring Council**  10.3K Tweets Follow

 Tendring Council Retweeted



Essex County Council  @Essex_CC · 24 Jul 

We have seen the first signs of an increase in cases of covid-19 in Clacton and Harwich and want to reassure residents that we are taking necessary action with our partners to understand this and put measures in place to ensure residents remain safe.



 6  37  23 

Rant*****
So we had a second night which was amazing [redacted] really can't believe how well the place is doing [redacted] trust me I have never seen people lining up to a place like mine 30 mins before doors open,, my asbo team are what I say are the best I do nothing really they do it all, but I feel for them all when they become a target because of me,, so Pc/Wpc what the fuck are you trying to do and just because the ship is tight then show your true colours and then aim at me,,, 28 years you have been doing what you do to me and effect the people around me, just because I have a few pounds that I put loads of hours into getting I didn't do the work but the jobs I give to people done that work,, now this is what makes me think when you turn up with wanting to do something to me and clearly show it's me your targeting yes your a CUNT!! and yes I will play cunt back and waste your time 😏 the longer you spent looking for things will only make me a bigger bad boy and give me the biggest name in a town you can ever make,, it really ends up helping me it doesn't stop me or make me look bad because let's face it I'm not a bad person im just trying to give Clacton something back,, so the place up the road who started the war thank you for helping me open up with the bad boy look I wanted 😏 Truth Night Club opening up with the real power look 😏 and you really have given me the name ASBO who



12:02 [status icons] 61%

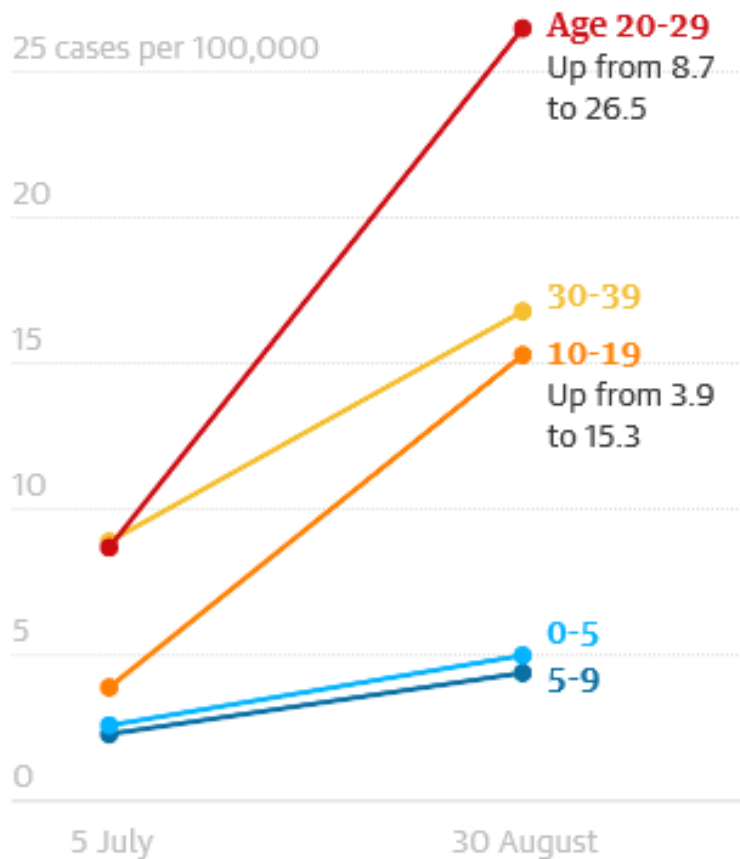
← Search
me or make me look bad because lets face it im not a bad person im just trying to give Clacton something back,, so the place up the road who started the war thank you for helping me open up with the bad boy look I wanted 😏 Truth Night Club opening up with the real power look 😏 [redacted] you really have given me the name ASBO who don't give a fuck what you say or do your self,, thank you for your support 😏 yes your be telling my manager and possibly door staff off but I'm the man behind the day so no one else 😏 remember the words people even when I loose I win 😏 and really picking out 2 cars and me moving them didn't piss me off it just made me laugh at you as you in cctv showed you targeted me last night which will be sent to my people to ask why you won't leave me alone yet again 😏 it must really piss you off reading this today I bet so could you please attend next week same time please I might add you to my pay roll as you clearly are in someone's pocket 😏



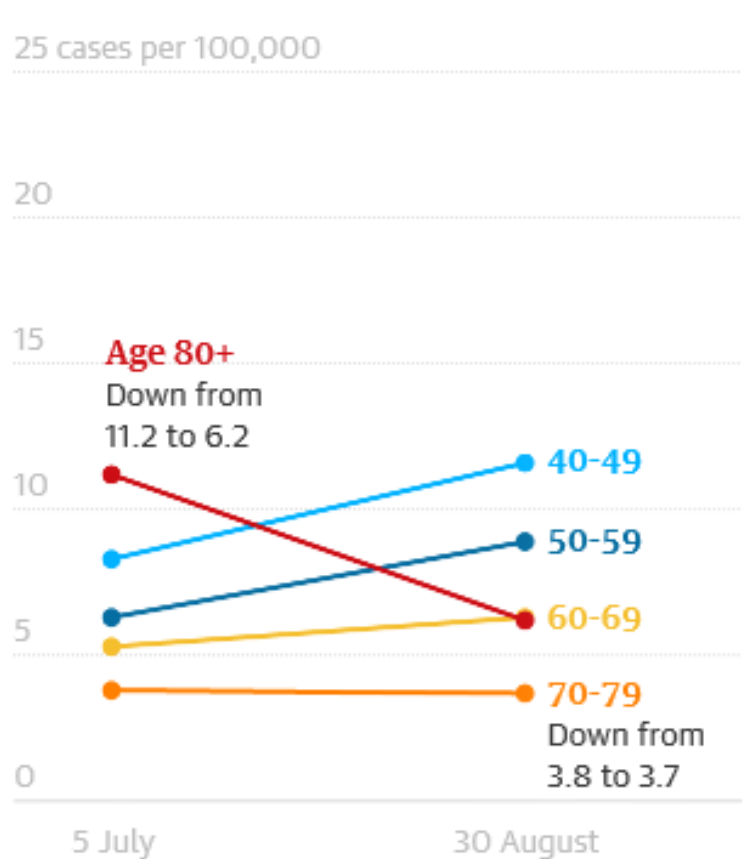
Essex Police ❤️❤️❤️ ASBO's life matters 😏
Loft hurry up open please because I really could do with the help now I can't get all the people in my building so they need a place to go I personally would give up with that shit your doing in TP's it's not working and I'm still saying I'm happy to come be your advertising and promotions manager for free 😏 I'm a flash cunt right now I know but fuck it [redacted] and I could help you with you even paying me 😏 let's not tell anyone



The rate of positive Covid cases is growing fastest among teenagers and people in their 20s ...



... while rising more slowly among the over-40s, and falling for those age 80 and above



Guardian graphic. Source: Public Health England. Note: Data is for England only

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From: Carol Archibald <carchibald@tendringdc.gov.uk>
Sent: 25 August 2020 10:48
To: 'jennahoward123@icloud.com' <jennahoward123@icloud.com>; 'jenna_bowen@hotmail.co.uk' <jenna_bowen@hotmail.co.uk>
Cc: Michael Cook <mcook@tendringdc.gov.uk>; Karen Townshend <ktownshend@tendringdc.gov.uk>
Subject: risk assessment

Classification - Official

Good morning Jenna,

I have now looked at your risk assessment and can comment that the risk assessment is very generic with very little about what you are doing and the focus is on the staff . Customers must also be included and what measure you are taking to protect them. You do not need to copy and paste the guidance as this is generic. Some people have other mitigations to suit their premises and circumstances.

Please see the attached guidance and link to the guidance, which you should regular check for updates and then if there are changes adjust your risk assessment.

I would expect to see effort made so there is no space available for dancing. This can be because table are on the dance floor or it is roped off. Customer notices should be displayed against dancing both outside and inside. You need to re write your risk assessment for the businesses you intend to run going forward. I look forward to receiving it asap.

I have also included a link to the hse website that has more information on risk assesments.

<https://assets.publishing.service.gov.uk/media/5eb96e8e86650c278b077616/working-safely-during-covid-19-restaurants-pubs-takeaway-services-200812.pdf>

https://www.hse.gov.uk/simple-health-safety/risk/index.htm?utm_source=hse.gov.uk&utm_medium=refferal&utm_campaign=ri sk&utm_content=home-page-popular

if you wish to discuss your risk assessment then please contact me to arrange a date and time.

Kind regards

Carol Archibald BSc (Hons),FCIEH, CEnvH Cert Ed,
Chartered Environmental Health Practitioner
Team Leader Food, Health and Safety, Port Health, Animal Welfare
Tendring District Council
88-90 Pier Avenue
Clacton-on- Sea
Essex
CO15 1NJ
Email:carchibald@tendringdc.gov.uk
Tp 01255 686753

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HM Government

Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services

COVID-19 secure guidance for employers, employees and the self-employed

12 August 2020





Document updates

Published 11 May 2020

Last updated 12 August 2020

Date	Version	Update	Section
14 June 2020	2.0	Updated guidance on the need to self isolate if advised by the government's track and trace service	3.2 People who need to self-isolate
14 June 2020	2.0	Guidance on test and trace for workers and the need to keep a record of staff shift patterns	7.1 Shift Patterns and Outbreaks
14 June 2020	2.0	Guidance for workers travelling to and from work	4.1 Coming to work and leaving work
14 June 2020	2.0	Guidance on considering the security implication of any implemented risk mitigations	1.Thinking about risk 4.6 Accidents, security, and other incidents
24 June 2020	3.0	Guidance on support bubbles and the need to self-isolate if anyone in your support bubble has COVID-19 symptoms	3.2 People who need to self-isolate
24 June 2020	3.0	Updated guidance on social distancing to reflect 2m, or 1m with risk mitigation where 2m is not viable is acceptable.	1.1 Managing Risk Throughout
24th June 2020	3.0	Updated to expand guidance on takeaways to venues providing service at the venue ahead of planned opening.	2.0 Keeping customer and visitors safe 4.0 Social distancing for workers
3 July 2020	4.0	Updated to include link to DHSC guidance on Test and Trace	7.1 Shift Patterns and Outbreaks
3 July 2020	4.0	Updated to include link to DHSC guidance on Test and Trace for temporary records of visitors and customers	2.1 Keeping customers and visitors safe
3 July 2020	4.0	Updated to include guidance in the event of a local lockdown	1. Thinking about risk
3 July 2020	4.0	Update to the COVID-19 secure poster to reflect 2m, or 1m with risk mitigation where 2m is not viable is acceptable.	1.2 Sharing the results of your risk assessment Webpage



Document updates (continued)

Published 11 May 2020

Last updated 12 August 2020

Date	Version	Update	Section
3 July 2020	4.0	Include guidance in the event of a COVID-19 outbreak in the workplace as section 7.1.2	7.1 Shift Patterns and Outbreaks
3 July 2020	4.0	Updated guidance on what business can be open to include self-contained hospitality	Introduction
9 July 2020	5.0	Guidance to say that if a building or space is repurposed there needs to be a fire risk assessment.	4.8 Accidents, security, and other incidents
9 July 2020	5.0	Updated guidance to provide more information on entertainment permitted in venues.	4.5 Entertainment
23 July 2020	6.0	Updated guidance on mass gatherings in the workplace	2.1 Keeping customers and visitors safe
23 July 2020	6.0	Updated guidance on working from home	3. Who should go to work Staying COVID-19 Secure in 2020 Poster
23 July 2020	6.0	Updated guidance on ventilation and mitigating against the transmission of COVID-19	2.2 Ventilation
23 July 2020	6.0	Updated guidance on live performances	4.5 Entertainment
23 July 2020	6.0	Include guidance on disposing of personal or business waste, including face coverings and PPE.	5.2 Keeping the venue clean
23 July 2020	6.0	Updated guidance on face coverings and where to wear them.	6.1 Face Coverings
23 July 2020	6.0	Updated guidance on the use of public transport for work related travel	7.2 Work-related travel
31 July 2020	7.0	Guidance on clinically extremely vulnerable individuals returning to the workplace	3.1 Protecting people who are at higher risk



Document updates (continued)

Published 11 May 2020

Last updated 12 August 2020

Date	Version	Update	Section
12 August 2020	8.0	Updated guidance on gatherings of multiple households	2.1 Keeping customers and visitors safe
12 August 2020	8.0	Updated guidance on workforce consultation in advance of returning to work	3. Who should go to work
12 August 2020	8.0	Guidance on those at higher risk of COVID-19	3.1 Protecting people who are at higher risk



Introduction

What do we mean by 'restaurants, pubs, bars and takeaway services'?

This guidance applies to any food preparation or service setting where food and drink is sold for consumption at venues or for takeaway or delivery. For example, restaurants, pubs, bars, beer gardens, food to go, cafes, self-contained hospitality which can be accessed from the outside of a closed venue, social and similar clubs operating as bars and restaurants, mobile catering and contract catering or similar environments where food and drink is purchased and consumed at a venue in their indoor or outdoor areas or offered for takeaway or delivery.

This guidance also considers entertainment in restaurants, pubs and bars and similar venues where food or drink is served, provided they meet current government criteria for safe reopening.

It does not apply to food preparation or food service in clinical or healthcare settings.

The UK is currently experiencing a public health emergency as a result of the COVID-19 pandemic. As such, it is critical that businesses take a range of measures to keep everyone safe. This document is to help you understand how to work safely and keep your customers safe during this pandemic, ensuring as many people as possible comply with social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable). We hope it gives you freedom within a practical framework to think about what you need to do to continue, or restart, operations during the COVID-19 pandemic. We understand how important it is that you can work safely and support your workers' and customers' health and wellbeing during the COVID-19 pandemic and not contribute to the spread of the virus. We know that many of these businesses are currently closed, by [government regulation](#), for their usual service - this guidance will be useful for those businesses as they develop new ways of working or to help prepare for the time when they are able to reopen. The government is clear that workers should not be forced into an unsafe workplace and the health and safety of workers and customers, and public health, should not be put at risk.

We know many people are also keen to return to or contribute to volunteering. Organisations have a duty of care to volunteers to ensure as far as reasonably practicable they are not exposed to risks to their health and safety. This guidance around working safely during COVID-19 should ensure that volunteers are afforded the same level of protection to their health and safety as others, such as workers and customers.

This document has been prepared by the Department for Business, Energy and Industrial Strategy (BEIS) with input from firms, unions, industry bodies and the devolved administrations in Wales, Scotland and Northern Ireland, and in consultation with Public Health England (PHE) and the Health and Safety Executive (HSE).

Public health is devolved in Northern Ireland, Scotland and Wales; this guidance should be considered alongside local public health and safety requirements and legislation in Northern Ireland, Scotland and Wales. For advice to businesses in other parts of the UK please see guidance set by the Northern Ireland Executive, the Scottish Government, and the Welsh Government.

We expect that this document will be updated over time. This version is up to date as of 12 August 2020. You can check for updates at <https://www.gov.uk/workingsafely>. If you have any feedback for us, please email safer.workplaces@beis.gov.uk.

This document is one of a set of documents about how to work safely in different types of workplace. This one is designed to be relevant for people who work in or run restaurants, pubs, bars and takeaway services.

Employers also providing accommodation services should refer to guidance on Working Safely during COVID-19 in hotels and other accommodation. Employers also providing entertainment may wish to refer to guidance published by the Department of Media, Culture and Sport.



How to use this guidance

This document sets out guidance on how to open workplaces safely while minimising the risk of spreading COVID-19. It gives practical considerations of how this can be applied in the workplace.

Each business will need to translate this into the specific actions it needs to take, depending on the nature of their business, including the size and type of business, how it is organised, operated, managed and regulated. They will also need to monitor these measures to make sure they continue to protect customers and workers.

This guidance does not supersede any legal obligations relating to health and safety, entertainment licensing and regulations, employment or equalities and it is important that as a business or an employer you continue to comply with your existing obligations, including those relating to individuals with protected characteristics. It contains non-statutory guidance to take into account when complying with these existing obligations. When considering how to apply this guidance, take into account agency workers, contractors and other people, as well as your employees.

To help you decide which actions to take, you must carry out an appropriate COVID-19 risk assessment, just as you would for other health and safety related hazards. This risk assessment must be done in consultation with unions or workers.



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1. Thinking about risk

Objective: That all employers carry out a COVID-19 risk assessment.

COVID-19 is a public health emergency. Everyone needs to assess and manage the risks of COVID-19, and in particular businesses should consider the risks to their workers and visitors. As an employer, you also have a legal responsibility to protect workers and others from risk to their health and safety. This means you need to think about the risks they face and do everything reasonably practicable to minimise them, recognising you cannot completely eliminate the risk of COVID-19.

You must make sure that the risk assessment for your business addresses the risks of COVID-19, using this guidance to inform your decisions and control measures. You should also consider the security implications of any decisions and control measures you intend to put in place, as any revisions could present new or altered security risks that may require mitigation. A risk assessment is not about creating huge amounts of paperwork, but rather about identifying sensible measures to control the risks in your workplace. If you have fewer than five workers, or are self-employed, you don't have to write anything down as part of your risk assessment. Your risk assessment will help you decide whether you have done everything you need to. There are interactive tools available to support you from the Health and Safety Executive (HSE) at <https://www.hse.gov.uk/risk/assessment.htm>.

Employers have a duty to consult their people on health and safety. You can do this by listening and talking to them about the work and how you will manage risks from COVID-19. The people who do the work are often the best people to understand the risks in the workplace and will have a view on how to work safely. You are encouraged to have individual discussions with your workers where reasonable, including those who are clinically extremely vulnerable and therefore may be returning to the workplace, to consider any uncertainties they have about precautions in place to make the workplace COVID-secure. Involving them in making decisions shows that you take their health and safety seriously. You must consult with the health and safety representative selected by a recognised trade union or, if there isn't one, a representative chosen by workers. As an employer, you cannot decide who the representative will be.

At its most effective, full involvement of your workers creates a culture where relationships between employers and workers are based on collaboration, trust and joint problem solving. As is normal practice, workers should be involved in assessing workplace risks and the development and review of workplace health and safety policies in partnership with the employer.

Employers and workers should always come together to resolve issues. If concerns still cannot be resolved, see below for further steps you can take.

How to raise a concern:



Contact your employee representative.



Contact your trade union if you have one.



Use the HSE form available at <https://www.hse.gov.uk/contact/concerns.htm>.

Page 210



Contact HSE by phone on 0300 790 6787.



1. Thinking about risk (continued)

Where the enforcing authority, such as the HSE or your local authority, identifies employers who are not taking action to comply with the relevant public health legislation and guidance to control public health risks, they are empowered to take a range of actions to improve control of workplace risks. These actions include closure of venues under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020. For example, this would cover employers not taking appropriate action to ensure social distancing, where possible.

Failure to complete a risk assessment which takes account of COVID-19, or completing a risk assessment but failing to put in place sufficient measures to manage the risk of COVID-19, could constitute a breach of health and safety law. The actions the enforcing authority can take include the provision of specific advice to employers to support them to achieve the required standard, through to issuing enforcement notices to help secure improvements. Serious breaches and failure to comply with enforcement notices can constitute a criminal offence, with serious fines and even imprisonment for up to two years. There is also a wider system of enforcement, which includes specific obligations and conditions for licensed premises.

Employers are expected to respond to any advice or notices issued by enforcing authorities rapidly and are required to do so within any timescales imposed by the enforcing authorities. The vast majority of employers are responsible and will join with the UK's fight against COVID-19 by working with the Government and their sector bodies to protect their workers and the public. However, inspectors are carrying out compliance checks nationwide to ensure that employers are taking the necessary steps.

Employers must follow all instructions from authorities in the event of new local restrictions. [See further detail of areas with additional local restrictions.](#)



1.1 Managing risk

Objective: To reduce risk to the lowest reasonably practicable level by taking preventative measures, in order of priority.

Employers have a duty to reduce workplace risk to the lowest reasonably practicable level by taking preventative measures. Employers must work with any other employers or contractors sharing the workplace so that everybody's health and safety is protected. In the context of COVID-19 this means protecting the health and safety of your workers and customers by working through these steps in order:

- Ensuring both workers and customers who feel unwell stay at home and do not attend the premise.
- In every workplace, increasing the frequency of handwashing and surface cleaning.
- Businesses and workplaces should make every reasonable effort to ensure their employees can work safely. From 1 August, this may be working from home, or within the workplace if COVID-19 Secure guidelines are followed closely. When in the workplace, everyone should make every reasonable effort to comply with the social distancing guidelines set out by the government (2m, or 1m with risk mitigation where 2m is not viable is acceptable). Where the social distancing guidelines cannot be followed in full, in relation to a particular activity, businesses should consider whether that activity can be redesigned to maintain a 2m distance or 1m with risk mitigations where 2m is not viable. From 1st August, clinically extremely vulnerable individuals, who were previously advised to shield at home, can go to the workplace as long as it is COVID-secure, but should carry on working from home wherever possible.
- Further mitigating actions include:
 - Further increasing the frequency of hand washing and surface cleaning.
 - Keeping the activity time involved as short as possible.
 - Using screens or barriers to separate people from each other.
 - Using back-to-back or side-to-side working (rather than face-to-face) whenever possible.
 - Reducing the number of people each person has contact with by using 'fixed teams or partnering' (so each person works with only a few others).
- Where the social distancing guidelines cannot be followed in full, even through redesigning a particular activity, businesses should consider whether that activity needs to continue for the business to operate, and if so, take all the mitigating actions possible to reduce the risk of transmission between their staff.



1.1 Managing risk (continued)

- Finally, if people must work face-to-face for a sustained period with more than a small group of fixed partners, then you will need to assess whether the activity can safely go ahead. No one is obliged to work in an unsafe work environment.
- In your assessment you should have particular regard to whether the people doing the work are especially vulnerable to COVID-19.

The recommendations in the rest of this document are ones you must consider as you go through this process. You could also consider any advice that has been produced specifically for your sector, for example by trade associations or trades unions.

If you are currently operating, you will already have carried out an assessment of the risks posed by COVID-19 in your workplace. You use this document to identify any further improvements you should make. You must review the measures you have put in place to make sure they are working. You should also review them if they may no longer be effective or if there are changes in the workplace that could lead to new risks.

If you have not already done so, you should carry out an assessment of the risks posed by COVID-19 in your workplace as soon as possible.) If you are currently operating, you will already have carried out an assessment of the risks posed by Covid-19 in your workplace. are likely to have gone through a lot of this thinking already. We recommend that) You should use this document to identify any further improvements you should make. You must review the measures you have put in place to make sure they are working.



1.2 Sharing the results of your risk assessment

You must share the results of your risk assessment with your workforce. If possible, you should consider publishing the results on your website (and we would expect all employers with over 50 workers to do so). We would expect all businesses to demonstrate to their workers and customers that they have properly assessed their risk and taken appropriate measures to mitigate this. You should do this by displaying a notification in a prominent place in your business and on your website, if you have one. Below you will find a notice you should sign and display in your workplace to show you have followed this guidance.

Staying COVID-19 Secure in 2020

We confirm we have complied with the government's guidance on managing the risk of COVID-19

FIVE STEPS TO SAFER WORKING TOGETHER

- ✓ We have carried out a [COVID-19 risk assessment](#) and shared the results with the people who work here
- ✓ We have [cleaning, handwashing and hygiene procedures](#) in line with guidance
- ✓ We have taken all reasonable steps to help people work safely from a [COVID-19 Secure workplace](#) or work from home
- ✓ We have taken all reasonable steps to [maintain a 2m distance](#) in the workplace
- ✓ Where people cannot keep 2m apart we have ensured at least a 1m distance and taken all the mitigating actions possible to [manage transmission risk](#)

Signed on behalf of employer _____ Employer representative signature _____

Employer _____ Employer name _____ Date _____

Who to contact: _____ Your Health and Safety Representative
(or the Health and Safety Executive at www.hse.gov.uk or 0300 003 1647)

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2. Keeping your customers and visitors safe





2.1 Keeping customers and visitors safe

Objective: To minimise the risk of transmission and protect the health of customers and visitors in restaurants, pubs, bars and takeaway venues.

- The opening up of the economy following the COVID-19 outbreak is being supported by NHS Test and Trace. You should assist this service by keeping a temporary record of your customers and visitors for 21 days, in a way that is manageable for your business, and assist NHS Test and Trace with requests for that data if needed. This could help contain clusters or outbreaks. Many businesses that take bookings already have systems for recording their customers and visitors – including restaurants, hotels, and hair salons. If you do not already do this, you should do so to help fight the virus. We have worked with industry and relevant bodies to design this system in line with data protection legislation, and further guidance can be found [here](#).
- Indoor gatherings should only be occurring in groups of up to two households (including support bubbles) while outdoor gatherings should only be occurring in groups of up to two households (or support bubbles), or a group of at most six people from any number of households. When counting the number of households in a group, a support bubble is considered to be one household. It is against the law to gather in groups of more than 30 people in private homes (including gardens and other outdoor spaces).
- The number of households permitted to gather in indoor and outdoor spaces could vary with local restrictions. You should consult your local guidance for further clarification on the number of households permitted to gather. Information on local restrictions can be found [here](#).
- Businesses should not intentionally facilitate gatherings between a greater number of households than is permitted in their local area; and should take steps to ensure customer compliance with the limits on gatherings. These could include:
 - Informing customers of guidance through signage or notices at the point of booking or on arrival.
 - Ensuring staff are familiar with the guidance, and if any local restrictions are in place.
 - Asking customers for verbal confirmation of the number of households in their party at the point of arrival.
- Businesses following COVID-19 Secure guidelines can have more than 30 people on the premises provided they are in groups of no more than two households (anyone in your support bubble counts as one household). However, they should not host individual groups of more than 30 people indoors. Events in public outdoor spaces that are organised by businesses, charitable or political organisations, and public bodies, can host more than 30 people provided they take reasonable steps to mitigate the risk of transmission, in line with COVID-19 Secure guidance and including completion of a risk assessment. Any other gathering in an outdoor space must not be any larger than 30 people.
- Those operating venues or running events following COVID-19 Secure guidelines should take additional steps to ensure the safety of the public and prevent large gatherings or mass events from taking place.
- Businesses that are found to operate in a way that increases the risk of transmission (for example by facilitating indoor gatherings between multiple households) can be closed by Local Authorities under the Health Protection (Coronavirus, Restrictions) (England) (No. 3) Regulations 2020.



2.1 Keeping customers and visitors safe (continued)

Objective: To minimise the risk of transmission and protect the health of customers and visitors in restaurants, pubs, bars and takeaway venues.

- Individual businesses or venues should consider the cumulative impact of many venues re-opening in a small area. This means working with local authorities, neighbouring businesses and travel operators to assess this risk and applying additional mitigations. These could include:
 - Further lowering capacity - even if it is possible to safely seat a number of people inside a venue, it may not be safe for them all to travel or enter that venue.
 - Staggering entry times with other venues and taking steps to avoid queues building up in surrounding areas.
 - Arranging one-way travel routes between transport hubs and venues.
 - Advising patrons to avoid particular forms of transport or routes and to avoid crowded areas when in transit to the venue.
- Local authorities should avoid issuing licenses for events that could lead to larger gatherings forming and provide advice to businesses on how to manage events of this type. If appropriate, the Government has powers under schedule 22 of the Coronavirus Act 2020 to close venues hosting large gatherings or prohibit certain events (or types of event) from taking place.





2.1 Keeping customers and visitors safe (continued)

Steps that will usually be needed:

- Calculating the maximum number of customers that can reasonably follow social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) at the venue. Taking into account total indoor and outdoor space, specific venue characteristics such as furniture as well as likely pinch points and busy areas.
- Reconfiguring indoor and outdoor seating and tables to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) between customers of different households or [support bubbles](#). For example, increasing the distance between tables.
- Working with your local authority or landlord to take into account the impact of your processes, including queues, on public spaces such as high streets and public car parks.
- Working with neighbouring businesses and local authorities to provide additional parking or facilities such as bike-racks, where possible, to help customers avoid using public transport.
- Reducing the need for customers to queue, but where this is unavoidable, discouraging customers from queueing indoors and using outside spaces for queueing where available and safe. For example, using some car parks and existing outdoor services areas, excluding disabled car parking bays.
- Managing outside queues to ensure they do not cause a risk to individuals, other businesses or additional security risks, for example by introducing queuing systems, having staff direct customers and protecting queues from traffic by routing them behind permanent physical structures such as street furniture, bike racks, bollards or putting up barriers.
- Providing clear guidance on social distancing and hygiene to people on arrival, for example, signage, visual aids and before arrival, such as by phone, on the website or by email.
- Managing the entry of customers, and the number of customers at a venue, so that all indoor customers are seated with appropriate distancing, and those outdoors have appropriately spaced seating or standing room. This is to ensure that the venue, including areas of congestion does not become overcrowded. Managing entry numbers can be done, for example, through reservation systems, social distancing markings, having customers queue at a safe distance for toilets or bringing payment machines to customers, where possible.



2.1 Keeping customers and visitors safe (continued)

Steps that will usually be needed:

- Ensure customers are compliant with limits on household gatherings. For example, inform customers of restrictions through signage or notices at the point of booking or on arrival, and ask customers for verbal confirmation of the number of households in their party at the point of arrival. Indoor gatherings are limited to members of any two households (or support bubbles), while outdoor gatherings are limited to members of any two households (or support bubbles), or a group of at most six people from any number of households. Limits on gatherings may vary with local restrictions.
- Encouraging customers to use hand sanitiser or handwashing facilities as they enter the venue.
- Ensuring any changes to entrances, exits and queue management take into account reasonable adjustments for those who need them, including disabled customers. For example, maintaining pedestrian and parking access for disabled customers.
- Reminding customers who are accompanied by children that they are responsible for supervising them at all times and should follow social distancing guidelines.
- Keeping indoor and soft play areas closed. For guidance on opening outdoor playgrounds safely, see guidance for managing playgrounds published by The Ministry of Housing, Communities and Local Government.
- Looking at how people move through the venue and how you could adjust this to reduce congestion and contact between customers, for example, queue management or one-way flow, where possible.
- Planning for maintaining social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) in the event of adverse weather conditions, being clear that customers cannot seek shelter indoors unless social distancing can be maintained.
- Working with neighbouring businesses and local authorities to consider how to spread the number of people arriving throughout the day for example by staggering opening hours; this will help reduce demand on public transport at key times and avoid overcrowding.
- Determining if schedules for essential services and contractor visits can be revised to reduce interaction and overlap between people, for example, carrying out services at night.



2.2 Managing service of food and drink at a venue

Objective: To manage interactions at the venue resulting from service of food and drink.

Steps that will usually be needed:

- Maintaining social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) from customers when taking orders from customers.
- Using social distance markings to remind customers to maintain social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) between customers of different households or [support bubbles](#).
- Minimising customer self service of food, cutlery and condiments to reduce risk of transmission. For example, providing cutlery and condiments only when food is served.
- Providing only disposable condiments or cleaning non-disposable condiment containers after each use.
- Reducing the number of surfaces touched by both staff and customers. For example, asking customers to remain at a table where possible, or to not lean on counters when collecting takeaways.
- Encouraging contactless payments where possible and adjusting location of card readers to social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- Minimising contact between front of house workers and customers at points of service where appropriate. For example, using screens or tables at tills and counters to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- Ensuring all outdoor areas, with particular regard to covered areas, have sufficient ventilation. For example, increasing the open sides of a covered area.



2.2 Managing service of food and drink at a venue

2.2.1 Takeaway or delivery

Objective: To manage interactions at the venue resulting from selling food and drinks for takeaway or delivery.

Steps that will usually be needed:

- See [government guidance](#) on food safety for food delivery.
- Encouraging customers to order online, on apps or over the telephone to reduce queues and stagger pick-up times.
- Minimising contact between kitchen workers and front of house workers, delivery drivers or riders, for example, by having zones from which delivery drivers can collect packaged food items.
- Limiting access to venues for people waiting for or collecting takeaways. Setting out clear demarcation for social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) for delivery drivers, riders or customers queuing. Asking customers to wait outside or in their cars.
- Working with your local authority, landlord and neighbours to ensure designated waiting areas do not obstruct public spaces.

2.2 Managing service of food and drink at a venue

2.2.2 Service at the venue

Objective: To manage interactions at the venue resulting from service of food and drink in indoor and outdoor services areas.

Steps that will usually be needed:

- Encouraging use of contactless ordering from tables where available. For example, through an ordering app.
- Adjusting service approaches to minimise staff contact with customers. Indoor table service must be used where possible, alongside further measures such as assigning a single staff member per table. Outdoor table service should also be encouraged, although customers are permitted to stand outside if distanced appropriately. Where bar or counter service is unavoidable, preventing customers from remaining at the bar or counter after ordering.
- Adjusting processes to prevent customers from congregating at points of service. For example, having only staff collect and return empty glasses to the bar.
- Minimising contact between kitchen workers and front of house workers. For example, by having zones from which front of house staff can collect food.
- Encouraging use of outdoor areas for service where possible. For example, increasing outdoor seating or outdoor points of service such as stalls.



2.3 Ventilation

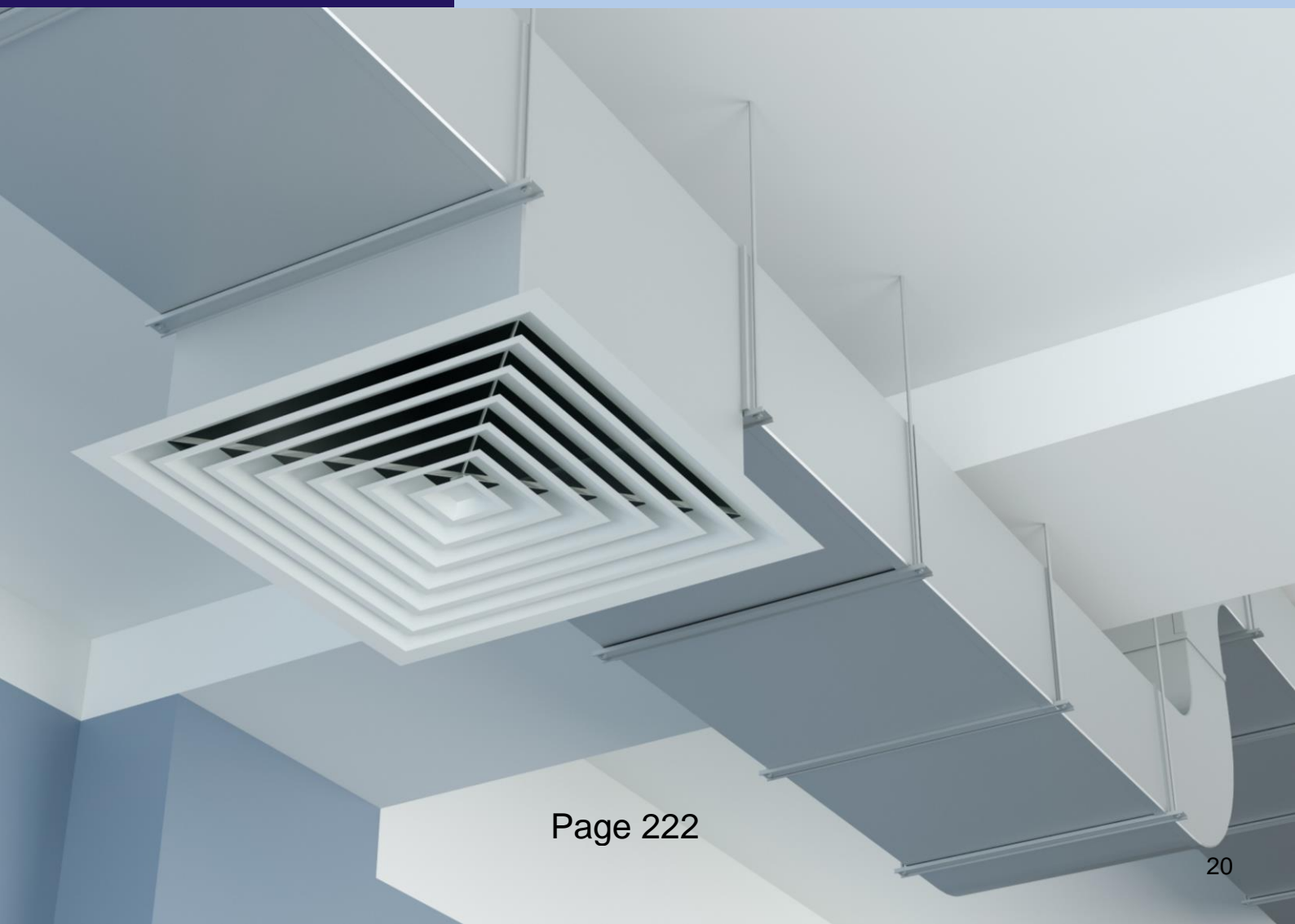
Objective: To use ventilation to mitigate the transmission risk of COVID-19.

Ventilation into the building should be optimised to ensure the maximum fresh air supply is provided to all areas of the facility wherever possible.

Ventilation systems should provide a good supply of fresh air.

Steps that will usually be needed:

- Increasing the existing ventilation rate by adjusting the fan speed.
- Operating the ventilation system when there are people in the building.
- Monitoring and managing filters in accordance to manufacturer instructions.
- Keeping doors and windows open if possible.
- Using ceiling fans or desk fans to improve air circulation, provided there is good ventilation.





2.4 Customer toilets

Objective: To ensure that toilets are kept open and to ensure/promote good hygiene, social distancing, and cleanliness in toilet facilities.

- Public toilets, portable toilets and toilets inside premises should be kept open and carefully managed to reduce the risk of transmission of COVID-19.

Steps that will usually be needed:








- Using signs and posters to build awareness of good handwashing technique, the need to increase handwashing frequency and to avoid touching your face, and to cough or sneeze into a tissue which is binned safely, or into your arm if a tissue is not available.
- Consider the use of social distancing marking in areas where queues normally form, and the adoption of a limited entry approach, with one in, one out (whilst avoiding the creation of additional bottlenecks).
- To enable good hand hygiene consider making hand sanitiser available on entry to toilets where safe and practical, and ensure suitable handwashing facilities including running water and liquid soap and suitable options for drying (either paper towels or hand driers) are available.
- Setting clear use and cleaning guidance for toilets, with increased frequency of cleaning in line with usage. Use normal cleaning products, paying attention to frequently hand touched surfaces, and consider use of disposable cloths or paper roll to clean all hard surfaces.
- Keeping the facilities well ventilated, for example by fixing doors open where appropriate.
- Special care should be taken for cleaning of portable toilets and larger toilet blocks.
- Putting up a visible cleaning schedule can keep it up to date and visible.
- Providing more waste facilities and more frequent rubbish collection.



2.5 Providing and explaining available guidance

Objective: To make sure people understand what they need to do to maintain safety.

Steps that will usually be needed:

-  Providing clear guidance on expected customer behaviours, social distancing and hygiene to people on or before arrival, for example on online booking forms and on-site signage and visual aids. Explaining to customers that failure to observe safety measures will result in service not being provided.
-  Providing written or spoken communication of the latest guidelines to both workers and customers inside and outside the venue. You should display posters or information setting out how customers should behave at your venue to keep everyone safe. Consider the particular needs of those with protected characteristics, such as those who are hearing or visually impaired.
-  Where necessary, informing customers that police and the local authorities have the powers to enforce requirements in relation to social distancing and may instruct customers to disperse, leave an area, issue a fixed penalty notice or take further enforcement action.
-  Informing customers that they should be prepared to remove face coverings safely if asked to do so by police officers and staff for the purposes of identification.
-  Encouraging workers to remind customers to follow social distancing advice and clean their hands regularly.
-  Where visits to venues are required, for example, inbound supplier deliveries or safety critical visitors, providing site guidance on social distancing and hygiene on or before arrival.
-  Ensuring information provided to customers and visitors, such as advice on the location or size of queues, does not compromise their safety.



3. Who should go to work

Objective:

Employers should ensure workplaces are safe whilst also enabling working from home.

It is recognised that for people who work in these types of workplace, it is often not possible to work from home.

In order to keep the virus under control, it is important that people work safely. Working from home remains one way to do this. However, the risk of transmission can be substantially reduced if COVID-19 Secure guidelines are followed closely. Employers should consult with their employees to determine who, from the 1 August, can come into the workplace safely taking account of a person's journey, caring responsibilities, protected characteristics, and other individual circumstances. Extra consideration should be given to those people at higher risk. Businesses should consider the impact of workplaces reopening on local transport and take appropriate mitigating actions (e.g. staggered start and finish times for staff). When employers consider that workers should come into their place of work, then this will need to be reflected in the COVID-19 workplace risk assessment and actions taken to manage the risks of transmission in line with this guidance. The decision to return to the workplace should be made in meaningful consultation with workers (including through trade unions or employee representative groups where they exist). A meaningful consultation means engaging in an open conversation about returning to the workplace before any decision to return has been made. This should include a discussion of the timing and phasing of any return and any risk mitigations that have been implemented. It is vital employers engage with workers to ensure they feel safe returning to work, and they should not force anyone into an unsafe workplace.

Steps that will usually be needed:

- Considering the maximum number of people who can be safely accommodated on site.
- Planning for a phased return to work for people safely and effectively.
- Monitoring the wellbeing of people who are working from home and helping them stay connected to the rest of the workforce, especially if the majority of their colleagues are on-site.
- Keeping in touch with off-site workers on their working arrangements including their welfare, mental and physical health and personal security.
- Providing equipment for people to work at home safely and effectively, for example, remote access to work systems.



3.1 Protecting people who are at higher risk

Objective: To support those who are at a higher risk of infection and/or an adverse outcome if infected.

The Public Health England [report](#) 'Disparities in the risk and outcomes of COVID-19' shows that some groups of people may be at more risk of being infected and/or an adverse outcome if infected.

The higher-risk groups include those who:

- are older males
- have a high body mass index (BMI)
- have health conditions such as diabetes
- are from some Black, Asian or minority ethnicity (BAME) backgrounds

You should consider this in your risk assessment.

From 1 August, clinically extremely vulnerable individuals can return to their workplace providing COVID-secure guidelines are in place but should work from home wherever possible. If extremely clinically vulnerable individuals cannot work from home, they should be offered the option of the safest available on-site roles, enabling them to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable). It may be appropriate for clinically extremely vulnerable individuals to take up an alternative role or adjusted working patterns temporarily.

As for any workplace risk you must take into account specific duties to those with protected characteristics, including, for example, expectant mothers who are, as always, entitled to suspension on full pay if suitable roles cannot be found. Particular attention should also be paid to people who live with clinically extremely vulnerable individuals.

Steps that will usually be needed:

- Providing support for workers around mental health and wellbeing. This could include advice or telephone support.
- See current guidance for advice on who is in the clinically extremely vulnerable and clinically vulnerable groups.
- Discussing the safest possible roles for clinically extremely vulnerable workers who are returning to the workplace.



3.2 People who need to self-isolate

Objective: To make sure individuals who are advised to stay at home under existing [government guidance](#) to stop infection spreading do not physically come to work. This includes individuals who have symptoms of COVID-19, those who live in a household or are in a [support bubble](#) with someone who has symptoms and those who are advised to self-isolate as part of the government's [test and trace](#) service.

Steps that will usually be needed:

- Enabling workers to work from home while self-isolating if appropriate.
- See current guidance for [employees](#) and [employers](#) relating to statutory sick pay due to COVID-19.
- Ensuring any workers who have symptoms of COVID-19 - a high temperature, new and persistent cough or anosmia - however mild, should self-isolate for at least 10 days from when the symptoms started. Workers who have tested positive for COVID-19 should self-isolate for at least 10 days starting from the day the test was taken. Where a worker has tested positive whilst not experiencing symptoms but develop symptoms during the isolation period, they should restart the 10-day isolation period from the day the symptoms developed. This only applies to those who begin their isolation on or after 30 July.
- See [current guidance](#) for people who have symptoms and those who live with others who have symptoms.

3.3 Equality in the workplace

Objective: To make sure that nobody is discriminated against.

- In applying this guidance, employers should be mindful of the particular needs of different groups of workers or individuals.
- It is breaking the law to discriminate, directly or indirectly, against anyone because of a protected characteristic such as age, sex, disability, race or ethnicity.
- Employers also have particular responsibilities towards disabled workers and those who are new or expectant mothers.

Steps that will usually be needed:

- Understanding and taking into account the particular circumstances of those with different protected characteristics.
- Involving and communicating appropriately with workers whose protected characteristics might either expose them to a different degree of risk, or might make any steps you are thinking about inappropriate or challenging for them.
- Considering whether you need to put in place any particular measures or adjustments to take account of your duties under the equalities legislation.
- Making reasonable adjustments to avoid disabled workers being put at a disadvantage, and assessing the health and safety risks for new or expectant mothers.
- Making sure that the steps you take do not have an unjustifiable negative impact on some groups compared to others. For example those with caring responsibilities or those with religious commitments.



4. Social distancing for workers

Objective:

Ensuring workers maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable), wherever possible, including arriving at and departing from work, while in work and when travelling between sites.

- You must maintain social distancing in the workplace wherever possible.
- Where the social distancing guidelines cannot be followed in full in relation to a particular activity, businesses should consider whether that activity can be redesigned to maintain a 2m distance or 1m with risk mitigations where 2m is not viable. Mitigating actions include:
 - Further increasing the frequency of hand washing and surface cleaning.
 - Keeping the activity time involved as short as possible.
 - Using screens or barriers to separate people from each other.
 - Using back-to-back or side-to-side working (rather than face-to-face) whenever possible.
 - Reducing the number of people each person has contact with by using 'fixed teams or partnering' (so each person works with only a few others).
- Where the social distancing guidelines cannot be followed in full, even through redesigning a particular activity, businesses should consider whether that activity needs to continue for the business to operate, and if so, take all the mitigating actions possible to reduce the risk of transmission between staff.
- Social distancing applies to all parts of a business, not just the place where people spend most of their time, but also entrances and exits, break rooms, canteens and similar settings. These are often the most challenging areas to maintain social distancing and workers should be specifically reminded.



4.1 Coming to work and leaving work

Objective: To maintain social distancing wherever possible, on arrival and departure and to ensure handwashing upon arrival.

Steps that will usually be needed:



Reduced staffing levels to maintain social distancing

- Staggering arrival and departure times at work to reduce crowding into and out of the venue, taking account of the impact on those with protected characteristics.
- Providing additional parking or facilities such as bike-racks to help people walk, run, or cycle to work where possible.
- Reducing congestion, for example, by having more entry points to the venue. If you have more than one door, consider having one for entering the building and one for exiting.
- Using markings to guide staff coming into or leaving the building.
- Providing handwashing facilities (or hand sanitiser where not possible) at entry and exit points and not using touch-based security devices such as keypads where possible.
- Providing storage for staff clothes and bags.
- Requesting staff change into work uniforms on site using appropriate facilities/changing areas, where social distancing and hygiene guidelines can be met.
- Washing uniforms on site, where appropriate, or requesting workers to regularly wash uniforms at home.
- See [government guidance](#) on travelling to and from work.



4.2 Moving around venues

Objective: To maintain social distancing wherever possible, while people travel through the venue.

Steps that will usually be needed:

- Reducing movement by discouraging non-essential trips within venues, for example, restricting access to some areas, encouraging use of radios, telephones or other electronic devices when sending orders from service areas to kitchens, where permitted, and cleaning them between use.
- Reducing job and location rotation, for example, assigning workers to specific areas or keeping temporary personnel dedicated to one venue.
- Introducing more one-way flow routes through buildings through signage that clearly indicate the direction of flow.
- Reducing maximum occupancy for lifts, providing hand sanitiser for the operation of lifts and encouraging use of stairs wherever possible.
- Making sure that people with disabilities are able to access lifts.
- Managing use of high traffic areas including, corridors, lifts and staircases to maintain social distancing.

4.3 Working areas

Objective: To maintain social distancing between individuals when they are at their working areas.

- For people who work in one place, for example waiter captains or cashiers, working areas should allow them to maintain social distancing from one another as well as the public.
- Working areas should be assigned to an individual as much as possible. If they need to be shared, they should be shared by the smallest possible number of people.
- If it is not possible to ensure working areas comply with social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) then businesses should consider whether that activity needs to continue for the business to operate, and if so take all mitigating actions possible to reduce the risk of transmission.

Steps that will usually be needed:

- Reviewing layouts and processes to allow staff to work further apart from each other.
- Only where it is not possible to move working areas further apart, arranging people to work side-by-side or facing away from each other rather than face-to-face. Where this is not possible, using screens to separate people from each other.
- Using floor tape or paint to mark areas to help people comply with social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).



4.4 Food preparation areas

Objective: To maintain social distancing and reduce contact where possible in kitchens and other food preparation areas.

- COVID-19 is a respiratory illness. It is not known to be transmitted by exposure to food.

Steps that will usually be needed:

- Following [government guidance](#) on managing food preparation and food service areas.
- Allowing kitchen access to as few people as possible.
- Minimising interaction between kitchen staff and other workers, including when on breaks.
- Putting teams into shifts to restrict the number of workers interacting with each other.
- Spacing working areas to maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable) as much as possible, recognising the difficulty of moving equipment such as sinks, hobs and ovens. Consider cleanable panels to separate working areas in larger kitchens.
- Providing floor marking to signal social distancing (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- Using 'one way' traffic flows to minimise contact.
- Minimising access to walk-in pantries, fridges and freezers, for example, with only one person being able to access these areas at one point in time.
- Minimising contact at 'handover' points with other staff, such as when presenting food to serving staff and delivery drivers.





4.5 Entertainment

Objective: To maintain social distancing when providing entertainment within or outside restaurants, pubs, bars and similar venues that serve food or drink.

- For many restaurants, pubs and bars, providing entertainment such as recorded music, live sports broadcasts, quizzes, live musicians or comedians are an important part of their business.
- From 15 August, venues may host socially distanced indoor and outdoor performances, though we encourage performances to continue to take place outdoors wherever possible. Venues should take account of the Performing Arts [guidance](#) in organising performances.
- All venues should ensure that steps are taken to mitigate the increased risk of virus transmission associated with aerosol production from raised voices, such as when speaking loudly or singing loudly, particularly in confined and poorly ventilated spaces. This includes, but is not limited to, lowering the volume of background music, and refraining from playing music or broadcasts that may encourage shouting, particularly if played at a volume that makes normal conversation difficult. Evidence on the most effective steps that can be taken to limit the transmission of the virus continues to be regularly reviewed. This guidance may be updated in the future in response to changing scientific understanding.

Steps that will usually be needed:

- Determining the viability of entertainment and maximum audience numbers consistent with social distancing outside and within venues and other safety considerations.
- Preventing entertainment, such as broadcasts, that is likely to encourage audience behaviours increasing transmission risk. For example, loud background music, communal dancing, group singing or chanting.
- Reconfiguring indoor entertainment spaces to ensure customers are seated rather than standing. For example, repurposing dance floors for customer seating.
- Encouraging use of online ticketing and online or contactless payments for entertainment where possible.
- Communicating clearly to customers the arrangements for entertainment and clearly supervising with additional staff if appropriate.



4.6 Meetings

Objective: To reduce transmission due to face-to-face meetings and maintain social distancing in meetings.

Steps that will usually be needed:

- Using remote working tools to avoid in-person meetings.
- Only absolutely necessary participants should physically attend meetings and should maintain social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable).
- Avoiding transmission during meetings, for example, avoiding sharing pens, documents and other objects.
- Providing hand sanitiser in meeting rooms.
- Holding meetings outdoors or in well-ventilated rooms whenever possible.
- For areas where regular meetings take place, use floor signage to help people maintain social distancing.

4.7 Back of house and common areas

Objective: To maintain social distancing while using common areas.

Steps that will usually be needed:

- Staggering break times to reduce pressure on the staff break rooms or places to eat and ensuring social distancing is maintained in staff break rooms.
- Using safe outside areas for breaks.
- Creating additional space by using other parts of the venue or building that have been freed up by remote working.
- Installing screens to protect staff in front of house areas or serving customers at till points.
- Using social distance marking for other common areas such as toilets, showers, lockers and changing rooms and in any other areas where queues typically form.



4.8 Accidents, security and other incidents

Objective: To prioritise safety during incidents.

- In an emergency, for example, an accident, provision of first aid, fire or break-in, people do not have to comply with social distancing guidelines if it would be unsafe.
- People involved in the provision of assistance to others should pay particular attention to sanitation measures immediately afterwards, including washing hands.

Steps that will usually be needed:

- Reviewing your incident and emergency procedures to ensure they reflect the social distancing principles as far as possible.
- Considering whether you have enough appropriately trained staff to keep people safe. For example, having dedicated staff to encourage social distancing or to manage security.
- Considering the security implications of any changes you intend to make to your operations and practices in response to COVID-19, as any revisions may present new or altered security risks which may need mitigations.
- For organisations who conduct physical searches of people, considering how to ensure safety of those conducting searches while maintaining security standards.
- Where spaces have been repurposed you should carry out a fire risk assessment.
- Following [government guidance](#) on managing security risks.





5. Cleaning the workplace



5.1 Before reopening

Objective: To make sure that any venue that has been closed or partially operated is clean and ready to restart, including:

- An assessment for all sites, or parts of sites, that have been closed, before restarting work.
- Cleaning procedures and providing hand sanitiser before restarting work.

Steps that will usually be needed:

- Checking whether you need to service or adjust ventilation systems, for example, so that they do not automatically reduce ventilation levels due to lower than normal occupancy levels.
- Most air conditioning systems do not need adjustment, however where systems serve multiple buildings, or you are unsure, advice should be sought from your heating ventilation and air conditioning (HVAC) engineers or advisers.
- Following [guidance](#) on reopening food businesses.
- Following [guidance](#) on managing legionella risks.

Enhanced cleaning measures





5.2 Keeping the venue clean

Objective: To keep the venue clean and prevent transmission by touching contaminated surfaces.

Steps that will usually be needed:

- Following [government guidance](#) on cleaning food preparation and food service areas.
- Wedging doors open, where appropriate, to reduce touchpoints. This does not apply to fire doors.
- Frequent cleaning of objects and surfaces that are touched regularly including counters, tills, and making sure there are adequate disposal arrangements for cleaning products.
- Cleaning surfaces and objects between each customer use. For example, cleaning tables, card machines, chairs, trays and laminated menus in view of customers before customer use.
- If you are cleaning after a known or suspected case of COVID-19 then you should refer to the [specific guidance](#).
- Frequent cleaning of work areas and equipment between uses, using your usual cleaning products.
- Providing extra non recycling bins for workers and customers to dispose of single use face coverings and PPE. You should refer to [guidance](#) for information on how to dispose of personal or business waste, including face coverings and PPE.

5.3 Keeping the kitchen clean

Objective: To ensure the highest hygiene standards are operated in kitchen areas.

Steps that will usually be needed:

- Recognising that cleaning measures are already stringent in kitchen areas, consider the need for additional cleaning and disinfection measures.
- Having bins for collection of used towels and staff overalls.
- Washing hands before handling plates and cutlery.
- Continuing high frequency of hand washing throughout the day.



5.4 Hygiene – handwashing, sanitation facilities and toilets

Objective: To help everyone keep good hygiene through the working day.

Steps that will usually be needed:

- Following [government guidance](#) on hygiene in food preparation and food service areas.
- Using signs and posters to build awareness of good handwashing technique, the need to increase handwashing frequency, avoid touching your face and to cough or sneeze into a tissue which is binned safely, or into your arm if a tissue is not available.
- Providing regular reminders and signage to maintain hygiene standards.
- Providing hand sanitiser in multiple locations in addition to washrooms.
- Setting clear use and cleaning guidance for toilets to ensure they are kept clean and social distancing is achieved as much as possible.
- Enhancing cleaning for busy areas.
- Special care should be taken for cleaning of portable toilets.
- Providing more waste facilities and more frequent rubbish collection.
- Providing hand drying facilities – either paper towels or electrical dryers.
- Washing hands after handling customer items and before moving onto another task. For example, after collecting used plates for cleaning and before serving food to another table.



5.5 Changing rooms and showers

Objective: To minimise the risk of transmission in changing rooms and showers.

Steps that will usually be needed:

- Where shower and changing facilities are required, setting clear use and cleaning guidance for showers, lockers and changing rooms to ensure they are kept clean and clear of personal items and that social distancing is achieved as much as possible.
- Introducing enhanced cleaning of all facilities regularly during the day and at the end of the day.

5.6 Handling goods, merchandise, other materials and onsite vehicles

Objective: To reduce transmission through contact with objects that come into the venue and vehicles at the worksite.

Steps that will usually be needed:

- Cleaning procedures for goods and merchandise entering the site.
- Cleaning procedures for the parts of shared equipment you touch before each use.
- Encouraging increased handwashing and introducing more handwashing facilities for workers handling goods and merchandise or providing hand sanitiser where this is not practical.
- Regular cleaning of the inside of shared vehicles that workers may take home.
- Enhanced handling procedures of laundry to prevent potential contamination of surrounding surfaces, to prevent raising dust or dispersing the virus.



6. Personal Protective Equipment (PPE) and face coverings



6. Personal Protective Equipment (PPE) and face coverings

PPE protects the user against health or safety risks at work. It can include items such as safety helmets, gloves, eye protection, high-visibility clothing, safety footwear and safety harnesses. It also includes respiratory protective equipment, such as face masks.

Where you are already using PPE in your work activity to protect against non-COVID-19 risks, you should continue to do so.

At the start of this document we described the steps you need to take to manage COVID-19 risk in the workplace. This includes maintaining social distancing guidelines (2m, or 1m with risk mitigation where 2m is not viable, is acceptable). When managing the risk of COVID-19, additional PPE beyond what you usually wear is not beneficial. This is because COVID-19 is a different type of risk to the risks you normally face in a workplace, and needs to be managed through social distancing, hygiene and fixed teams or partnering, not through the use of PPE.

The exception is clinical settings, like a hospital, or a small handful of other roles for which Public Health England advises use of PPE. For example, first responders and immigration enforcement officers. If you are in one of these groups you should refer to the advice at:

<https://www.gov.uk/government/publications/coronavirus-covid-19-personal-protective-equipment-ppe-plan/covid-19-personal-protective-equipment-ppe-plan>

and

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>.

Workplaces should not encourage the precautionary use of extra PPE to protect against COVID-19 outside clinical settings or when responding to a suspected or confirmed case of COVID-19.

Unless you are in a situation where the risk of COVID-19 transmission is very high, your risk assessment should reflect the fact that the role of PPE in providing additional protection is extremely limited. However, if your risk assessment does show that PPE is required, then you must provide this PPE free of charge to workers who need it. Any PPE provided must fit properly.



6.1 Face coverings

There is growing evidence that wearing a face covering in an enclosed space helps protect individuals and those around them from COVID-19.

A face covering can be very simple and may be worn in enclosed spaces where social distancing isn't possible. It just needs to cover your mouth and nose. It is not the same as a face mask, such as the surgical masks or respirators used by health and care workers. Similarly, face coverings are not the same as the PPE used to manage risks like dust and spray in an industrial context. Supplies of PPE, including face masks, must continue to be reserved for those who need them to protect against risks in their workplace, such as health and care workers, and those in industrial settings like those exposed to dust hazards.

Face coverings are not a replacement for the other ways of managing risk, including minimising time spent in contact, using fixed teams and partnering for close-up work, and increasing hand and surface washing. These other measures remain the best ways of managing risk in the workplace and government would therefore not expect to see employers relying on face coverings as risk management for the purpose of their health and safety assessments.

Face coverings are mandatory on public transport and for customers in a number of indoor premises including where food has been purchased at a restaurant without table service or at a take-away outlet. If a shop or a café has a designated seating area for customers to eat and drink, face coverings can be removed in this area only.

The wearing of face coverings will not be required in restaurants with table service, bars or pubs.

[Find further detail on when and where to wear face coverings.](#)

Businesses should take reasonable steps to encourage customer compliance for example through in store communications or notices at the entrance. If necessary, police can issue fines to members of the public for non-compliance. Businesses will not be required to provide face coverings for their customers.

Some people don't have to wear a face covering including for [health, age or equality reasons](#). No one who is exempt from wearing a face covering should be denied entry if they are not wearing one.



6.1 Face coverings (continued)

It is not mandatory for workers in pubs, restaurants or takeaways to wear face coverings where they are not part of usual health and safety measures. However, businesses should consider recommending their use where other mitigations are not in place, for example screens or visors, and where it does not hinder workers, for example, speaking to or supporting customers. Where businesses recommend the use of face coverings, they must be used safely. This means telling workers:

- Wash your hands thoroughly with soap and water for 20 seconds or use hand sanitiser before putting a face covering on, and before and after removing it.
- When wearing a face covering, avoid touching your face or face covering, as you could contaminate them with germs from your hands.
- Change your face covering if it becomes damp or if you've touched it.
- Continue to wash your hands regularly.
- Change and wash your face covering daily.
- If the material is washable, wash in line with manufacturer's instructions. If it's not washable, dispose of it carefully in your usual waste.
- Practise social distancing wherever possible.

Please be mindful that the wearing of a face covering may inhibit communication with people who rely on lip reading, facial expressions and clear sound.



7. Workforce management



7.1 Shift patterns and outbreaks

7.1.1 Shift patterns and working groups

Objective: To change the way work is organised to create distinct groups and reduce the number of contacts each worker has.

Steps that will usually be needed:

- As far as possible, where staff are split into teams or shift groups, fixing these teams or shift groups so that where contact is unavoidable, this happens between the same people.
- Considering where congestion caused by people flow and pinch points can be improved. Using one-way systems, staggered shifts and assigned staff mealtimes are possible ways to minimise the risk of transmission.
- You should assist the Test and Trace service by keeping a temporary record of your staff shift patterns for 21 days and assist NHS Test and Trace with requests for that data if needed. This could help contain clusters or outbreaks. Further guidance can be found [here](#).

7.1 Shift patterns and outbreaks

7.1.2 Outbreaks in the workplace

Objective: To provide guidance in an event of a COVID-19 outbreak in the workplace

Steps that will usually be needed:

- As part of your risk assessment, you should ensure you have an up to date plan in case there is a COVID-19 outbreak. This plan should nominate a single point of contact (SPOC) where possible who should lead on contacting local Public Health teams.
- If there is more than one case of COVID-19 associated with your workplace, you should contact your local PHE health protection team to report the suspected outbreak. [Find your local PHE health protection team](#).
- If the local PHE health protection team declares an outbreak, you will be asked to record details of symptomatic staff and assist with identifying contacts. You should therefore ensure all employment records are up to date. You will be provided with information about the outbreak management process, which will help you to implement control measures, assist with communications to staff, and reinforce prevention messages.



7.2 Work-related travel

7.2.1 Cars, deliveries on motorcycles and bicycles, accommodation and visits

Objective: To avoid unnecessary work travel and keep people safe when they do need to travel between locations.

Steps that will usually be needed:

- Walking or cycling where possible. Where not possible, you can use public transport or drive. You must wear a face covering when using public transport.
- Minimising the number of people outside of your household or [support bubble](#) travelling together in any one vehicle, using fixed travel partners, increasing ventilation when possible and avoiding sitting face-to-face.
- Cleaning shared vehicles between shifts or on handover.
- Where workers are required to stay away from their home, centrally logging the stay and making sure any overnight accommodation meets social distancing guidelines.
- Ensuring that delivery drivers or riders maintain good hygiene and wash their hands regularly.





7.3 Ongoing communications and signage

Objective: To make sure all workers are kept up to date with how safety measures are being implemented or updated.

Steps that will usually be needed:

- Ongoing engagement with workers, including through trade unions or employee representative groups, to monitor and understand any unforeseen impacts of changes to working environments.
- Awareness and focus on the importance of mental health at times of uncertainty. The government has published [guidance on the mental health and wellbeing aspects of coronavirus \(COVID-19\)](#).
- Communicating approaches and operational procedures with suppliers, customers or trade bodies to help their adoption and share experience.
- Using simple, clear messaging to explain guidelines using images and clear language, with consideration of groups for which English may not be their first language and those with protected characteristics such as visual impairments.
- Using visual communications, for example, whiteboards or signage, to explain changes to rotas or stock shortages without the need for face-to-face communications.



8. Inbound and outbound goods

Objective:

To maintain social distancing and avoid surface transmission when goods enter and leave the site, especially in high volume situations, for example, distribution centres, despatch areas.

Steps that will usually be needed:

- Revising pick-up and drop-off collection points, procedures, signage and markings.
- Considering methods to reduce frequency of deliveries, for example by ordering larger quantities less often.
- Minimising unnecessary contact at gatehouse security, yard and warehouse. For example, non-contact deliveries where the nature of the product allows for use of electronic pre-booking.
- Where possible and safe, having single workers load or unload vehicles.
- Where possible, using the same pairs of people for loads where more than one is needed.
- Enabling drivers to access welfare facilities when required, consistent with other guidance.
- Encouraging drivers to stay in their vehicles where this does not compromise their safety and existing safe working practice, such as preventing drive-aways.
- Creating one-way flow of traffic in stockrooms.
- Adjusting put-away and replenishment rules to create space for social distancing. Where social distancing cannot be maintained due to venue design, sufficient mitigation strategies should be designed and implemented.



Where to obtain further guidance

COVID-19: what you need to do

<https://www.gov.uk/coronavirus>

Support for businesses and employers during coronavirus (COVID-19)

<https://www.gov.uk/coronavirus/business-support>

General guidance for employees during coronavirus (COVID-19)

<https://www.gov.uk/guidance/guidance-and-support-for-employees-during-coronavirus-covid-19>

COVID-19: cleaning of non-healthcare settings

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings>

COVID-19: guidance for food businesses

<https://www.gov.uk/government/publications/covid-19-guidance-for-food-businesses/guidance-for-food-businesses-on-coronavirus-covid-19>

Appendix

Definitions

Common Areas	The term 'common area' refers to areas and amenities which are provided for the common use of more than one person including canteens, reception areas, meeting rooms, areas of worship, toilets, gardens, fire escapes, kitchens, fitness facilities, store rooms, laundry facilities.
Support Bubbles	The term 'support bubble' refers to single adult households, where adults live alone or with dependent children only, expanding their support network so that it includes one other household of any size. Further guidance on this can be found here: https://www.gov.uk/guidance/meeting-people-from-outside-your-household



Appendix

Definitions

<p>Clinically extremely vulnerable</p>	<p>Clinically extremely vulnerable people will have received a letter telling them they are in this group, or will have been told by their GP. Guidance on who is in this group can be found here:</p> <p>https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19</p>
<p>Clinically vulnerable people</p>	<p>Clinically vulnerable people include those aged 70 or over and those with some underlying health conditions, all members of this group are listed in the 'clinically vulnerable' section here:</p> <p>https://www.gov.uk/government/publications/staying-alert-and-safe-social-distancing/staying-alert-and-safe-social-distancing</p>



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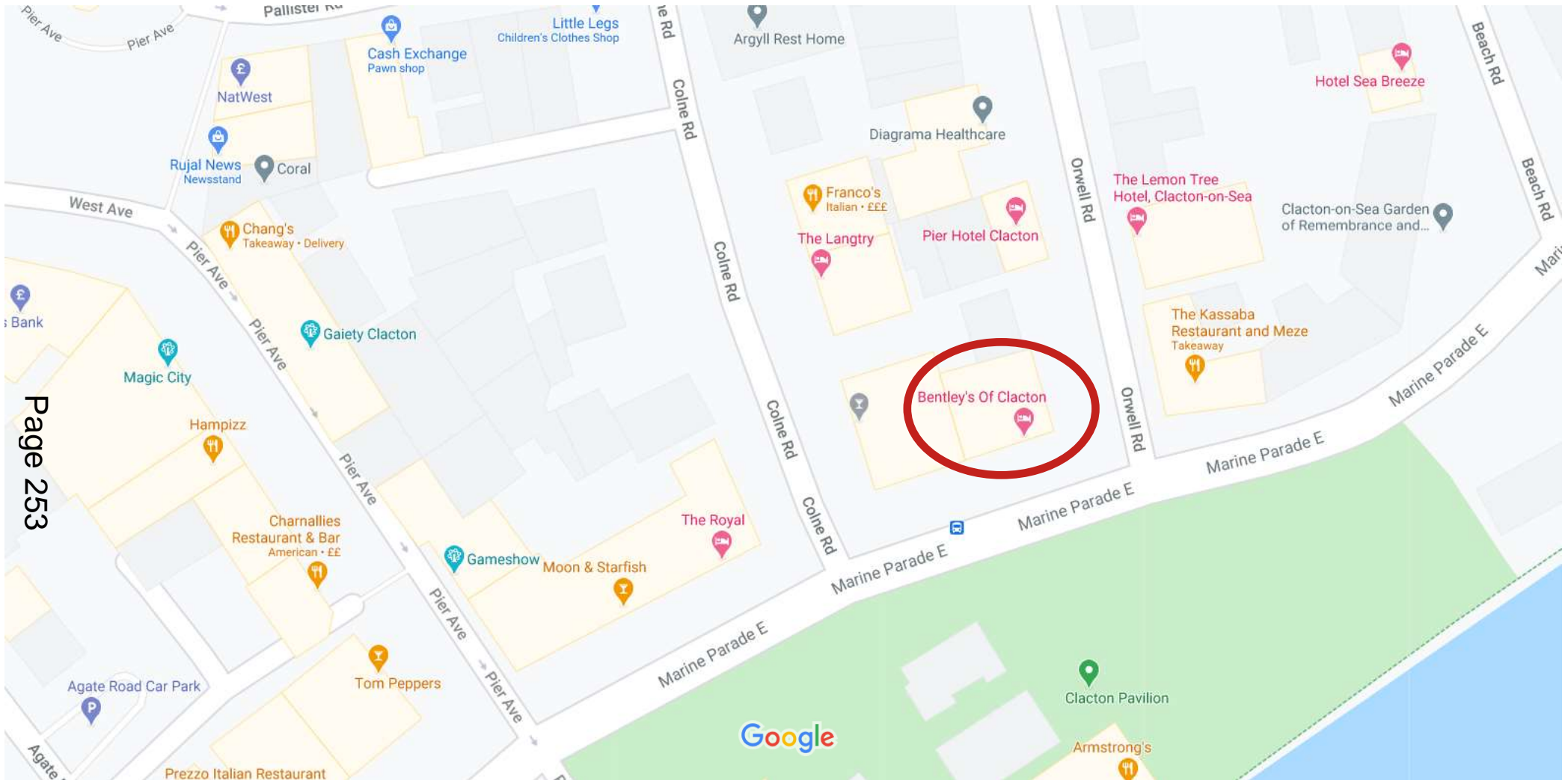
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