

Public Document Pack



COTSWOLD
DISTRICT COUNCIL

Friday, 14 July 2023

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LICENSING SUB-COMMITTEE (LICENSING ACT 2003 MATTERS)

A meeting of the Licensing Sub-Committee (Licensing Act 2003 Matters) will be held on
Monday, 24 July 2023 at 4.00 pm.

Rob Weaver
Chief Executive

To: Members of the Licensing Sub-Committee (Licensing Act 2003 Matters)
(Councillors Patrick Coleman, Julia Judd and Michael Vann)

Recording of Proceedings – The law allows the public proceedings of Council, Cabinet, and Committee Meetings to be recorded, which includes filming as well as audio-recording. Photography is also permitted.

As a matter of courtesy, if you intend to record any part of the proceedings please let the Committee Administrator know prior to the date of the meeting.

AGENDA

1. **Apologies**
2. **Substitutions**
3. **Declarations of Interest**
To receive any declarations of interest from Members. To receive any declarations of interest from Officers under the Code of Conduct for Officers.

Procedures for Licensing Hearings

4. **Review of a Premises Licence (Pages 7 - 266)**
Summary
To decide, having regard to the application made for the review of this premises licence and any relevant representations made in response to it, what steps are to be taken (if any) as the Committee considers necessary for the promotion of the licensing objectives.

Recommendation

That the Committee considers the application and decides whether to:-

- Leave the premises licence unchanged
- Modify the conditions of the licence
- Remove the Designated Premises Supervisor (DPS)
- Suspend the licence for a period of not exceeding 3 months
- Revoke the licence

(END)



LICENSING COMMITTEE (LICENSING ACT 2003 MATTERS) PROCEDURE FOR DETERMINING APPLICATIONS

The four licensing objectives, as given by the Licensing Act 2003, are:

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

Each application that comes before the Committee will be determined on its own merits, and the licensing authority will take its decision based on:

- the merits of the application;
 - the promotion of the four licensing objectives;
 - the Council's Statement of Licensing Policy, a copy of which can be obtained from the Licensing Section at Forest of Dean District Council
 - the amended guidance issued by the Home Office in April 2018 under Section 182 of the Licensing Act 2003.
1. Following election, the Chairman opens the Meeting, introducing the Members of the Committee and Officers to the Applicant(s) and members of the public, explains the nature of the decision to be taken, and the procedure to be followed.
 2. The Licensing Officer outlines the application, any relevant representations and relevance to the Council's Statement of Licensing Policy and statutory guidance.
 3. Members may ask any relevant questions of the Licensing Officer.
 4. The Licensing Officer introduces the Applicant(s) (if present) and the Chairman invites him/her/them, or the person representing the Applicant, to present his/her application to the Committee and to clarify any information arising from the Officer's outline, if necessary.
 5. Members may ask relevant questions of the Applicant(s) regarding the application.
 6. The Chairman invites those parties, including any interested parties and/or responsible authorities, making representations to address the Committee in turn.
 7. Members may ask any relevant questions of those parties making representations.
 8. The Applicant(s) may ask any relevant questions of those parties making representations.

9. If necessary, the Committee will consider requests to allow other parties invited by the Applicant(s) to address the Committee.
10. Members may ask any relevant questions of any person invited by the Applicant(s) who addresses the Committee.
11. Any parties who have made representations may ask any relevant questions of any person invited by the Applicants who addresses the Committee.
12. The Chairman invites the Applicant(s) and any parties making representations, to briefly summarise their points if they wish.
13. The Chairman ascertains that all parties are satisfied they have said all they wish to say.
14. The Committee debates the application and makes its decision; it may retire to do so, if appropriate.
15. Where a decision is made at the Meeting, the Chairman notifies the Applicant(s):-
 - of the decision;
 - the reasons for the decision;
 - any conditions placed on the licence (if granted), and the licensing objectives they relate to;
 - the rights of appeal, and that the decision will be confirmed in writing as soon as practicable following the Meeting, and within the statutory timescales.

NOTES

- a. All references to the Committee relate to any three Member Committees of the Licensing Committee. However, a Committee could decide not to exercise its delegated authority and refer an application to the Licensing Committee for determination, or to the Council (as the Licensing Authority). In such cases, references to 'the Committee' shall relate to the Committee or the Council, as appropriate.
- b. All references to the Licensing Officer refer to the Public Protection Manager or other appropriate Licensing Officers.
- c. All references to the Applicant(s) refer to the Applicant(s), the licensee or his/her representative.
- d. Hearings will take the form of a discussion led by the Committee throughout which Members, the Applicant(s) and, if appropriate, Officers and other parties, may ask questions.
- e. Parties who have made representations will be invited to address the Committee in the following order, where applicable:-
 - Gloucestershire Constabulary;
 - Gloucestershire Fire & Rescue Service;
 - the Health & Safety Executive;
 - Trading Standards Officer;
 - Child Protection Team
 - Officers of the Council in capacity as Responsible Authorities (health and safety, planning and pollution);
 - Health Body;
 - Other Persons;
 - Ward Member(s).
- f. Each party is allowed a maximum period of 15 minutes to make all of their relevant statements unless the Chairman expressly approves otherwise, but the Committee respectfully requests that all parties keep points pertinent and the discussion moving, in the interests of cost and efficiency.
- g. In order to avoid repetition, parties are requested to appoint a spokesperson to address the Committee where a number of the same, or similar representations, are being made.
- h. Decisions will generally be taken regardless of whether the Applicant(s) is present. All notices and representations received from absent parties will be considered.
- i. Where the decision is not made at the Meeting, it will be made within five working days of the date of that Meeting.
- j. Information which has not been produced prior to a Meeting will not be considered unless with the agreement of the Committee and all relevant parties present.

- k. Any changes in the membership of the Committee will be announced by the Chairman at the start of the Meeting.
- l. The Council is committed to taking decisions in an honest, accountable and transparent fashion but, on occasion, may find it necessary to exclude members of the public and Press in accordance with the legal framework given in Schedule 12A of the Local Government Act 1972 and/or local policy. On those occasions, decisions based on the above framework will be given. Similarly, the Council generally will allow all parties to ask questions of another party present, but this decision will be taken on a case-by-case basis. Cross examination of parties is prohibited except in exceptional circumstances, when a reason will be given
- m. The Council has the right to exclude parties disrupting this Meeting, at its discretion.

HOUSEKEEPING MATTERS

Mobile phones must be switched off or set to silent

No smoking throughout the building or anywhere on the site

In the event of the fire alarm sounding, Officers will direct you to the meeting point

Agenda Item 4



COTSWOLD
DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	LICENSING SUB-COMMITTEE – 24 th July 2023
Subject	REVIEW OF A PREMISES LICENCE – Spice Room Indian Restaurant, 3 Oxford Street, Moreton in Marsh GL56 0LA
Wards affected	Moreton In Marsh
Accountable Member	Planning and Licensing Committee
Accountable officer	Kevin Dunford, Licensing Officer Tel: 01285 623000 Email: kevin.dunford@publicagroup.uk
Summary	To decide, having regard to the application made for the review of this premises licence and any relevant representations made in response to it, what steps are to be taken (if any) as the Sub-Committee considers necessary for the promotion of the licensing objectives
Annexes	Annex A – Copy of application for a review of the Premises Licence submitted by the Home Office Annex B – Home Office Licence Review Pack Annex C – Location plan Annex D – Premises Licence Annex E – Decision Letter Annex F - Licence Holder Submission Annex G - Request for an adjournment Annex H – Statement of Licensing Policy Annex I – Section 182 guidance
Recommendation	a) <i>That the Sub-Committee considers the application and decides whether to:-</i> • <i>Leave the premises licence unchanged</i> • <i>Modify the conditions of the licence</i> • <i>Remove the Designated Premises Supervisor (DPS)</i> • <i>Suspend the licence for a period of not exceeding 3 months</i> • <i>Revoke the licence</i>



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Corporate priorities	Ensure that services delivered by the Council are delivered to the highest standard
Key Decision	No
Exempt	No
Consultees/ Consultation	A 28 day consultation has been undertaken with all Responsible Authorities, Ward Member, Town Council and advertised in accordance with the Licensing Act 2003.

1. BACKGROUND

- 1.1.** Under the Licensing Act 2003 (the Act) there is a provision for the review of premises licences and club premises certificates. This allows residents and businesses in the area of licensed premises, together with regulatory authorities, to voice their concerns regarding any person that has a premises licence.
- 1.2.** A review has been sought against the Premises Licence in relation to the Spice Room Indian Restaurant, 3 Oxford Street, Moreton in Marsh on the grounds of Crime and Disorder.
- 1.3.** The review has been applied for by the Home Office Immigration Enforcement, Alcohol Licensing Team, Lunar House, 40 Wesley Road, Croydon CR9 2BY **Annex A** (hereafter referred to as 'the Home Officer').
- 1.4.** A copy of the Home Office's evidence and representations can be found at **Annex B**.
- 1.5.** A plan of the location of the premises can be found at **Annex C**.
- 1.6.** The application was submitted on 31 May 2023 and has been advertised in accordance with the legislation

2. LICENCE HOLDER

- 2.1.** Mrs Yarum Islam has been the premises licence holder since August 2018. A copy of the Premises Licence can be found at **Annex D**

3. REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES AND OTHER PERSONS

- 3.1.** During the representation period no representations were received.

4. PREVIOUS REVIEW HEARING

- 4.1.** On the 18th October 2018 the Licence Holder appeared before the Licensing Sub-Committee for a review of the Premises Licence. This was as result of an application submitted by the Home Office. The outcome of that hearing was to impose additional conditions on the Premises Licence. This is set out in the decision letter in **Annex E**.

5. REPRESENTATIONS FROM THE REVIEW LICENCE HOLDER

- 5.1.** The Licence Holder is represented by FJF Licensing Consultants. Representations have also been made in support of the Licence Holder. These representations have been set out in **Annex F**.
- 5.2.** Her representative has also requested an adjournment of this Review as set out in **Annex G**. The stated reason for the request is so that an expert can appear on behalf of the Licence Holder. Enquires have been made with the Licence Holder's representative as to why an



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expert is required at the hearing. An explanation has been provided and forwarded onto the Home Office for a response shortly before finalising this report.

6. RELEVANT STATUTORY PROVISIONS

6.1. The Licensing Authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives. The licensing objectives are:

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

In addition, in carrying out its licensing functions, the Licensing Authority must also have regard to its own Statement of Licensing Policy (**Annex H**) and any guidance issued by the Secretary of State under section 182 of the 2003 Act (**Annex I**).

Where an application for the review of a licence has been made, the Licensing Authority must, having regard to the application and any relevant representations, and take such steps, as it considers necessary for the promotion of the licensing objectives. The following steps are open to the Sub-Committee:

- to modify the conditions of the licence;
- to exclude a licensable activity from the scope of the licence;
- to remove the designated premises supervisor;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added (Section 52, Licensing Act 2003).

7. NATIONAL GUIDANCE

7.1. As stated above, in carrying out its licensing functions, the Licensing Authority must have regard to any guidance issued by the Secretary of State under section 182 of the 2003 Act. In the case of the review of a licence the relevant guidance is contained in chapter 11 of the Amended Guidance issued under section 182 of the Licensing Act 2003 by the Home office in April 2018. The following paragraphs are of particular relevance:

Paragraphs 11.16 – 11.23 (inclusive): Powers of a Licensing Authority on the determination of a review.

8. PUBLICATIONS

- 8.1.** The Council's statement of Licensing Policy is attached at **Annex H**.
- 8.2.** Revised guidance issued under section 182 of the Licensing Act 2003 is attached at **Annex I**.

- 9. FINANCIAL IMPLICATIONS**
 - 9.1.** There are no financial implications arising directly from this report. There are, however, possible cost implications if an appeal against the decision is made to the Magistrates' Court and the decision of the Sub-Committee is not upheld.

- 10. LEGAL IMPLICATIONS**
 - 10.1.** The Licence Holder, applicants, interested parties and responsible authorities have the right to appeal against the Sub-Committee's decision to the Magistrates' Court.

- 11. RISK ASSESSMENT**
 - 11.1.** There are no risks arising from this report.

- 12. ALTERNATIVE OPTIONS**
 - 12.1.** The options for the Sub-Committee are set out in the recommendations section of this report.

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Licensing Authority: **Cotswold District Council**

Address:

Reference:

**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 Home Office Immigration Enforcement

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description	
The Spice Room, 3, Oxford Street	
Post town Moreton-on-Marsh	Post code (if known) GL56 0LA

Name of premises licence holder or club holding club premises certificate (if known)
Mrs Yarum Islam

Number of premises licence or club premises certificate (if known) C/18/01022/PRMA

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

☐

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 ✓ yes

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

Home Office Immigration Enforcement Alcohol Licensing Team Lunar House 40 Wellesley Road Croydon CR9 2BY
Telephone number (if any)
E-mail address (optional) IE.Alcoholreviews@homeoffice.gov.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 | ☒ |
| 2) public safety | ☐ |
| 3) the prevention of public nuisance | ☐ |
| 4) the protection of children from harm | ☐ |

Please state the ground(s) for review (please read guidance note 2)

Grounds for review:

We have grounds to believe the license holder has failed to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.

The Home Secretary (in practice Home Office (Immigration Enforcement)) was added to the list of Responsible Authorities (RA) in the licensing regime, which requires Home Office (Immigration Enforcement) to receive premises licence applications (except regulated entertainment only licences and applications to vary a Designated Premises Supervisor (DPS)), and in some limited circumstances personal licence applications. In carrying out the role of responsible authority, Home Office (Immigration Enforcement) is permitted to make relevant representations and objections to the grant of a licence or request a review of an existing licence as a responsible authority where there is concern that a licence and related licensable activity is prejudicial to the prevention of immigration crime including illegal working.

Please provide as much information as possible to support the application (please read guidance note 3)

Please refer to accompanied review pack for detailed information

Please tick ✓ yes

Have you made an application for review relating to the premises before?

✓

If yes, please state the date of that application

Day	Month	Year
24	08	2018

If you have made representations before relating to the 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, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant, please state in what capacity.**

Signature P.Thomas

.....

Date 23/05/23

.....

Capacity **Responsible Authority**.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

**Alcohol Licensing Team
Lunar House
40 Wellesley Road**

**Post town
Croydon**

**Post Code
CR9 2BY**

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) IE.Alcoholreviews@homeoffice.gov.uk

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

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Home Office

Premises Licence Review

The Spice Room
3, Oxford Street
Moreton-in-Marsh
GL56 0LA

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Case Summary

On 08 October 2022, Immigration Enforcement conducted a visit at The Spice Room, 3 Oxford Street, Moreton-in-Marsh, GL56 0LA following intelligence that persons without permission to work in the UK were working at the premises.

At the time of the enforcement visit the Licence holder was Mrs Yarum Islam and the Designated Premises Supervisor (DPS) was Mr Mohhamad Abdul Ali.

The premises hold a late-night food license and an alcohol license. Entry was gained under Section 179 of the Licensing Act 2003.

Licensed Premises History

On 5 April 2018 an enforcement visit was conducted, Officers attended The Spice Room 3 Oxford Street, Moreton in the Marsh, Gloucestershire GL56 0LA and entered under Section 179 of the Licensing Act 2003.

Nine immigration offenders were encountered, 6 of whom were arrested and detained pending removal from the UK. The other 3 immigration offenders were bailed.

Following the above visit an application for the review of the premises licence was submitted by Immigration Enforcement.

At the review hearing held on 5 November 2018, it was the decision of the Licensing Sub-committee to impose additional conditions on the premises licence. (see below and the Decision Letter in Annex A of this review pack).

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

1. The employer must carry out checks relating to the right to work of their employees working at the premises and any prospective employees before entering into a contract of employment; the premises licence holder will operate a full HR Management system where all relevant documents as specified by the Home Office, to prove entitlement to work, are stored for each individual member of staff.
2. The employer must retain copies of documents as a result of conducting checks relating to the right to work for a period of 24 months post termination of employment. These must be stored securely by the employer at the premises, or a digital copy must be immediately accessible from the premises for ease of inspection by immigration officials, police, or licensing officers on request.
3. The employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work at the request of a Police officer, Licensing officer or an Immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act.
4. The premises licence holder will work with an independent immigration compliance business to carry out checks on the Home Office website and verify identification documents such as right to work documents to ensure that all new members of staff can be legally employed.
5. No new member of staff will be able to work at the premises unless they have provided satisfactory proof of identification and right to work.

Enforcement Visit dated 08 October 2022

On 08 October 2022, officers from Cardiff Immigration Compliance and Enforcement team (ICE) conducted a visit to the premises.

Three arrests were made for illegal working.

[REDACTED]

[REDACTED] entered the UK illegally in June or July 1998 (his own admission). He used a falsified passport to obtain entry at the UK Border. [REDACTED] first became known to the Home Office in his own identity in May 2003, when he made an application for a work permit. This was refused in August 2003 on the basis of [REDACTED] entering the UK illegally.

[REDACTED] has since made further applications for leave and had multiple encounters with the Home Office which resulted in immigration detention. [REDACTED] sought leave to remain in July 2018. On 08 June 2021, [REDACTED] legal rep wrote to the Home Office requesting that [REDACTED] be given the right to work while waiting for an outcome of his application. On 02 August 2021, [REDACTED] was granted permission to work with the restriction that any work must be on the Shortage Occupation List.

During the enforcement visit, [REDACTED] was observed by officers standing at the stove cooking food when they entered the kitchen. [REDACTED] claimed not to have been working and was instead warming up his food as he was hungry. He claimed to have been visiting the premises to pay the owner rent for accommodation in Gloucester.

Yarum Islam (the employer) was interviewed regarding [REDACTED]. She confirmed that she holds joint responsibility of employing staff with her husband. She confirmed that they take a residence permit or passport as proof of the right to work and retain copies.

Yarum Islam stated that [REDACTED] helps out on weekends as an assistant chef. Yusuf Islam also stated that [REDACTED] was provided with accommodation in exchange for helping out. Islam was asked about how [REDACTED] got employed, she stated:

He has a carer visa; he just helps out on Weekends. He works at a care home in Kennington full time.

[REDACTED] does not have a visa, nor any leave to remain on the basis of being a carer or care worker. [REDACTED] ARC card will state that work is permitted in the Shortage Occupation List. Care work is listed on the Shortage Occupation List, however

working as an assistant chef is not. The fact that the employer states [REDACTED] has a carer visa suggests that the employer has not conducted the necessary checks. There has been no evidence outside of the interviews, of [REDACTED] working within the care sector.

[REDACTED] would have been in possession of an Application Registration Card (ARC). This ARC card is provided to applicants, it confirms their identity and clearly stipulates the restriction of work, in this case - the Shortage Occupation List. The employer in this case has either failed to conduct the proper checks or has knowingly overlooked the restriction, in either scenario [REDACTED] was working illegally as he was in breach of his conditions.

[REDACTED]

[REDACTED] entered the UK illegally in 2001.

[REDACTED] was observed packing food orders in the kitchen. [REDACTED] claimed that he was not working, and instead he lives at the premises and was in the kitchen as he was hungry. He claimed to have just moved the bag which contained a food order.

It must be noted that [REDACTED] was previously encountered working at the Spice Room during the visit on 04 April 2018. Home Office records show that on 23 October 2014, [REDACTED] was found working illegally as a chef at a restaurant in Cuffley, Potters Bar. [REDACTED] was arrested on 16 January 2015 while working at another restaurant in Borehamwood. This supports the Home Office's view that [REDACTED] was indeed working at the Spice Room on both occasions.

Yarum Islam was asked whether [REDACTED] has permission to work. She stated: He has permission to work - I think maybe as a spouse. I just take the card. She also confirmed that he works as a kitchen porter, his work times and that he is paid £9 per hour in cash. It must be noted that the Civil Penalty Compliance Team investigated the employment, it was found that [REDACTED] had provided his employer with a residence card that was not genuine. Nonetheless, [REDACTED] has never had the right to work in the UK.

[REDACTED]

[REDACTED] entered the UK on 15 July 2021, landing at London Heathrow. [REDACTED] arrived from Greece after making a request, while he was a minor, to join his paternal aunt in the UK. Upon arriving in the UK, [REDACTED] made a claim for leave to remain. This claim is still outstanding, and [REDACTED] was provided an ARC card with permission to work within the Shortage Occupation List.

[REDACTED] was observed by officers packing food orders in the kitchen. [REDACTED] claimed that he wasn't working at the Spice Room, instead he claimed he was

watching the cook who is his friend. [REDACTED] was asked whether the owner had given him permission to enter the business's kitchen, [REDACTED] could not confirm.

Yarum Islam confirmed that [REDACTED] works at the restaurant, his job is to pack customer orders. She claims to have seen documents proving permission to work, which she claimed to be European Union Settlement Scheme documents. It must be noted there is no evidence of [REDACTED] making any application under the Settlement Scheme. Nor has [REDACTED] made any other attempts to regularise his stay other than a claim at the airport on arrival.

A record of the interview with [REDACTED] is exhibited as '**RM001/081122**' in Appendix A of this review pack.

A record of the interview with [REDACTED] is exhibited as '**Exhibit GG-08102022**' in Appendix A of this review pack.

A record of the interview with [REDACTED] is exhibited as '**Exhibit GG-08102022**' in Appendix A of this review pack.

Reasons for Review

This business has (again) employed three persons with no right to work in the UK.

The license holder has again failed to meet the licensing objectives of the prevention of crime and disorder, as illegal working has been identified at this premises.

Despite the fact that, as an employer, the licence holder should have been fully aware that all employers have a responsibility to prevent those without lawful immigration status from working in the UK, following an earlier licence Review Hearing on 8 November 2018 these Conditions were specifically added to the premises licence. It is therefore reasonable to conclude that, prior to this earlier Review hearing, people without lawful status had also been employed at the restaurant.

Section 36 and Schedule 4 of the Immigration Act 2016 (the 2016 Act) amended the Licensing Act 2003 (the 2003 Act) to introduce immigration safeguards in respect of licensing applications made in England and Wales on or after 6 April 2017. The intention is to prevent illegal working in premises licensed for the sale of alcohol or late-night refreshment.

As stated, all employers have a responsibility to prevent those without lawful immigration status from working in the UK:

The ability to work illegally is often the main driver of illegal migration. Working in the UK without the requisite permission ("illegal working") encourages people to break our immigration laws and provides the practical means for migrants to remain in the UK unlawfully. It often results in abusive and exploitative behaviour, the mistreatment of unlawful migrant workers, tax evasion and illegal housing conditions, including modern slavery in the most serious cases. It can also undercut legitimate businesses and have an adverse impact on the employment of people who are in the UK lawfully

Once again, the employer has either failed to complete the necessary pre-employment checks as per the license conditions or has knowingly flouted the rules by employing [REDACTED] outside of the Shortage Occupation List [REDACTED]

[REDACTED] It is an offence to work when a person is disqualified to do so, and such an offence can only be committed with the co-operation of a premises licence holder or its agents. In this case, all employees had outstanding claims. Claimants are issued Application Registration Cards (ARC), these cards clearly state the holder's employment restrictions. The [shortage occupation list](#) shows the occupations and the minimum rates of pay applicable for someone to be employed in that role. The license holder could have checked this list by conducting a quick search online.



Example of an ARC card where work is permitted in a shortage occupation. “No work, no public funds” is the most common condition.

A Civil Penalty Referral Notice was issued against the employer for the employment of 3 individuals with no right to work in the UK.

A civil penalty of £20,000 was issued to Yarkam Limited for the employment of two individuals with no right to work in the United Kingdom. No civil penalty was issued for the employment of [REDACTED], as he had provided a fake Residence Permit valid from 28/07/21 to 30/11/23. The Employer had copied both sides and established a statutory excuse.

The employer had undertaken some checks for [REDACTED] and [REDACTED], but these were not carried out correctly and did not provide a stat excuse. They had copied both sides of the Application Registration Card (ARC) but did not consider the information on the cards. The employer could have conducted some basic research on the conditions of employment which would have shown that employment at the restaurant was prohibited. Alternatively, the employer could have obtained a Positive Verification Notice (PVN) from the Employer Checking Service (ECS), who would have advised that they were both only allowed to work in roles on the Shortage Occupation List (SOL). Neither role they were undertaking was included on the SOL.

It must be noted that Annex 3 condition 4 states:

4. The premises licence holder will work with an independent immigration compliance business to carry out checks on the Home Office website and verify identification documents such as right to work documents to ensure that all new members of staff can be legally employed.

It is considered that the license holder has failed to meet the condition by accepting the ARC card and residence permit before employing the workers.

Immigration Enforcement submits that for commercial reasons those engaged in the management of the premises employed illegal workers and, in light of the fact there

has already been an earlier Review Hearing which itself imposed specific conditions related to right to work checks, all of which have been ignored, then a warning or other activity falling short of a review is deemed to be inappropriate.

For this reason, Immigration Enforcement has proceeded straight to review.

Outcome Sought

The objective of the Licensing Act 2003 (the Act) is to provide a clear, transparent framework for making decisions about applications by individuals or businesses wishing to sell or supply alcohol or provide certain types of regulated entertainment and late-night refreshment.

There are four licensing objectives which underpin the Act, and which need to be taken into account and promoted throughout the licensing process.

The licensing objectives are:

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

Illegal workers are those subject to immigration control who either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them taking up the work in question. It is an employer's responsibility to be aware of their obligations and ensure they understand the immigration landscape to avoid the risk of prosecution, the imposition of a civil penalty or their revocation/suspension of their premises licence.

Since 1996 it has been unlawful to employ a person who is disqualified from employment because of their immigration status. A statutory excuse exists where the employer can demonstrate they correctly carried out document checks, i.e., that they were not duped by fake or forged documents.

The Immigration Act 2016 came into force in July 2016 and its explanatory notes state that "these offences were broadened to capture, in particular, employers who deliberately did not undertake right to work checks in order that they could not have the specific intent required to 'knowingly' employ an illegal worker".

Since 2016 an employer may be prosecuted not only if they knew their employee was disqualified from working but also if they had reasonable cause to believe that an employee did not have the right to work: what might be described as wilful ignorance where either no documents are requested, or none are presented despite a request. This means an offence is committed when an employer 'ought to have known' the person did not have the right to work.

Since 2016 it has also been an offence to work when disqualified from doing so. It is obvious that without a negligent or wilfully ignorant employer, an illegal worker cannot work. Such an employer facilitates a criminal offence and Home Office (Immigration Enforcement) highlights this as relevant irrespective of whether a civil penalty is imposed, or a prosecution launched for employing an illegal worker.

The Spice Room under the control of Mrs Yarum Islam and the DPS Mr Mohhamad Abdul Ali have employed three illegal workers. This business has clearly failed to meet the prevention of crime and disorder objective by again failing to carry out the necessary pre-employment checks to make sure that the people employed at the premises have the right to work in the UK.

The license holder is aware of their responsibilities to uphold the licensing objectives as they are clearly defined as part of the premises license application and had been specifically added as conditions to the premises licence on 08 November 2018 following a review of the premises licence.

Immigration Enforcement asks that the premises licence be revoked. The licence holder has failed to comply with the conditions previously imposed on the licence at the review hearing in November 2018 and we feel that there is no other course of action open to the sub-committee but to revoke the licence.

This submission and appended documents provide the licensing subcommittee with background arguments and information pertinent to that contention. These provide the sub-committee with a sound and defensible rationale as to why it should revoke the licence.

Appendix A – Supporting Evidence

MG11 IO [REDACTED] 081122

Illegal Working Interview [REDACTED] – Exhibit RM001/081122

MG11 CIO [REDACTED] 081122

Illegal Working Interview [REDACTED] – Exhibit GG-08102022

Illegal Working Interview [REDACTED] – Exhibit GG-08102022

Witness Statement IO [REDACTED] – Exhibit JW08102022

Updated Premises Licence following Review hearing November 2018.

Licensing Sub Committee decision letter 05-11-2018

WITNESS STATEMENT

Criminal Procedure Rules, r 27.2: Criminal Justice Act 1967, s.9: Magistrates' Court Act 1980, s.5B

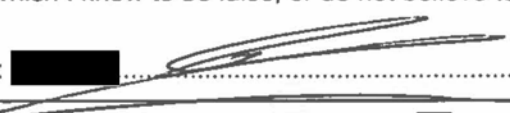
URN

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Statement of: [REDACTED]

Age if under 18: (if over 18 insert 'over 18') Occupation: Immigration Officer

This statement (consisting of 1 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: [REDACTED] 

Date 8/11/22.....

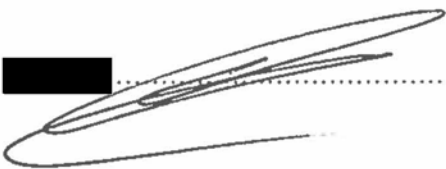
Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am employed by the Home Office as an Immigration Officer at the Immigration & Enforcement Unit, Floor 2, 31-33 Newport Road, Cardiff, CF24 0AB.

At approx 1932 on the 8th OCTOBER 2022 at THE SPICE ROOM, 3 OXFORD ST, MORETON-ON-MARSH, GL56 0LA, I attended, along with colleagues from the Cardiff enforcement Team, the aforementioned premises. Access was gained via Section 179 of the 2003 Licensing Act.

Intelligence was received that immigration offenders may be working on the premises.

At approx. 2046 I commenced an illegal working Q & A with [REDACTED] which I now produce as exhibit reference RM001/081122.

Signature: [REDACTED]  Signature witnessed by:.....

WITNESS STATEMENT

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

Statement of

URN:

Age if under 18

Over 18

(if over 18 insert 'over 18') Occupation:

Chief Immigration Officer

This statement (consisting of: 3 pages 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 anything in it which I know to be false, or do not believe to be true.

Signature:

Date: 08/11/2022

Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am employed by the Home Office as a Chief Immigration Officer at the Immigration & Enforcement Unit, Floor 2, General Buildings, 31-33 Newport Road, Cardiff, CF24 0AB.

On SATURDAY 8TH OCTOBER 2022, at approximately 19:38hrs, I attended the address of; THE SPICE ROOM, 3 OXFORD STREET, MORETON ON MARSH, GL56 0LA, along with colleagues from the Cardiff Enforcement Team. Intelligence had been received stating that the above-named business was employing two male illegal workers. Entry to the premises was gained by the Officer in Charge of the visit, Immigration Officer [REDACTED]. Power of entry to the premise was under Section 179 of the licensing act 2003.

During the visit I questioned two individuals who were suspected of working illegally at the premise and had been encountered by Immigration Officer [REDACTED] in the business kitchen. Immigration Officer [REDACTED] had taken their details during the visit to ascertain their status in the UK and relayed to me that both individuals had no permission to work.

The first individual; [REDACTED] national, was questioned by me using a Home Office approved interpreter as follows.

Q) HOW LONG HAVE YOU BEEN WORKING HERE?

A) I DON'T HAVE ANYWHERE TO STAY. SO I LIVE HERE BUT I DON'T WORK HERE.

Q) DO YOU HELP OUT AT THIS BUSINESS?

A) I'M OLD I DON'T WORK HERE.

Q) WHEN MY COLLEAGUE ENTERED THE KITCHEN YOU WERE SEEN PACKING THE FOOD ORDERS. CAN YOU CONFIRM IF YOU WORK OR HELP OUT AT THIS BUSINESS?

A) NO I DON'T WORK OR HELP OUT AT THIS BUSINESS.

Q) HOW LONG HAVE YOU LIVED AT THIS ADDRESS?

A) 6 TO 7 YEARS.

Q) TO CLARIFY, WHEN MY COLLEAGUE ENTERED THE KITCHEN YOU WERE OBSERVED PACKING FOOD ORDERS. ARE YOU ABLE TO TELL ME WHY YOU WERE LOCATED IN THE BUSINESS

KITCHEN?

A) I HAVE DIABETES AND WHY I FEEL HUNGRY I EAT. I JUST MOVED THE BAG.

Q) HAVE YOU EVER BEEN ENCOUNTERED AT THIS BUSINESS BY IMMIGRATION OFFICERS?

A) YES AGES AGO.

Q) WHO GAVE YOU PERMISSION TO EAT FROM THE BUSINESS KITCHEN?

A) THE OWNER ALLOWS ME. THEIR NAME IS MOHAMMED AMIN.

Q) DO YOU UNDERSTAND THAT YOU CURRENTLY HAVE NO PERMISSION TO WORK IN THE UK?

A) YES I UNDERSTAND.

The second individual; [REDACTED] born [REDACTED] national, was questioned by me using a Home Office approved interpreter as follows.

Q) HOW LONG HAVE YOU BEEN WORKING HERE?

A) I DON'T WORK HERE.

Q) DO YOU HELP OUT AT THIS BUSINESS?

A) NO.

Q) MY COLLEAGUE ENCOUNTERED YOU IN THE BUSINESS KITCHEN PACKING FOOD ORDERS. CAN YOU CLARIFY WHAT YOU WERE DOING IN THE BUSINESS KITCHEN?

A) I WASN'T DOING ANYTHING IN THE KITCHEN. I JUST CAME DOWN TO THE KITCHEN.

Q) DO YOU LIVE HERE AT THIS ADDRESS?

A) NO I DON'T.

Q) WHAT WERE YOU DOING IN THE BUSINESS KITCHEN?

A) I WAS JUST WATCHING THE COOK.

Q) WHO ALLOWED YOU TO ENTER THE BUSINESS KITCHEN?

A) I JUST WENT IN TO SEE MY FRIEND WHO WORKS IN THE KITCHEN.

Q) DID THE BUSINESS OWNER KNOW YOU WERE IN THE BUSINESS KITCHEN?

A) I'M NOT SURE THEY SAW ME GO IN THE KITCHEN.

Q) HOW DO YOU SUPPORT YOURSELF IN THE UK?

A) I LIVE WITH MY AUNT.

Q) DO YOU UNDERSTAND THAT YOU CURRENTLY HAVE NO PERMISSION TO WORK IN THE UK?

A) YES.

Signature: [REDACTED]

Witness contact details

URN : / / /

Name of witness: CIO [REDACTED]

Home address: C/O 31-33, NEWPORT ROAD, CARDIFF Postcode: CF24 0AB

Email address: [REDACTED] Mobile:

Home telephone number: Work telephone number:

Preferred means of contact (specify details for vulnerable/intimidated witnesses **only**):

Gender: Male Date and place of birth:

Former name: Ethnicity Code (16 + 1):

DATES OF WITNESS NON-AVAILABILITY:

Witness care

- a) Is the witness willing to attend court? Yes ☒ No ☐ If 'No', include reason(s) on form **MG6**.
- b) What can be done to ensure attendance?
- c) Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? (*youth under 18; witness with mental disorder, learning or physical disability; or witness in fear of giving evidence or witness is the complainant in a sexual offence case*)
Yes ☐ No ☐ If 'Yes', submit **MG2** with file in anticipated not guilty, contested or indictable only cases.
- d) Does the witness have any particular needs? Yes ☐ No ☐ If 'Yes', what are they? (*Disability, healthcare, childcare, transport, language difficulties, visually impaired, restricted mobility or other concerns?*)

Witness Consent (for witness completion)

- a) The Victim Personal Statement scheme (victims only) has been explained to me: Yes ☐ No ☐
- b) I have been given the Victim Personal Statement leaflet Yes ☐ No ☐
- c) I have been given the leaflet "Giving a witness statement to the Home Office...." Yes ☐ No ☐
- d) I consent to police having access to my medical record(s) in relation to this matter (*obtained in accordance with local practice*) Yes ☐ No ☐ N/A ☐
- e) I consent to my medical record in relation to this matter being disclosed to the defence: Yes ☐ No ☐ N/A ☐
- f) I consent to the statement being disclosed for the purposes of civil proceedings if applicable, e.g. child care proceedings, CICA Yes ☐ No ☐ N/A ☐
- g) **Child witness cases only.** I have had the provision regarding reporting restrictions explained to me. Yes ☐ No ☐ N/A ☐
- I would like the CPS to apply for reporting restrictions on my behalf. Yes ☐ No ☐ N/A ☐

I understand that the information recorded above will be passed on to the Witness Service, which offers help and support to witnesses pre-trial and at court.

Signature of witness: PRINT NAME:

Signature of parent/guardian/appropriate adult: PRINT NAME:

Address and telephone number if different from above:

Statement taken by (print name): CIO [REDACTED] Station: CARDIFF

Time and place statement taken: CARDIFF ICE OFFICE 08/11/2022

WITNESS STATEMENT

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

Statement of

URN:

Age if under 18

Over 18

(if over 18 insert 'over 18')

Occupation:

Immigration Officer

This statement (consisting of: 3 pages 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 anything in it which I know to be false, or do not believe to be true.

Signature:

Date:

08/11/2022

Tick if witness evidence is visually recorded

☐*(supply witness details on rear)*

I am a Home Office Immigration Officer (IO) based in Immigration Compliance and Enforcement (ICE) Cardiff Office. I am an arrest trained uniformed officer and conduct arrest enquiries as part of my role.

On Monday 8th November 2022 I was on duty, and I was Officer in charge. Part of my role is prepare, plan and execute visits to premises or residential addresses to investigate immigration offences and take appropriate action where necessary.

At 19:28 hours I briefed the following Officers: Immigration Officer [REDACTED], Immigration Officer [REDACTED] and Chief Immigration Officers [REDACTED] who were on the visit to carry out the investigation of into illegal working at The Spice Room, 3 Oxford Street, Moreton-in-Marsh, GL56 0LA.

At 19:32 hours I gained entry to the premises utilising powers to enter under Section 179 of Licensing Act 2003. I explained this fully to Yarum Islam and gave her a copy of the legislation used.

At 20:27 hours I noted the following. I have spoken to the owner listed above and she has confirmed that her CCTV doesn't work and that it isn't recording. The premises has a license and would have conditions for CCTV.

At 20:43 hours I noted the following, Musthak Syed told officers that we were not allowed to interview all three of the gentlemen who we have taken out of the kitchen at the same time as this would severely impact the business. He asked whether we could interview them one at a time as they could continue to work whilst the others got asked questions. It was explained to him that none of them have the right to work and he appeared shocked. He then stopped asking officers and walked back to the bar area.

Witness contact details

URN : / / /

Name of witness: IO [REDACTED]

Home address: C/O 31-33, NEWPORT ROAD, CARDIFF Postcode: CF24 0AB

Email address [REDACTED] Mobile:

Home telephone number: [REDACTED] Work telephone number:

Preferred means of contact *(specify details for vulnerable/intimidated witnesses only)*:

Gender: Male

Date and place of birth: [REDACTED]

Former name: Ethnicity Code (16 + 1):

DATES OF WITNESS NON-AVAILABILITY:**Witness care**

- a) Is the witness willing to attend court? Yes ☒ No ☐ If 'No', include reason(s) on form **MG6**.
- b) What can be done to ensure attendance?
- c) Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? *(youth under 18; witness with mental disorder, learning or physical disability; or witness in fear of giving evidence or witness is the complainant in a sexual offence case)*
Yes ☐ No ☐ If 'Yes', submit **MG2** with file in anticipated not guilty, contested or indictable only cases.
- d) Does the witness have any particular needs? Yes ☐ No ☐ If 'Yes', what are they? *(Disability, healthcare, childcare, transport, language difficulties, visually impaired, restricted mobility or other concerns?)*

Witness Consent (for witness completion)

- a) The Victim Personal Statement scheme (victims only) has been explained to me: Yes ☐ No ☐
- b) I have been given the Victim Personal Statement leaflet Yes ☐ No ☐
- c) I have been given the leaflet "Giving a witness statement to the Home Office...." Yes ☐ No ☐
- d) I consent to police having access to my medical record(s) in relation to this matter *(obtained in accordance with local practice)* Yes ☐ No ☐ N/A ☐
- e) I consent to my medical record in relation to this matter being disclosed to the defence: Yes ☐ No ☐ N/A ☐
- f) I consent to the statement being disclosed for the purposes of civil proceedings if applicable, e.g. child care proceedings, CICA Yes ☐ No ☐ N/A ☐
- g) **Child witness cases only.** I have had the provision regarding reporting restrictions explained to me. Yes ☐ No ☐ N/A ☐
- I would like the CPS to apply for reporting restrictions on my behalf. Yes ☐ No ☐ N/A ☐

I understand that the information recorded above will be passed on to the Witness Service, which offers help and support to witnesses pre-trial and at court.

Signature of witness: PRINT NAME:

Signature of parent/guardian/appropriate adult: PRINT NAME:

Address and telephone number if different from above:

Statement taken by *(print name)*: IO [REDACTED] Station: CARDIFF



Time and place statement taken: CARDIFF ICE OFFICE 12/11/2021



Illegal Working - Employee

Details

Type of work	Visit
Visit reference	EV24-844,687
Created by	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
Subject name	[REDACTED]
Subject DOB	[REDACTED]
Subject nationality	[REDACTED]
Subject gender	Male
Time	20:46
Created at geolocation	Easting 420522 Northing 232469
Creation date	08-10-2022 20:46:09

Language of Interview

What language is the interview carried out in?	English
Interpreter used?	No

Obligation

How long have you been working here?	I am not working here. I came here to visit the owner. I pay him rent for accommodation. I live here in Gloucester as its cheaper than where I work- Oxford
why were you observed in the kitchen at the stove cooking?	I came downstairs to cook my own food as I was hungry
What days/ hours do you work each week?	I am not working here. I was cooking my own food

Control

Who tells you what tasks/ duties to do each day?	No one tells me as I don't work here. Just visiting
--	---

Remuneration

How are you paid (money, accommodation, food)?	I don't get paid as I do not work here. I pay them for rent
--	---

Pre-employment Checks

what documents did you show the boss to state you could legally work in the UK?

I did not show any documentation as I don't work here

Additional Questions

No details provided.

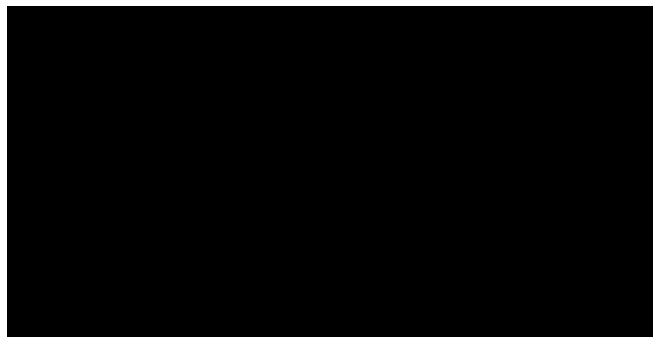
Photographs

No photographs.

Declaration

I confirm that I have understood all the questions and that the details are true and correct.

Interviewee signature



08-10-2022 20:55:15

Observations

Observations

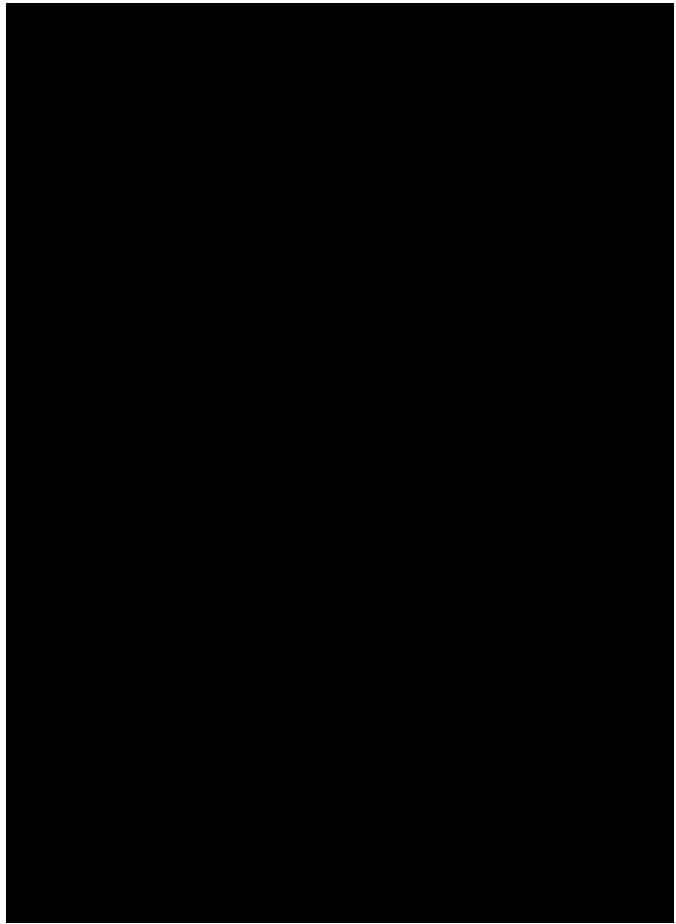
Male observed stood at the stove cooking food when I entered the kitchen

Do you suspect this person of illegal working?

Yes

Photo 1

Caption



Reply to : Andrea Thomas
Tel : 01285 623000
Email: ERS@publicagroup.uk

Council Offices
Trinity Road,
Cirencester,
Gloucestershire.
GL7 1PX
Tel: 01285 623000
www.cotswold.gov.uk



Your Ref: C/18/01022/PRMA

Mrs Y Islam
3 Oxford Street
Moreton In Marsh
Gloucestershire
GL56 0LA

Date: 8th November 2018

Dear Sir/Madam,

LICENSING ACT 2003
Review of a Premises Licence

Please find attached the updated Premises Licence following the review hearing for the premises of:

Premises Name:	Spice Room Indian Restaurant
Address:	3 Oxford Street Moreton-In-Marsh GL56 0LA
Application Type:	New Premises Licence
Application Reference:	C/18/01022/PRMA

Please can you check that the details contained within the Premises Licence are correct. If there are any clerical errors please notify the licensing section immediately using the contact details above so that the errors can be rectified.

Part B of the Premises Licence must be on display at the premises it relates to at all times.

Attached to the Premises Licence, at Appendix 1, are the current Mandatory Conditions. These Mandatory Conditions are subject to change and it is the licence holder's/Designated Premises Supervisor's responsibility to ensure that they are aware of the most up-to-date Mandatory Conditions. The full up-to-date list can be found on the Cotswold District Council website (www.cotswold.gov.uk), under the licensing service area.

Cotswold District Council may share information provided to it with other bodies responsible for auditing or administering public funds in order to prevent and detect fraud under Section 6 of the Audit Commission Act 1998.

If you have any queries regarding this matter please do not hesitate to contact us.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Matthew Kirby', written in a cursive style.

Mr M Kirby
Service Leader
Business Support

Environmental and Regulatory Services

Cotswold District Council may share information provided to it with other bodies responsible for auditing or administering public funds in order to prevent and detect fraud under Section 6 of the Audit Commission Act 1998

LICENSING ACT 2003

PART A –PREMISES LICENCE

Premises Licence Number

C/18/01022/PRMA

Part 1 –Premises Details

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

3 Oxford Street
Moreton-In-Marsh
GL56 0LA

Telephone number

Where the licence is time limited the dates

Not applicable

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Supply by Retail of Alcohol	Every day	18:00 - 00:00
Performances of Dance	Every day	18:00 - 23:00
Live Music	Every day	18:00 - 23:00
Late Night Refreshment	Every day	23:00 - 00:00

Non Standard Timings

The opening hours of the premises

Every day 06:30 - 00:30

Non Standard Timings

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

On and Off

Part 2

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

Mrs Y Islam
3 Oxford Street
Moreton In Marsh
Gloucestershire
GL56 0LA

E mail



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

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

Mr Mohhamad Abdul Ali



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 No.: 10/01045/PER

Licensing Authority: Oxford City Council

Signature of Issuing Officer:

Service Leader Business Support

Date of Determination:

5th November 2018

Date of Issue:

8th November 2018

(See Annexes and Plans attached for conditions relating to this Licence)

Issuing Authority

Cotswold District Council, Trinity Road, Cirencester, Glos, GL7 1PX

Annex 1 –Mandatory conditions

1. Age Verification Policy:

- (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.

2. Irresponsible Promotions:

- (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) 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 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 that which carries 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;
 - (e) dispensing alcohol 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).

3. Free tap water:

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

4. Availability of Certain Measures of Alcohol:

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; and
- (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.

5. Minimum Pricing

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.

6. No retail sale or supply of alcohol may be made under this 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.

7. Every retail sale or supply of alcohol under this must be made or authorised by a person who holds a personal licence.

Annex 2 –Conditions consistent with the Operating Schedule

- 1. Live music and the performance of dance shall be restricted to the hours of 18.00 - 23.00 on any day.

Live music and performance of dance shall only be permitted in the rear restaurant as shown on the attached plan (copy available at the licensing office).

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

- 1. The employer must carry out checks relating to the right to work of their employees working at the premises and any prospective employees before entering into a contract of employment; the premises licence holder will operate a full HR Management system where all relevant documents as specified by the Home Office, to prove entitlement to work, are stored for each individual member of staff.
- 2. The employer must retain copies of documents as a result of conducting checks relating to the right to work for a period of 24 months post termination of employment. These must be stored securely by the employer at the premises or a digital copy must be immediately accessible from the premises for ease of inspection by immigration officials, police or licensing officers on request.

3. The employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work, at the request of a Police officer, Licensing officer or an Immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act.

4. The premises licence holder will work with an independent immigration compliance business to carry out checks on the Home Office website and verify identification documents such as right to work documents to ensure that all new members of staff can be legally employed.

5. No new member of staff will be able to work at the premises unless they have provided satisfactory proof of identification and right to work.

Annex 4 –Plans

AS SUBMITTED WITH THE APPLICATION

LICENSING ACT 2003

PART B –PREMISES LICENCE SUMMARY

Premises Licence Number

C/18/01022/PRMA

Premises Details

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

3 Oxford Street
Moreton-In-Marsh
GL56 0LA

Telephone number

Where the licence is time limited the dates

Not applicable

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Supply by Retail of Alcohol	Every day	18:00 - 00:00
Performances of Dance	Every day	18:00 - 23:00
Live Music	Every day	18:00 - 23:00
Late Night Refreshment	Every day	23:00 - 00:00

Non Standard Timings

The opening hours of the premises

Every day 06:30 - 00:30

Non Standard Timings

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

On and Off

Part 2

Name, (registered) address of holder(s) of premises licence

Mrs Y Islam
3 Oxford Street
Moreton In Marsh
Gloucestershire
GL56 0LA

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

Name of designated premises supervisor where the premises licence authorises the supply of alcohol

Mr Mohhamad Abdul Ali

State whether access to the premises by children is restricted or prohibited

Signature of Issuing Officer:



Business Support Service Leader

Date of Determination:

5th November 2018

Date of Issue:

8th November 2018

Issuing Authority

Cotswold District Council, Trinity Road, Cirencester, Glos, GL7 1PX

Reply to : Michelle Bignell
Tel : 01285 623000
Email: [ERS@ publicagroup.uk](mailto:ERS@publicagroup.uk)

Council Offices
Trinity Road,
Cirencester,
Gloucestershire.
GL7 1PX
Tel: 01285 623000
www.cotswold.gov.uk



8th November 2018

Ref: C/18/01022/PRMA

Dear Sir/Madam

Licensing Act 2003

Premises: Spice Room Indian Restaurant, 3 Oxford Street, Moreton-In-Marsh, GL56 0LA

I refer to our correspondence concerning the application for the review of the above Premises Licence.

As you are aware this application was considered by the Council's Licensing Sub-Committee held on 5th November 2018. This letter is to formally notify you of the decision of the Council's Licensing Sub-Committee which was to impose the following conditions:-

1. The employer must carry out checks relating to the right to work of their employees working at the premises and any prospective employees before entering into a contract of employment; the premises licence holder will operate a full HR Management system where all relevant documents as specified by the Home Office, to prove entitlement to work, are stored for each individual member of staff.
2. The employer must retain copies of documents as a result of conducting checks relating to the right to work for a period of 24 months post termination of employment. These must be stored securely by the employer at the premises or a digital copy must be immediately accessible from the premises for ease of inspection by immigration officials, police or licensing officers on request.
3. The employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work, at the request of a Police officer, Licensing officer or an Immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act.
4. The premises licence holder will work with an independent immigration compliance business to carry out checks on the Home Office website and verify identification documents such as right to work documents to ensure that all new members of staff can be legally employed.
5. No new member of staff will be able to work at the premises unless they have provided satisfactory proof of identification and right to work.

In reaching this decision, the Sub Committee took into consideration the written representation(s) from the interested party(ies), and the submissions made by representatives of the interested party(ies) at the hearing. It also took into consideration the submission made by the applicant(s) at the hearing.

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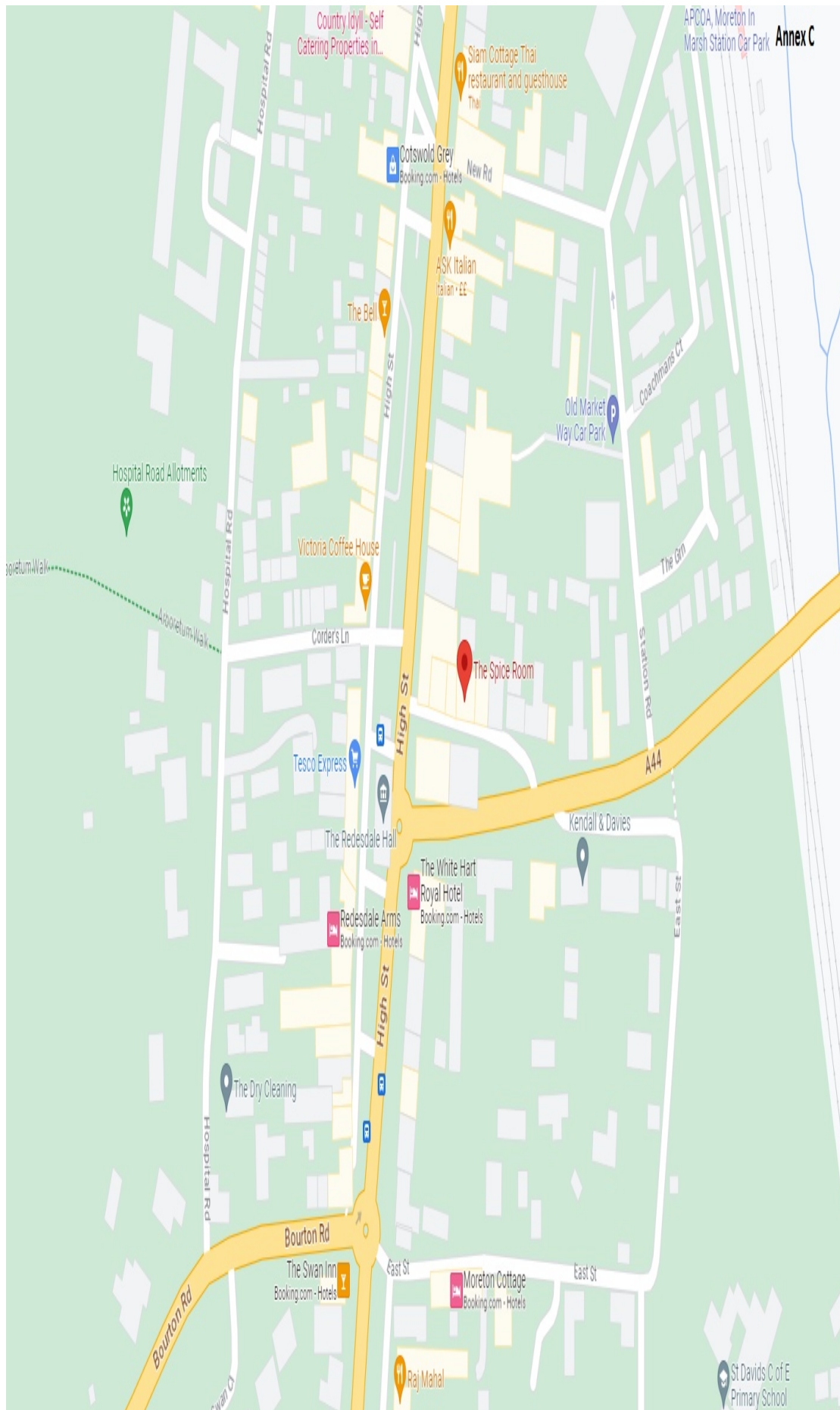


COTSWOLD
DISTRICT COUNCIL

You have the right of appeal against the decision of the Licensing Authority. Appeals must be made to Gloucestershire Magistrates Court, PO Box 9051, Gloucester, GL1 2XG within 21 days of being notified of this decision.

Yours faithfully,

Michelle Bignell
Service Leader (Licensing)



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Reply to : Andrea Thomas
Tel : 01285 623000
Email: ERS@publicagroup.uk

Council Offices
Trinity Road,
Cirencester,
Gloucestershire.
GL7 1PX
Tel: 01285 623000
www.cotswold.gov.uk



Your Ref: C/18/01022/PRMA

Date: 8th November 2018

Mrs Y Islam
3 Oxford Street
Moreton In Marsh
Gloucestershire
GL56 0LA

Dear Sir/Madam,

LICENSING ACT 2003
Review of a Premises Licence

Please find attached the updated Premises Licence following the review hearing for the premises of:

Premises Name:	Spice Room Indian Restaurant
Address:	3 Oxford Street Moreton-In-Marsh GL56 0LA
Application Type:	New Premises Licence
Application Reference:	C/18/01022/PRMA

Please can you check that the details contained within the Premises Licence are correct. If there are any clerical errors please notify the licensing section immediately using the contact details above so that the errors can be rectified.

Part B of the Premises Licence must be on display at the premises it relates to at all times.

Attached to the Premises Licence, at Appendix I, are the current Mandatory Conditions. These Mandatory Conditions are subject to change and it is the licence holder's/Designated Premises Supervisor's responsibility to ensure that they are aware of the most up-to-date Mandatory Conditions. The full up-to-date list can be found on the Cotswold District Council website (www.cotswold.gov.uk), under the licensing service area.

Cotswold District Council may share information provided to it with other bodies responsible for auditing or administering public funds in order to prevent and detect fraud under Section 6 of the Audit Commission Act 1998.

If you have any queries regarding this matter please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Matthew Kirby', written in a cursive style.

Mr M Kirby
Service Leader
Business Support

Environmental and Regulatory Services

Cotswold District Council may share information provided to it with other bodies responsible for auditing or administering public funds in order to prevent and detect fraud under Section 6 of the Audit Commission Act 1998

LICENSING ACT 2003

PART A – PREMISES LICENCE

Premises Licence Number

C/18/01022/PRMA

Part I – Premises Details

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

3 Oxford Street
Moreton-In-Marsh
GL56 0LA

Telephone number

Where the licence is time limited the dates

Not applicable

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Supply by Retail of Alcohol	Every day	18:00 - 00:00
Performances of Dance	Every day	18:00 - 23:00
Live Music	Every day	18:00 - 23:00
Late Night Refreshment	Every day	23:00 - 00:00

Non Standard Timings

The opening hours of the premises

Every day 06:30 - 00:30

Non Standard Timings

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

On and Off

Part 2

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

Mrs Y Islam
3 Oxford Street
Moreton In Marsh
Gloucestershire
GL56 0LA

E mail yaz_islam@yahoo.co.uk

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

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

Mr Mohhamad Abdul Ali
7 Aldrich Road
Cutteslowe
Oxford
OX2 7SS

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 No.:	10/01045/PER
Licensing Authority:	Oxford City Council

Signature of Issuing Officer:

Matthew Kirby

Service Leader Business Support

Date of Determination: 5th November 2018

Date of Issue: 8th November 2018

(See Annexes and Plans attached for conditions relating to this Licence)

Issuing Authority

Cotswold District Council, Trinity Road, Cirencester, Glos, GL7 1PX

Annex I – Mandatory conditions

1. Age Verification Policy:

- (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.

2. Irresponsible Promotions:

- (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) 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 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 that which carries 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;
 - (e) dispensing alcohol 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).

3. Free tap water:

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

4. Availability of Certain Measures of Alcohol:

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; and
- (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.

5. Minimum Pricing

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.

6. No retail sale or supply of alcohol may be made under this 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.

7. Every retail sale or supply of alcohol under this must be made or authorised by a person who holds a personal licence.

Annex 2 – Conditions consistent with the Operating Schedule

- 1. Live music and the performance of dance shall be restricted to the hours of 18.00 - 23.00 on any day.

Live music and performance of dance shall only be permitted in the rear restaurant as shown on the attached plan (copy available at the licensing office).

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

- 1. The employer must carry out checks relating to the right to work of their employees working at the premises and any prospective employees before entering into a contract of employment; the premises licence holder will operate a full HR Management system where all relevant documents as specified by the Home Office, to prove entitlement to work, are stored for each individual member of staff.
- 2. The employer must retain copies of documents as a result of conducting checks relating to the right to work for a period of 24 months post termination of employment. These must be stored securely by the employer at the premises or a digital copy must be immediately accessible from the premises for ease of inspection by immigration officials, police or licensing officers on request.

3. The employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work, at the request of a Police officer, Licensing officer or an Immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act.
4. The premises licence holder will work with an independent immigration compliance business to carry out checks on the Home Office website and verify identification documents such as right to work documents to ensure that all new members of staff can be legally employed.
5. No new member of staff will be able to work at the premises unless they have provided satisfactory proof of identification and right to work.

Annex 4 – Plans

AS SUBMITTED WITH THE APPLICATION

LICENSING ACT 2003

PART B – PREMISES LICENCE SUMMARY

Premises Licence Number

C/18/01022/PRMA

Premises Details

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

3 Oxford Street
Moreton-In-Marsh
GL56 0LA

Telephone number

Where the licence is time limited the dates

Not applicable

Licensable activities authorised by the licence and the times the licence authorises the carrying out of licensable activities

Supply by Retail of Alcohol	Every day	18:00 - 00:00
Performances of Dance	Every day	18:00 - 23:00
Live Music	Every day	18:00 - 23:00
Late Night Refreshment	Every day	23:00 - 00:00

Non Standard Timings

The opening hours of the premises

Every day 06:30 - 00:30

Non Standard Timings

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

On and Off

Part 2

Name, (registered) address of holder(s) of premises licence

Mrs Y Islam
3 Oxford Street
Moreton In Marsh
Gloucestershire
GL56 0LA

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

Name of designated premises supervisor where the premises licence authorises the supply of alcohol

Mr Mohhamad Abdul Ali

State whether access to the premises by children is restricted or prohibited

Signature of Issuing Officer:

Matthew Kirby

Business Support Service Leader

Date of Determination:

5th November 2018

Date of Issue:

8th November 2018

Issuing Authority

Cotswold District Council, Trinity Road, Cirencester, Glos, GL7 1PX

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Reply to : Michelle Bignell
Tel : 01285 623000
Email: ERS@publicagroup.uk

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GL7 1PX
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www.cotswold.gov.uk



8th November 2018

Ref: C/18/01022/PRMA

Dear Sir/Madam

Licensing Act 2003

Premises: Spice Room Indian Restaurant, 3 Oxford Street, Moreton-In-Marsh, GL56 0LA

I refer to our correspondence concerning the application for the review of the above Premises Licence.

As you are aware this application was considered by the Council's Licensing Sub-Committee held on 5th November 2018. This letter is to formally notify you of the decision of the Council's Licensing Sub-Committee which was to impose the following conditions:-

1. The employer must carry out checks relating to the right to work of their employees working at the premises and any prospective employees before entering into a contract of employment; the premises licence holder will operate a full HR Management system where all relevant documents as specified by the Home Office, to prove entitlement to work, are stored for each individual member of staff.
2. The employer must retain copies of documents as a result of conducting checks relating to the right to work for a period of 24 months post termination of employment. These must be stored securely by the employer at the premises or a digital copy must be immediately accessible from the premises for ease of inspection by immigration officials, police or licensing officers on request.
3. The employer, or any person appearing to represent the employer, must be able to produce on demand documents relating to the right to work, at the request of a Police officer, Licensing officer or an Immigration officer who enters the premises to carry out an inspection under section 179 (1A) of the 2003 Act.
4. The premises licence holder will work with an independent immigration compliance business to carry out checks on the Home Office website and verify identification documents such as right to work documents to ensure that all new members of staff can be legally employed.
5. No new member of staff will be able to work at the premises unless they have provided satisfactory proof of identification and right to work.

In reaching this decision, the Sub Committee took into consideration the written representation(s) from the interested party(ies), and the submissions made by representatives of the interested party(ies) at the hearing. It also took into consideration the submission made by the applicant(s) at the hearing.

Reply to : Michelle Bignell
Tel : 01285 623000
Email: ERS@publicagroup.uk

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COTSWOLD
DISTRICT COUNCIL

You have the right of appeal against the decision of the Licensing Authority. Appeals must be made to Gloucestershire Magistrates Court, PO Box 9051, Gloucester, GL1 2XG within 21 days of being notified of this decision.

Yours faithfully,

Michelle Bignell
Service Leader (Licensing)

Civil Penalty Compliance Team
PO Box 665
Salford
M5 0LY

Civil Penalty Objection - Reference: 321677

Date: 20th January 2023

Business Name: Yarkam Limited

Business Address:
273 Abingdon Road
Oxford
Oxfordshire
OX1 4TJ

Further Submission Following the Objection Outcome Notice:

The liable party respectfully sets out the following reasons for reconsideration of the imposed penalty:

1. The liable party acknowledges, and appreciates, your consideration of this matter thus far, and understands that you have cancelled the imposed penalty relating to due to the fact that a statutory excuse had been established. Although you have considered the case of the further two named individuals you have decided to maintain the corresponding imposed penalties.
2. Yarkam Limited was previously served with an illegal working civil penalty on 06 September 2018. Since this time, the management team have exercised diligence in ensuring that document checks are completed on all new employees to establish a valid right to work. The evidence of these checks has been provided to you in the form of immigration documents and Home Office check lists.
3. In this course of this process the liable party has provided the following documents:
 - a) Md Iftekhar – Residence Permit illustrating 'spouse/partner leave to remain' and 'work permitted' valid from 28 July 2021 until 30 November 2023
 - b) Mujibur Rahman – Application Registration Card illustrating 'indefinite leave to remain' and 'work permitted' valid from 18 November 2021 until 18 August 2023
 - c) Md Ikbai Hussain – Application Registration Card illustrating 'leave to remain' and 'work permitted' valid from 01 October 2022 until 01 September 2024

Each document was accompanied by an official Home Office check list available online <https://www.kent.ac.uk/human-resources/immigration/forms-docs/Right%20to%20Work%20Checklist.pdf> The Home Office check lists illustrate, in great detail, the steps which had been taken to validate the employees right to work.

4. Leaving aside the document relating to Md Iftekhar (as a statutory excuse has been established), document checks were carried out as follows:

Mujibur Rahman

As the code is referred to in order, the first example of a valid document believed to have been held by the employer is found at number 5 within 'List A' - 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.

The liable party has evidenced the copy of an Identification card which, to the layperson, would appear to be an immigration status document. It would seem perfectly feasible that this document be recognised as an 'immigration status document' as it is a document which illustrates the immigration status of the holder. This document was honestly thought to have provided a statutory excuse in relation to the employment of Mujibur Rahman.

Md Ikbal Hussain

Continuing through the code in order, the next example of a valid document thought to be held by the employer is found at number 3 within List B - a current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question.

Again, the liable party has evidenced the copy of an Identification card which, to the layperson, would appear to be an immigration status document. It would seem perfectly feasible that this document be recognised as an 'immigration status document' as it is a document which illustrates the immigration status of the holder. This document was honestly thought to have provided a statutory excuse in relation to the employment of Md Ikbal Hussain. However, the liable party also accepts that the date on the card did not cover the employment period in full.

The liable party submits that the code of practice is not simple to understand and their interpretation of an immigration status document fits with the examples found within section 5 of list A and section 3 of List B.

5. In consideration of the objection made by the liable party you made a decision to reduce the penalty amount, specifically, cancelling the penalty in relation to Md Iftekhar. This decision was made despite the fact that the document is deemed to be a false document and the fact that the code of practice requires an accompanying national insurance document. However, you have accepted that the liable party had established a statutory excuse in relation to this individual and you have cancelled the penalty accordingly. You cite that the Residence Permit is false but you make no mention of the fact that it would, or would not, have been reasonably apparent to the untrained person.
6. The Code of practice on preventing illegal working: 6 April 2022 illustrates the steps which must be taken by an employer to provide themselves with a statutory excuse. The liable party understands and had completed the three basic steps to conducting a manual document-based right to work check.
7. Although they are not trained in recognising a false document, the liable party carried out checks on all of the documents to ensure that they were genuine, that the person presenting them was the prospective or existing employee and that the photograph and dates of birth were consistent across documents and with the person's appearance. The liable party took all reasonable steps, that is to say briefly but carefully examined the documents without any technological aids, to check the validity of the documents presented to them.

8. If an employer is given a false document, they should only be liable for a civil penalty if it is reasonably apparent that it is false. "Reasonably apparent" means: where a person who is untrained in the identification of false documents, examining it carefully, but briefly, and without the use of technological aids could reasonably be expected to realise that the document in question is not genuine.
9. The liable party submits that the false documents were not reasonably apparent. It is also argued that the quality of all three documents submitted are of a comparable standard and to allow a statutory excuse for one but not the other two demonstrates a lack of consistency in decision making.

Summary

10. The employer in this case has acted in the spirit of the code and has made genuine attempts to abide by the code of practice.
11. The liable party has established a statutory excuse in relation to Mujibur Rahman to the same standard as that relating to Md Iftekhar and therefore should benefit from the same discretion in cancelling the related penalty. This would support a consistent approach to decision making.
12. With regards to this current matter, the liable party has been transparent, honest and compliant with officers and the CPCT in all matters relating to employment and document checks.
13. If advanced to the submission of the appeal, the Court may consider the above, and it may do so under 17(3)(b) of the 2006 Act by considering any matters which it thinks relevant. Such discretion may be applied by the Court in the exercise of its statutory power to allow any appeal and cancel the penalty under 17(2)(a) of the Immigration, Asylum & Nationality Act 2006.
14. By virtue of section 17(3) of the 2006 Act the appeal would be by way of rehearing of the Secretary of State's decision to impose the penalty rather than a review of the decision. It would therefore be for the Secretary of State to establish that the grounds are made out for imposing a penalty. The burden would not be on the liable party.

Yarkam Limited

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Kevin Dunford

From: [REDACTED]
Sent: 10 July 2023 16:24
To: ERS Licensing & Applications
Cc: Kevin Barker
Subject: Fwd: Re: Review of Premises Licence - Spice Room Indian Restaurant, Oxford Street, Moreton in Marsh
Attachments: 321677 - Yarkam Limited - Further Submission.pdf
Follow Up Flag: Follow up
Flag Status: Flagged
Categories: Committee Hearing Information, Green Category, Spice Room

[REDACTED] [Learn why this is important](#)

Good afternoon Licensing

As per the email below, I have been instructed to represent the premises licence holder for Spice Room, at a forthcoming hearing of the Licensing Sub Committee. The hearing is necessary as a result of an application to review the premises licence.

I understand the date for the hearing has been set for 25th July 2023.

I would like to formally request that the hearing be adjourned from 25th July to a date after 4th August. The reason for this request is that I have invited an expert witness to attend the hearing, to provide evidence on behalf of the premises licence holder. The witness is Kevin Barker, who is copied into this email.

I have also attached a letter to this email which I would like to be added to the council report for the attention of all parties prior to the hearing taking place. This letter forms the basis of Mr Barker's evidence.

Please acknowledge safe receipt of this email and confirm that my request for an adjournment can be accommodated.

I look forward to hearing from you.

Kind regards

Frank

Frank Fender
FJF Licensing Consultants
10 Highfield Close
Newport Pagnell
Bucks
MK16 9AZ
[REDACTED]

Please note that the contents of this e-mail, including any attachments thereto, may contain information which is confidential or privileged, and which is solely for the use of the recipient named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this e-mail is strictly prohibited. If you have received this message in error, please notify the sender immediately.

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The Licensing Act 2003

STATEMENT OF LICENSING POLICY 2021/25



PREAMBLE

By virtue of the Licensing Act 2003 (the Act) Cotswold District Council (the Council) as the Licensing Authority has responsibility for the licensing of all premises in the Cotswold District (the District) that sell alcohol, provide regulated entertainment or serve hot food or drink to the public between 23.00 and 05.00. In addition the Council must issue Personal Licences to persons responsible for the retail sale of alcohol and accept Temporary Event Notifications from persons requiring occasional permissions for activities licensable under the Act.

To comply with the legislation, Licensing Authorities must publish a Licensing Policy that sets out the position in relation to its duties under the Act to guide its work in implementing the Act. The Council welcomes the powers granted to it by the legislation and will continue to use them, in consultation with 'Responsible Authorities' (e.g. Police, Fire Service, Planning, Environmental Health etc), licensees, local businesses and residents, in a socially responsible way.

This document is the fifth Licensing Policy Statement to be consulted upon by the Council. The Council will consult widely on this issue as it affects a very large number of people in the District (e.g. licensees, residents and businesses) as well as statutory agencies and the like.

This Licensing Policy has been drawn together based on the last edition with some updates where appropriate and reflects the local balance between the commercial interests of the licensed trade and the communities they serve and impact upon. The Act requires the Council to revise and re-publish the policy every five years. This Policy was adopted at a meeting of the Council on 14 July 2021.

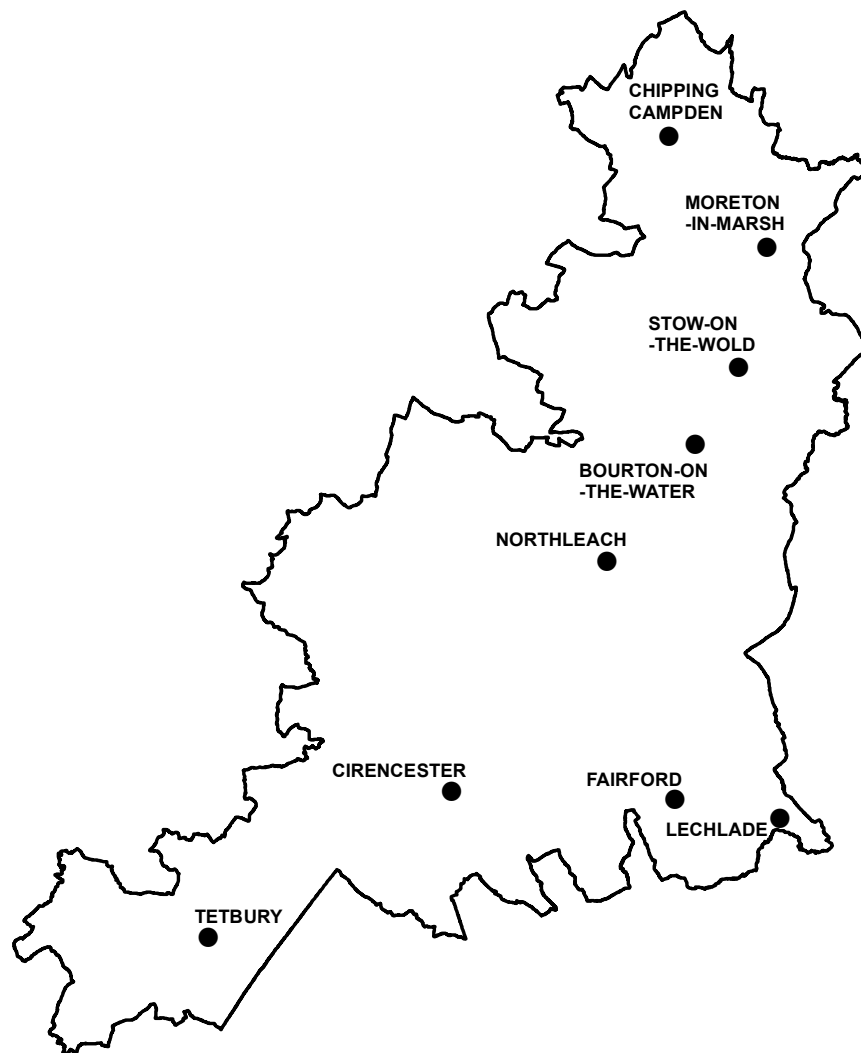
NB Due to the coronavirus pandemic, the 2020 review was delayed until 2021. The next review will be carried out in 2025 and will come into force on 7 January 2026 or earlier if necessary.

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I INTRODUCTION

- I.1 The Council is one of six district councils within Gloucestershire. The Cotswold District is mainly a rural area based around 9 market towns Cirencester, Bourton-on-the-Water, Chipping Campden, Fairford, Lechlade, Moreton-in-Marsh, Northleach, Stow-on-the-Wold and Tetbury and has a population of 90,000. A map of the area [450 sq miles] is shown below:



2.0 THE LICENSING ACT 2003

2.1 The Council is responsible under the 'Act' for the licensing of 'licensable activities' within its area. The licensable activities that are required to be licensed under the Act are:

- the retail sale of alcohol (including via the internet or mail order);
- The supply of alcohol by or on behalf of a club, or to the order of a member of the club
- The provision of regulated entertainment
- The provision of Late Night Refreshment

2.2 The Act imposes a duty on the Council to produce, develop and review a Statement of Licensing Policy that sets out the policies which the Council will generally apply to promote the licensing objectives when making decisions under the Act. The Council, as the licensing authority, will actively seek to promote the four statutory licensing objectives that are set out in section 4 of the Act, which are as follows:

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

Each objective is of equal importance and the Council's policy relating to each of them is given in this Statement of Licensing Policy. Where the Council receives relevant representations regarding an application from a "Responsible Authority" or an "other person", thereby invoking the Council's discretion to consider the matter, the Council may consider attaching conditions to licences to promote the licensing objectives as appropriate. 'Other Persons' may include any of the following:-

- Residents living near the premises
- Persons with an interest in the premises or locality
- Local Councillors
- Businesses with an interest in the premises or locality
- Organisations with an interest in the locality, premises or licensable activities

2.3 This Statement of Licensing Policy has been prepared in accordance with the provisions of the Act and with regard to the Guidance issued by the Home Office under Section 182 of the Act. The Policy will take effect after it is adopted by Council on 14 July 2021 and will remain in force for a period of not more than five years. A review and further consultation will be carried out no later than Autumn 2025. If any amendments to the Statement of Licensing Policy are needed before the review period they will only be made following consultation with those parties referred to in paragraph 2.6 below.

2.4 There are a number of groups who have an interest in the licensing of premises under the Act, including the licensed trade, customers, residents, local councillors and enforcing agencies. All these parties have views and concerns that require consideration as part of the licensing function. Before publishing the Statement of Licensing Policy and any amendments to it, the Council as licensing authority will consult with Gloucestershire Police; Gloucestershire Fire and Rescue Service; the Council's Development Control and Public Protection Services, bodies representing local holders of personal licences, premises licences and club premises certificates; and local businesses and residents in the District. In addition, the Council may also consult with other local bodies and agencies as appropriate.

- 2.5 The Act introduces a unified system of regulation for the sale and supply of alcohol, and the provision of regulated entertainment and late night refreshment. Nothing in this Policy will prevent any person from exercising their rights under the Act as an applicant or objector. The Council's aim is to uphold the licensing objectives whilst facilitating well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.
- 2.6 In drawing up and reviewing this policy the Council must consult with:-
- The Chief Officer of Police for the area;
 - The Fire and Rescue Authority for the area;
 - Persons/bodies representative of local holders of premises licences;
 - Persons/bodies representative of local holders of club premises certificates;
 - Persons/bodies representative of local holders of personal licences; and
 - Persons/bodies representative of businesses and residents in its area.
- In addition the Council will seek to identify and consult with other organisations and individuals who may be affected by this policy in an attempt to ensure that a balanced policy is achieved.
- The Policy Statement and future drafts for consultation will be placed on the Council's website which can be found at www.cotswold.gov.uk. All parties will be emailed where possible and the consultation will also be advertised widely on social media.
- 2.7 The Council's aim is to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents. To this end, conditions attached to the various permissions granted under the Act will be focussed on matters within the control of the individual licensees and others granted relevant permissions.
- 2.8 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 a part of a holistic approach to the management of the evening and night-time economy in town and city centres. Therefore, as a matter of policy the Council expects every holder of their licence, certificate or permission to be responsible for minimising the impact of their activities and anti social behaviour by their patrons within the vicinity of their premises.
- 2.9 Licensed premises, especially those offering late night entertainment, alcohol and refreshments, can sometimes be a source of crime and disorder, nuisance and public safety concerns. The Council will expect Operating Schedules to satisfactorily address these issues from the design of the premises through to the way that they are to be operated on a day to day basis. The Council understands and expects that the primary responsibility for controlling activities on and in the immediate vicinity of their premises shall rest with all holders of a licence, certificate or permission.
- 2.10 When applications are considered by the Council following receipt of relevant representations, they will be considered on individual merits with regard to this Statement of Licensing Policy. It will seek to balance the needs of the wider community, local community and commercial premises and activities, against the needs of those who may be concerned about the adverse impacts for licensed premises. The views of vocal individuals or groups will not necessarily prevail over the general interests of the community.

- 2.11 The Council recognises the need to encourage and promote cultural events which may include live music, dancing and theatre, for the wider cultural benefit of communities. Where such events include regulated entertainment, particularly live music, the Council will seek to balance any concerns over disturbance with the wider cultural benefits.
- 2.12 The Council will work in partnership with other local authorities in Gloucestershire to ensure a consistent approach is taken to licensing matters whilst respecting the differing needs of the individual communities.
- 2.13 Where it is necessary to depart from the Home Office Guidance, either in this Policy or at any other time, the Council will give clear and sound reasons for doing so.

3. THE LICENSING PROCESS

- 3.1 One of the major principles in the Act is that the licensing functions contained within it should be delegated to an appropriate level to ensure speedy, efficient and cost effective service delivery.
- 3.2 The Council will be involved in a wide range of licensing decisions and functions and has established a Licensing Committee to administer them. Appreciating the need to provide an efficient service to all parties involved in the licensing process, the Committee has delegated certain decisions and functions and has established a number of Sub-Committees to deal with those matters.
- 3.3 The Act creates a presumption that applications will be granted where no relevant representations or objections are made. Where decisions and functions are largely administrative and are not contentious, including those applications for which no relevant representations or objections are made, then and in the interests of efficiency and effectiveness these are delegated to Officers. Attached at Appendix A to this Statement of Licensing Policy is a Table of Delegated Functions setting out the agreed delegation of decisions and functions to the Council's Licensing Committee, Sub-Committees and Officers. These delegations will not prevent Officers from referring an application to a Sub-Committee or the Licensing Committee, or a Sub-Committee referring a matter to the full Licensing Committee if it is considered appropriate in the individual circumstances of the case.
- 3.4 The Act requires all applicants for new and varied premises licences and club premises certificates to state the steps that they propose to take to promote the licensing objectives in their Operating Schedule.
- 3.5 It is recommended that applicants make themselves aware of any relevant planning and transportation policies, tourism and cultural strategies or local crime and disorder strategies and to take account of these, where appropriate, when formulating their Operating Schedule.
- 3.6 Operators of licensed premises will have to comply with planning, environmental health, fire safety, licensing and building control legislation when opening or adapting licensed premises.
- 3.7 Where relevant representations have been received from responsible authorities or other person, the Council will consider whether it is necessary, having regard to the representations, to modify the conditions proposed in the operating schedule. In such cases, the Council will seek to impose the minimum burden which is necessary in order to promote the licensing objectives in the individual case.
- 3.8 Where relevant representations are received and upheld, the Council will seek to avoid confusion and duplication by not imposing licence conditions that are required under other legislation, except where they can be exceptionally justified to promote the licensing objectives.
- 3.9 This overlap will principally apply to fire safety, health and safety or planning matters.
- 3.10 In accordance with Guidance issued by the Home Office (para 10.4 in particular) applicants are advised to undertake a risk assessment before preparing their applications. This should be translated into the steps recorded in the Operating Schedule that it is proposed to take to

- promote the licensing objectives.
- 3.11 Where relevant representations are received applications will be considered on their individual merits and decisions made in relation to licensing applications will be made entirely separately from any decision in relation to planning. The Council also recognises the need to avoid, so far as possible, duplication with other regulatory areas.
 - 3.12 Some regulations do not cover the unique circumstances of some entertainment. Where relevant representations are received, and upheld, the Council will consider attaching conditions to premises licence and club premises certificates where these are necessary to promote the licensing objectives and are not already provided for in any other legislation.
 - 3.13 In circumstances where conditions are imposed, they will be tailored to the individual style and characteristics of the premises and events concerned. In addition, the Act prescribes mandatory conditions in certain circumstances.
 - 3.14 Minor Variation applications are restricted to licence changes that will not impact adversely on the licensing objectives. The Council may consult with any Responsible Authority deemed appropriate to the application. Other persons may make representations but there is no right to a hearing. Licensing officers have delegated powers to determine applications made under the Minor Variations process and any decisions made will be based on whether or not the proposed variation will impact on any of the Licensing Objectives.
 - 3.15 Applications can be made by community premises to remove the mandatory condition under the Act requiring a Designated Premises Supervisor in premises where alcohol is sold. Where an application of this nature is made, the Council must be satisfied that the premises is operating as a community premises and that the management committee has the capacity to provide sufficient supervision of the premises to minimise any risk to the four licensing objectives.

How this policy applies

- 3.17 All applications for new premises licences or variations need to be supported by an Operating Schedule. The Schedule must specify (among other things) the steps which the applicant proposes to promote each of the licensing objectives.
- 3.18 If no responsible authority or interested person lodges an objection (known as a “relevant representation”) to the application, the Council must grant the application as set out in the operating schedule, subject only to mandatory conditions under the Act. The steps proposed by the applicant will become licence conditions. The Council will have no discretion to refuse the application or to alter or add to the conditions arising from the operating schedule.
- 3.19 Where, however, there are relevant representations, then a hearing before a Licensing Sub-Committee will normally follow. After the hearing, the Sub-Committee must, having regard to the representations, take such steps as it considers necessary to promote the licensing objectives. These may include refusing the application, or adding to or modifying the conditions proposed in the operating schedule.
- 3.20 In exercising its discretion, the Licensing Sub-Committee will have regard (amongst other things) to this Licensing Policy. Therefore, in drawing up their Operating Schedule, applicants would be well advised to read this Policy carefully. Where an Operating Schedule complies with this Policy, it is generally less likely that another person or responsible authority will

object to it, or that any objection will succeed. Therefore, compliance with this Policy is likely to assist the applicant to avoid the delay and expense of a contested licensing hearing, and the risk of a refusal or the addition of unwanted licence conditions.

- 3.21 This is not to say that an application which complies with the Policy will necessarily be granted or that an application which does not comply with it will necessarily be refused. Where there have been relevant representations, the Council will always consider the merits of the case, and interfere with the operating schedule only when, and to the extent, necessary to promote the licensing objectives. Nor will blanket or standard conditions be applied without regard to the merits of the individual case. For example, the Council will not interfere with an Operating Schedule which does not comply with this Policy where the steps proposed are sufficient to meet the licensing objectives in the individual circumstances of the case.
- 3.22 However, the Policy represents the Council's view of the best means of securing the licensing objectives in most normal cases. It has been drawn up in consultation with other expert bodies and responsible authorities, together with community stakeholders. While the contents of the Operating Schedule are a matter for the applicant, where there is objection to a Schedule which departs from the Policy, the Licensing Sub-Committee will normally expect to be given a good reason for the departure if it is to be asked to make an exception to the Policy.
- 3.23 In this Policy, there are a number of references to the Council's requirements of applicants. As explained above, the Policy is only engaged where the Council has a discretion following the receipt of objections. In such cases, the Council will not apply the Policy rigidly, but will always have regard to the merits of the case with a view to promoting the licensing objectives.
- 3.24 Where considering an application for review of a licence, the Council is likely to view with concern premises which are being operated in clear breach of the terms of this Policy.
- 3.25 The contents of this section apply both to premises licences and club premises certificates.

4. COVID-19

- 4.1 The Coronavirus Regulations required many licensed premises to be closed for a period of time or to work in different ways such as offering a takeaway and/or shop service. Where appropriate the Council will apply some flexibility and creativity in the implementation of application processes to enable businesses to get back running safely and to help the local economy to recover.
- 4.2 During times when the Government is advising that premises must have social distancing measures in place, or there are other similar Government directions, it is expected that new applicants will have undertaken a risk assessment and include in their application the measures they will be implementing.

Where there is evidence that a licence holder is breaching Coronavirus Regulations, or any similar public health direction, in the first instance advice will be given. However, if breaches continue action may be taken under the relevant emergency legislation and/or the licence may be reviewed under the Licensing Act under the prevention of crime and disorder and public safety objectives

THE LICENSING POLICY OBJECTIVES

5. PREVENTION OF CRIME AND DISORDER

- 5.1 Licensed premises, especially those offering late night/early morning entertainment, alcohol and refreshment for large numbers of people, can sometimes if not properly managed be a source of public nuisance generating crime and disorder problems. In its role as the licensing authority, the Council will recommend that licensees of premises develop Operating Schedules that satisfactorily address these issues from the design of the premises through to the daily operation of the business.
- 5.2 In addition to the requirements for the Council to promote the licensing objectives, it also has a duty under Section 17 of the Crime and Disorder Act 1988 to do all it reasonably can to prevent crime and disorder in the District. The Council recommends applicants consider what actions they can take in the management of their premises that will contribute towards the reduction of crime and disorder and their responsibilities to the community in general when engaged in their activities and trading as licensed premises.
- 5.3 In developing such Operating Schedules applicants should take notice of this Policy, its contents and appendices and where appropriate are recommended to seek advice from the Council or Gloucestershire Police Licensing Unit. When planning and preparing Operating Schedules applicants may take into account local planning and transport policies, tourism, cultural and crime and disorder reduction strategies as appropriate.
- 5.4 Where, following receipt of a relevant representation, the Council's discretion is engaged it will when making its determination take into account the measures proposed by the applicant to prevent crime and disorder. The Council may give particular consideration to the following:
- i. the ability of the person in charge of the premises to monitor the premises at all times that it is open;
 - ii. the training given to staff regarding crime prevention measures for the premises;
 - iii. physical security features installed in the premises (e.g. position of cash registers, CCTV, toughened drinking glasses etc.);
 - iv. management attitudes (e.g. responsible pricing promotions and willingness to stagger trading);
 - v. that when appropriate approved trained and registered door supervisors are employed to regulate entry and prevent disorderly behaviour (e.g. Night Clubs, Pubs and Clubs on Fridays and Saturdays, Christmas Eve, New Years Eve and evenings when it may be reasonable to expect higher than normal clientele numbers – transmission of high profile rugby football and football matches or sporting events etc via any other measure as may be appropriate (e.g. participation in local Pubwatch and/or Shopwatch schemes or 'Behave or be Banned (BOBS), restrictions on 'happy hours', music wind-down policies);
 - vii. the measures employed to prevent the consumption or supply of illegal drugs, including any search procedures and entry policies;
 - viii. arrangements for transport to get people home during the evening and at closing times.
 - ix. Where the premises are subject to age restrictions, the procedures in place to conduct age verification checks (identification bearing their photograph, date of birth, and either a holographic mark or ultraviolet feature. The Home Office encourages licensed premises also accept cards bearing the Proof of Age Standards Scheme

- (PASS) hologram)
- x. The location of the premises and the likelihood of any anti-social behaviour, violence, public order or policing problems if the licence is granted.
- xi. Shops, stores and supermarkets wishing to sell alcohol by retail sale will normally be permitted to match their permitted hours to their normal trading hours unless there are reasons relating to the prevention of crime and disorder for restricting those hours.

Further information can be found in the Statutory Guidance.

The Council will give considerable weight to any representations made by Gloucestershire Police in determining any application for a licence and whether or not the use of any of these conditions is appropriate.

5.5 The Council will not apply standardised conditions but will in respect of each case where relevant representations have been received and upheld consider whether any of the conditions set out below are necessary and proportionate:

- i. Certain premises, particularly those licensed to sell alcohol beyond 11pm in the town centres, may be required to install a closed-circuit television system that meets with the approval of the Police.
- ii. Premises licensed to sell alcohol beyond 11pm in Cirencester may be required to become members of the Pubwatch scheme (or equivalent) , and to become a part of the Pubwatch radio system in order to alert other premises of potential trouble makers.
- iii. Applicants for late-night entertainment and liquor premises should agree a protocol with the police on the handling of illegal drugs found on their premises.
- iv. Any door supervisors employed on licensed premises must be licensed by the Security Industry Authority. It is recommended that pubs and clubs that wish to sell alcohol beyond 11pm employ registered door supervisors. It may be appropriate for some premises to employ door supervisors each night of the week whereas others may only require them at weekends.
- v. Licences for any form of public entertainment may be subject to conditions to prohibit entertainment (including film exhibitions) which are likely to lead to disorder, or stir up hatred or incite violence towards any section of the public on the grounds of colour, race, ethnic or national origin, disability, religious beliefs, sexual orientation or gender.

5.6 Where there is evidence that a particular area of the District is already suffering adverse effects on the licensing objectives from the concentration of late night premises, when determining any further application for premises within the area identified when relevant representations have been received and upheld the Council will take into account:

- The character of the surrounding area;
- The impact of the licence on the surrounding area, both individually and cumulatively with existing licences; and
- The nature and character of the proposed operation.

- 5.7 The Licensing Committee's starting point is in terms of seeking a reduction in crime and disorder throughout the District, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998, and an improvement in local amenity through reduction of anti social behaviour.
- 5.8 Premises serving alcohol after 11pm should consider giving customers the opportunity to remain on the premises after last orders to encourage a 'wind down' period. The Licensing Authority will normally expect the service of alcohol to cease at least 30 minutes before customers are required to leave the premises. Applicants should consider a strategy of how they will implement a 'winding down' period and detail this in the application form. This could include slowing down the pace, volume and type of music played, brighter lighting arrangements and serving hot food, coffee and other soft drinks.

6. PUBLIC SAFETY

- 6.1 The Act covers a wide range of premises that will present a mixture of risks to public safety, some of which may be common to different premises whilst others will be unique to specific operations.
- 6.2 Where the applicant can demonstrate compliance with statutory requirements (e.g. relating to fire prevention etc), and that suitable and sufficient risk assessments are in place which are relevant to the activities proposed and the Council's discretion has been engaged by the receipt of a relevant representation, the Council will not normally seek to duplicate such controls by the imposition of licensing conditions.

Capacity limits

- 6.3 The Council will not seek to set a capacity limit for premises for fire safety purposes only as this is controlled by the Fire Service under the Regulatory Reform (Fire Safety) Order 2005.
- 6.5 The Council is however, committed to ensuring public safety especially in relation to premises providing regulated entertainment and in some cases a capacity limit may be relevant to the Licensing Objectives.
- 6.5 The identification of a safe capacity limit for premises ensures that persons can be evacuated safely from premises in cases of emergency and may be one means of promoting the Act's public safety objective. The design and layout of premises are important factors when determining a safe occupant capacity. Other factors that may influence safe occupancy limits and may need to be considered when assessing the appropriate capacity for premises or events include;
- the nature of the premises or event;
 - the nature of the licensable activities being provided;
 - the provision or removal of such items as temporary structures, such as a stage, or furniture;
 - the number of staff available to supervise customers both ordinarily and in the event of an emergency;
 - the age spectrum of the customers;
 - the level and frequency of attendance by customers with disabilities, or who may be unable to speak or understand English;
 - availability of suitable and sufficient sanitary facilities;
 - nature and provision of facilities for ventilation.
- 6.6 The Council requires applicants for premises licences that provide regulated entertainment (or any other premises providing a licensable activity where occupant capacity may be a fire safety issue) to seek advice regarding safe occupancy levels from the Fire Safety Section of Gloucestershire Fire and Rescue Service.
- 6.7 Where following receipt of a relevant representation the Council's discretion has been engaged, and it believes it is necessary to impose a condition identifying an occupancy limit on a premises licence, the Council will liaise with Gloucestershire Fire and Rescue Service. <http://www.glosfire.gov.uk>

7. PREVENTION OF PUBLIC NUISANCE

- 7.1 Licensed premises, especially those operating late at night and in the early hours of the morning, can sometimes cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises.
- 7.2 The Council in its role as the licensing authority, is keen, where it is able, to protect the amenity of residents and businesses in the vicinity of licensed premises, and for these purposes 'vicinity' is taken to mean the immediate area around licensed premises. As the Council is fully aware of the importance of the licensed trade to the local economy and its culture and leisure aspirations, it will aim to work together with all other persons, statutory agencies and licensed businesses to ensure a mutual and productive co-existence.
- 7.3 Applicants should consider noise that could emanate from their premises in all instances. Where appropriate applicants are recommended to provide a noise management plan with their application. Examples include outdoor events or late evening venues.
- 7.4 When considering licence applications, where relevant representations have been received the Council will take into account measures proposed by the applicant to promote the prevention of nuisance and/or anti-social behaviour. In particular the Council may consider the following matters, where relevant:
- prevention of noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices (e.g. the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices);
 - preventing disturbance by customers arriving at or leaving the premises, particularly between 11pm and 7am;
 - preventing queuing by pedestrians or vehicular traffic, or if some queuing is inevitable then ensuring the queues are diverted away from neighbouring premises, or are otherwise managed, to prevent disturbance or obstruction;
 - ensuring staff leave the premises quietly;
 - arrangements for parking by patrons and staff, and the effect of the parking on local residents;
 - provision for public transport (including taxis and private hire vehicles) for patrons;
 - whether licensed taxis or private hire vehicles are likely to disturb local residents;
 - whether routes to and from the premises on foot, by car or other services pass residential premises;
 - the installation of any special measures where licensed premises are, or are proposed to be, located near sensitive premises such as nursing homes, hospitals, hospices or places of worship;
 - the use of gardens and other open-air areas;
 - the location of external lighting, including security lighting that is installed inappropriately;
 - other appropriate measures to prevent nuisance, (e.g. registered door supervisors, the use of CCTV);
 - how the premises address refuse storage or disposal problems, or additional litter (including fly posters and illegal placards);
 - the history of previous nuisance complaints proved against the premises, particularly where statutory action has been taken.

7.5 The Council is keen to stress, however, that as well as the licensing function there are other mechanisms for addressing issues of unruly behaviour that occur away from licensed premises. These include:

- planning controls;
- powers to designate parts of the District as places where alcohol may not be consumed publicly and the confiscation of alcohol in these areas;
- police and local authority powers to close some premises for up to 24 hours in extreme cases of disorder or excessive noise;
- police enforcement of the normal law with regard to disorder and anti-social behaviour;
- the power of the police, other responsible authorities, or a local business or resident to request a review of the licence or certificate;
- enforcement action against those selling alcohol to people who are already drunk.

8. PROTECTION OF CHILDREN FROM HARM

8.1 In its role as the licensing authority the Council recognises that there are a range of activities for which licences may be sought meaning that children can be expected to visit many of these premises, often on their own, for food and/or other entertainment. The Act only prohibits unaccompanied children (persons aged under 16) from visiting certain licensed premises. The Council recognises that locally, limitations may have to be considered where it is deemed necessary for the prevention of physical, moral or psychological harm. The following are examples of premises that may raise concerns:

- where there have been convictions for serving alcohol to minors, or with a reputation for under-age drinking;
- with a known association with drug taking or dealing;
- where there is a strong element of gambling on the premises;
- where entertainment of an adult or sexual nature is provided;
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises;
- where there is a presumption that persons under 18 should not be allowed (e.g. to nightclubs, except when under 18 discos are being held).

8.2 The Council expects personal licence holders to ensure that they do not serve alcohol to persons under the age of 18, except in limited conditions allowed for by law. The Council recommends that the only way to verify a person's proof of age is with reference to appropriate identification such as:-

- passport
- a photocard driving licence issued in a European Union country;
- a Proof of Age Standards Scheme card (e.g. PASS Card);

8.3 Where appropriate applicants are encouraged to participate in the Challenge 25 age verification scheme.

8.4 The Council recognises the potential risk to children from mobile, remote, internet and other delivery sales of alcohol being made to or accepted on the doorstep of persons under 18. The Council expects applicants for internet and delivery alcohol sales to explain in their application how they will ensure that sales and deliveries are only made to persons over 18. This could include checks whilst taking bookings and ensuring a signature of a responsible adult on delivery.

8.5 Where relevant representations have been received and upheld, when deciding whether to limit the access of children to premises the Council will judge each application on its own merits. To assist with this the Council will consult with Gloucestershire Police and other agencies as appropriate, including the Area Child Protection Committee or Social Services Department. Where concerns have been identified in respect of individual premises and it is felt that access to the premises by children should be restricted the options available would include:

- limitations on the hours when children may be present;
- age limitations for persons under 18;
- limitations on the exclusion of children under certain ages when specified activities are taking place;
- full exclusion of persons under 18 when certain licensable activities are taking place;
- limitation of access to certain parts of the premises for persons under 18;

- a requirement for an accompanying adult to be present.

This list is not meant to be seen as an exhaustive list covering everything, but gives applicants examples of the conditions the Council may seek to impose in meeting its obligation towards the protection of children.

- 8.6 The Council will not impose any conditions that specifically require the access of children to the premises.
 - 8.7 Where no conditions or restrictions are imposed, the issue of access for children remains a matter of discretion for individual licensees or clubs, or a person who has been given a Temporary Event Notice. The Act does not impose any restrictions on individual applicants volunteering prohibitions or restrictions in their Operating Schedules because their own risk assessments have shown that the presence of children is undesirable or inappropriate. In the absence of any relevant representations the volunteered prohibitions or restrictions would become conditions of the licence or certificate.
 - 8.8 The Act details a number of offences that are designed to protect children in licensed premises and the Council will work closely with the Police and Trading Standards Services to ensure appropriate and effective enforcement, particularly in relation to the sale and supply of alcohol to children.
 - 8.9 Films cover a vast range of subjects, some of which deal with adult themes and/or contain, for example, scenes of horror or violence that may be considered unsuitable for children within certain age ranges. In order to prevent children from seeing such films, the Act provides that licences/club premises certificates which authorise the display of films are subject to a mandatory condition requiring licensees to restrict access to persons who meet the required age limit in line with any certificate granted by the British Board of Film Classification or the Council itself.
 - 8.10 The Council will expect licensees to ensure that age restrictions for film exhibitions are properly complied with.
 - 8.11 In considering applications where relevant representations have been received and upheld the Council will take into account any evidence that age restrictions for film exhibitions are not being properly observed.
 - 8.12 The Council recognises that some licensees may wish to hold functions or provide facilities targeted specifically towards children (under 16's Disco's, children's parties, supervised crèche/play areas etc).
 - 8.13 In considering applications where relevant representations have been received and upheld the Council will take into account an applicant's Child Protection Policy and measures highlighted within that policy to secure child protection.
- NB Gloucestershire County Council Social Services is the responsible authority with regard to the protection of children from harm.**

9. CUMULATIVE IMPACT

- 9.1 The Council, as licensing authority, will not take “need” into account when considering an application as this relates to the commercial demand for another pub, hotel or restaurant and is not a matter for a licensing authority. On the other hand, the ‘cumulative impact’ of licensed premises or the promotion of the licensing objectives is a matter for the Council, as the licensing authority, to consider.
- 9.2 The Council recognises that potentially the cumulative impact of a number of late night premises in some areas may result in an increase of people either walking through, or congregating in, streets during the night. This may in turn have a number of undesirable consequences, for example;
- an increase in crime against property and/or person(s);
 - an increase in noise causing disturbance to residents;
 - traffic congestion and/or parking problems;
 - littering and fouling.
- 9.3 This may result in the amenity of local residents in some areas being placed under pressure. It will not always be possible to attribute a particular problem to customers of particular premises. Consequently, whilst enforcement action may be taken to ensure conditions are complied with, this may not resolve all the problems as licence conditions can only relate to matters that the licensee can be expected to control in relation to the carrying on of licensable activities.
- 9.4 Where there is evidence that a particular area of the District is already suffering adverse effects from the concentration of late night premises, when determining any further application for premises within the area identified the Council will take into account:
- the character of the surrounding area;
 - the impact of the licence on the surrounding area, both individually and cumulatively with existing licences;
 - the nature and character of the proposed operation.
- 9.5 The Council will consider representations on the impact on the promotion of licensing objectives when determining the grant of any particular application before them. The onus would, however, be on the objector to provide evidence to support any assertion that the addition of the premises in question would produce the cumulative impact claimed, taking into account that the impact will be different for premises with different styles and characteristics.
- 9.6 The Council recognises that the diversity of premises selling alcohol, serving food and providing entertainment covers a wide range of contrasting styles and characteristics and will have full regard to those differences and the differing impact these will have on the community.
- 9.7 There is currently insufficient evidence to demonstrate that any particular concentration of licensed premises within the District is causing a cumulative impact on one or more of the licensing objectives requiring the Council to adopt a special policy of refusing new licences or restricting applications to vary the licensable activities of existing licensed premises.

- 9.8 Similarly there is currently insufficient evidence to demonstrate that an Early Morning restriction order is required in this district.
- 9.9 The Council has not adopted a Late Night Levy.
- 9.10 The situation will be kept under review throughout the period that the Licensing Policy is in force with a view to collecting suitable evidence and then incorporating a special policy if appropriate.
- 9.11 Other mechanisms for controlling cumulative impact.

The Council will encourage the use of other mechanisms for controlling problems caused by customers behaving badly and unlawfully once away from licensed premises. For example:-

- Planning controls.
- Positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the Council.
- The provision of CCTV surveillance in town centres
- Cirencester is subject to Designated Public Places Orders (to be replaced by Public Spaces Protection Orders under Anti-Social Behaviour, Crime and Policing Act 2014) as being places where alcohol may not be consumed publicly except where there is authorisation under the Act
- Police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices for relevant offences.
- The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk.
- The confiscation of alcohol from adults and children in designated areas, within the limits of current legislation.
- Police and local authority powers to close down instantly, for up to 24 hours, any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance.
- The power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.

10. LICENSING HOURS

- 10.1 When dealing with licensing hours, each application will be dealt with on its individual merits. The Council recognises the variety of premises for which licences will be sought and that fixed and artificially early closing times in certain areas can lead to peaks of disorder and disturbance on the streets when people tend to leave licensed premises at the same time.
- 10.2 Unless there are good reasons to the contrary on the grounds of public disorder or crime prevention, shops, stores and supermarkets that sell alcohol will be permitted to do so during the times that they would ordinarily sell other goods. It would be for interested persons or the responsible authorities to prove why this should not be so in any particular case. There may, however, be instances where it is considered that there are good reasons for restricting those hours, for example, where police representations are made in respect of isolated shops known to be the focus of disorder and public nuisance. In order to ensure that objections are not wrongly classified as frivolous or vexatious evidence of issues should be provided by objectors.
- 10.3 The Council will have a flexible approach to opening hours and will generally deal with the issue of licensing hours having due regard to the individual merits of each application in the light of relevant representations received. The Council will take into account requests for terminal hours in the light of the:
- environmental quality;
 - residential amenity;
 - character or function of a particular area; and
 - nature of the proposed activities to be provided at the premises.
- Where relevant representations have been received and upheld consideration may, however, be given to imposing stricter controls on noise and disturbance from particular licensed premises, such as those in mainly residential areas.
- 10.4 The Council will not normally set fixed trading hours within designated areas. Stricter conditions with regard to noise control may be demanded in areas that have denser residential accommodation, but this will not normally be considered as a reason to limit opening hours without regard to the individual merits of any application.
- 10.5 Generally the Council sees staggered trading hours as being helpful to the dispersal of patrons from licensed premises, particularly late at night. This removes some of the friction caused by sudden excessive peaks of demand at fast food outlets, taxi ranks and so on.
- 10.6 In keeping with established best practice, the Council encourages applicants in respect of Town Centre premises to include in their Operating Schedule a Closed Door Policy on New Years Eve if operating hours past 12.00 midnight are proposed; the effect of the Closed Door Policy to be to prohibit admission or re-admission to the premises after 11.30pm with a view to reducing disorder and disturbance to members of the public late at night.

11. LARGE SCALE OUTDOOR EVENTS

- 11.1 A large scale event is considered one where the capacity is more than 499.
- 11.2 Where there is no premises licence in place, it is recommended that a premises licence application should be submitted to the Licensing Service ideally 6 months before the event, but not less than 3 months.
- 11.3 The primary responsibility for safety of attendees at events rests with the event organisers.
- 11.4 Applicants are expected to have reference to The Event Safety Guide - A Guide to Health, Safety and Welfare at Music and Similar Events, commonly referred to as 'The Purple Guide'.
- 11.5 Applicants for large outdoor events are recommended to provide an Event Management Plan (EMP) with their application for a premises licence. For an ongoing premises licence the EMP should be reviewed, updated and submitted to the Council at least 3 months before the event.
- 11.6 The EMP should cover as a minimum the following area (this list is not exhaustive and will vary by event type):
- Site plan including site management, exits, entrances and the structural integrity of all temporary structures
 - Crowd management, stewarding and security plan
 - Use of SIA registered door supervisors
 - Intended activities and entertainment
 - Capacities
 - Alcohol management plan
 - Production details
 - Medical and first aid provision
 - Fire safety and control
 - Noise Management Plan (including hotline telephone numbers and how residents can communicate with the event when it is taking place)
 - Car-parking arrangements
 - Sanitary provisions
 - Concessionary activities
 - Drug Policy
 - Emergency Evacuation Plan
 - Counter terrorism measures
 - Welfare provisions
 - Traffic management plan
 - Refuse and recycling plan
 - Where appropriate measures in place to prevent spread of Covid-19 or similar
- 11.7 In most cases large events will engage the Event Safety Advisory Group (ESAG). The ESAG is a group established to provide specialist advice and guidance in relation to safety at, concerts, festivals and other events.

- 11.8 Applicants for a premises licence for a large event are encouraged to submit a ESAG notification. Where a premises licence has been granted for on-going events the licence holder is encouraged to submit a ESAG notification annually. The notification should be submitted ideally at least 6 months before each event but not less than 3 months.
- 11.9 Applicants are also encouraged to liaise with the Town/Parish Council prior to applying for a licence to hold an event.

12. PROMOTION OF EQUALITY

- 12.1 The Council recognises 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.
- 12.2 Public authorities are required to publish information at least annually to demonstrate their compliance with the equality duty. The Council is firmly committed to providing and promoting equality for all its employees, service users and the wider community. Further information and data is provided on the Council's website.

Access And Evacuation For Persons With Disabilities

- 12.3 Disabled people have the right to access services. There are clear legal responsibilities under the Disability Discrimination Act 1995, requiring all service providers to make reasonable adjustments to enable disabled persons to access the service thereby ensuring that disabled people are not discriminated against.

13. ENFORCEMENT AND COMPLAINTS

- 13.1 The Council recognises the contribution that can be made by developing effective working practices with its partner agencies. The Council will establish enforcement protocols with the Gloucestershire Constabulary, Gloucestershire Fire and Rescue Service and other relevant partnership agencies to ensure efficient deployment of the Council's enforcement staff and thereby avoiding duplication of effort when carrying out inspection or enforcement matters.
- 13.2 The Council recognises that there are a number of mechanisms for addressing unlawful or anti-social behaviour that occurs away from licensed premises, qualifying clubs and temporary events which include -
- Planning controls
 - Enforcement of Environmental Protection legislation (e.g. on noise nuisance)
 - Positive measures to provide a safer and clean town centre environment in partnership with local businesses, transport operators and other departments of the Council.
 - Powers to designate parts of the District as places where alcohol may not be consumed publicly
 - Police enforcement of the law with regard to disorder and anti-social behaviour, including the issue of fixed penalty notices
 - The prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk
 - Police powers to confiscate alcohol from adults and other in designated areas
 - Police and local authority powers to close down instantly for up to 24 hours any licensed premises or temporary events on the grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises
 - The power of police, other responsible authority or a local resident or business to seek a review of the licence or certificate in question.
- 13.3 Once licensed, it is essential that premises are maintained and operated so as to ensure the continued promotion of the licensing objectives and compliance with the specific requirements of the Act. The Council will monitor premises and take any appropriate enforcement action to ensure compliance.
- 13.4 All decisions and enforcement actions taken by the Council will be in accordance with the Council's Enforcement Policy and the principles of consistency, transparency and proportionality.
- 13.5 The Council may when appropriate employ licensing enforcement officers to investigate allegations of unlicensed activities and to ensure that licence conditions are complied with, and will seek to work actively with the Gloucestershire Police in enforcing licensing legislation.
- 13.6 The Council will continue to work with its partner agencies in enforcing the licensing laws and in the inspection of premises to ensure the licensing objectives and licence conditions are met. In particular the Council will target its inspection process proportionally towards those premises that are considered as 'problematic' and 'high risk' premises requiring greater attention, while providing the minimal input in respect of low risk premises that are run well.

- 13.7 In undertaking the inspection of licensed premises the Council will promote the following categories of risk weighting:
- Town Centre Public Houses and Night Clubs - Medium to High Risk (dependant upon history).
 - All other Public Houses - Low to Medium Risk (dependant upon history)
 - Premises where there is 'regulated entertainment' as defined by the Act, including auditoria, social clubs and meeting halls as well as pubs, clubs and theatres - medium to high risk (dependent upon history).
 - Town Centre Late Night Refreshment Houses - Medium to High Risk (dependant upon history).
 - All other premises where the primary purpose is serving food - Low Risk (dependant upon history).
 - All other existing sites within the district - Low Risk (dependant upon history)
 - New sites not listed above - to be assessed dependant upon location and style of operation and operators.
- 13.8 The Council is prepared to investigate complaints against licensed premises of any description. In the first instance, complainants will be encouraged to raise the complaint directly with the licensee or business concerned.
- 13.9 Where an other person (such as a local resident, or a resident's association) has made a valid representation about licensed premises or a valid application for a licence to be reviewed, then the Council will initially arrange a mediation meeting to address, clarify and try to resolve the issues of concern.
- 13.10 The Council can only review a licence where it is alleged that the licensing objectives are being breached. It views particularly seriously applications for the review of any premises licence where it involves the:
- use of licensed premises for the sale distribution of Class A drugs and the laundering of the proceeds of drugs crimes.
 - use of licensed premises for the sale distribution of illegal firearms
 - evasion of copyright in respect of pirated films and music.
 - Underage purchase and consumption of alcohol
 - Use of licensed premises for prostitution or the sale of unlawful pornography
 - Use of licensed premises for unlawful gaming.
 - Use of licensed premises as a base for organised criminal activity.
 - Use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks.
 - Use of licensed premises for the sale of smuggled tobacco or goods.
 - The use of licensed premises for the sale of stolen goods.
 - Where the police are frequently called to attend to incidents of disorder.
 - Prolonged and/or repeated instances of public nuisance.
 - Where serious risks to public safety have been identified, for example breach of health and safety standards or fire safety standards, and the management is unable or unwilling to correct those.
 - Where serious risks to children have been identified.
 - Immigration offences such as employment of persons who do not have the right to work in the UK

- 13.11 This process will not override the right of any other person to ask the Council's Licensing Committee to consider their valid objections, or for any licence holder to decline to participate in a mediation meeting.

NB A copy of the Council's Enforcement Policy is available on the Council's website (www.cotswold.gov.uk).

14. FURTHER INFORMATION AND CONTACT DETAILS

- 14.1 For further information about the Council's Licensing Policy, the Act and any other licensing matters applicants and other persons should please contact:-

**Licensing Team
Cotswold District Council
Trinity Road
Cirencester
GL7 1PX**

**Telephone No.: 01285 623000
Email: licensing@cotswold.gov.uk
Website: www.cotswold.gov.uk**

TABLE OF DELEGATED FUNCTIONS

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a representation	If no representation
Application for personal licence with unspent convictions		All Cases	
Hearing to determine Suspension or Revocation of a Personal Licence following a relevant Offence		All Cases	
Application for premises licence/club premises certificate	If representation relates to Cumulative impact	If a representation	If no representation
Application for provisional statement	If representation relates to Cumulative impact	If a representation	If no representation
Application to vary premises licence/club premises certificate	If representation relates to Cumulative impact	If a representation	If no representation
Application to vary designated personal licence holder		If a police representation	All other cases
Request to be removed as designated personal licence holder			All Cases
Application for transfer of premises licence		If a police representation	All other cases
Application for interim authority		If a police representation	All other cases
Application to review premises licence/club premises certificate	All Cases		
Decision on whether a complaint or objection is irrelevant, frivolous, vexatious etc			All Cases
Decision to object when Local Authority is a consultee and not the lead authority			All Cases
Determination of a police representation to a temporary event notice		All Cases	
Application to display the mandatory conditions for alcohol sales at community premises		If a police representation	All other cases
Application for minor variation to premises			All Cases

GLOSSARY

Club Premises Certificate

A certificate granted to a qualifying club under the Act. Alcohol must not be supplied other than to members and guests by or on behalf of the club.

Designated Premises Supervisor

A person named on a premises licence who has overall responsibility for sales of alcohol. This person must be a personal licence holder and is normally the person that has day to day control of the premises.

Hearing

A meeting of a panel of three Councillors (Sub-Committee) from the Committee that deals with licensing matters who will consider an application where there has been relevant representation, objection or a request for a review.

Late Night Refreshment

Provision of hot food or hot drink to members of the public, for consumption on or off the premises, between 11 pm and 5 am

Other Person

Any person, business or organisation. An 'Other Person' can make representation about premises licence and club premises certificate applications and can request a review of a premises licence or club premises certificate.

Personal Licence

Licence issued to a person that authorises them to sell alcohol in, or to authorise another person to sell alcohol, in accordance with a premises licence. A personal licence is issued to an individual's home address and has effect indefinitely (has no end date).

Premises

Means any place and includes a building, outdoor area, vehicle, vessel or moveable structure.

Premises Licence

Licence that authorises the premises to be used for one or more licensable activity.

Representation

Comment made against, or in support of an application for a new premises licence or club premises certificate or a variation to a premises licence or club premises certificate or a review of a premises licence or club premises certificate. A representation can be made by a responsible authority or other persons. The representation must be made during the representation period.

Temporary Event Notice

A notice given to the Council of intention to hold a temporary event where licensable activities will take place. The person submitting the notice must do so at least 10 clear working days before the event. A late temporary event notice is one given within 5 to 9 clear working days.

RESPONSIBLE AUTHORITY CONTACT DETAILS

Licensing Authority	Licensing Team, Cotswold District Council, Trinity Road, Cirencester GL7 1PX Telephone: 01285 623000 Email: ers@cotswold.gov.uk
Gloucestershire Constabulary	Harm Reduction, Police Headquarters, No 1 Waterwells, Quedgeley, Gloucester, GL2 2AN Telephone: 01452 754482 Email: Licensing@Gloucestershire.pnn.police.uk
Gloucestershire Fire & Rescue Service	Chief Fire Officer Fire Service HQ, Waterwells Drive, Quedgeley Gloucester GL2 2AX Telephone: 01452 753333 Email: fire@glosfire.gov.uk
Local department with responsibility for Planning	Planning Team, Cotswold District Council, Trinity Road, Cirencester GL7 1PX Telephone: 01285 623000 E-mail: planning@cotswold.gov.uk
Local department with responsibility for Environmental Pollution	Technical Pollution Services Team, Cotswold District Council, Trinity Road, Cirencester GL7 1PX Telephone: 01285 623000 E-mail: ers@cotswold.gov.uk
Local department with responsibility for Health & Safety	Food, Health and Safety Team, Cotswold District Council, Trinity Road, Cirencester GL7 1PX Telephone: 01285 623000 E-mail: ers@cotswold.gov.uk
Gloucestershire Safeguarding Children Board	Gloucestershire Safeguarding Children Board Block 4, 1st Floor, Room 133B, Shire Hall, Westgate Street Gloucester, GL1 2TH Telephone : 01452 583636 E.mail: gscb@gloucestershire.gov.uk
Trading Standards	Gloucestershire Trading Standards Service, The Tri-Service Centre, Waterwells Drive, Quedgeley, Gloucester GL2 2AX Telephone: 01452 426201 E-mail: tradstds@gloucestershire.gov.uk
Local health body representative	Public Health Department, Block 4, 2nd Floor Gloucestershire County Council Shire Hall, Westgate Street, Gloucester, GL1 2TG Telephone: 01452 328607 E-mail: Publichealth@gloucestershire.gov.uk



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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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

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

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)

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;

- 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.

- 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

- 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:

- 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.

- 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

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.

- 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 "wharfside" 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.

- 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

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

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

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

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:

- 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

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.

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.

- 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

(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

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

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

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.

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.

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.

- 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:

- 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

- 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

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.

- 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 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.

- 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.

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.

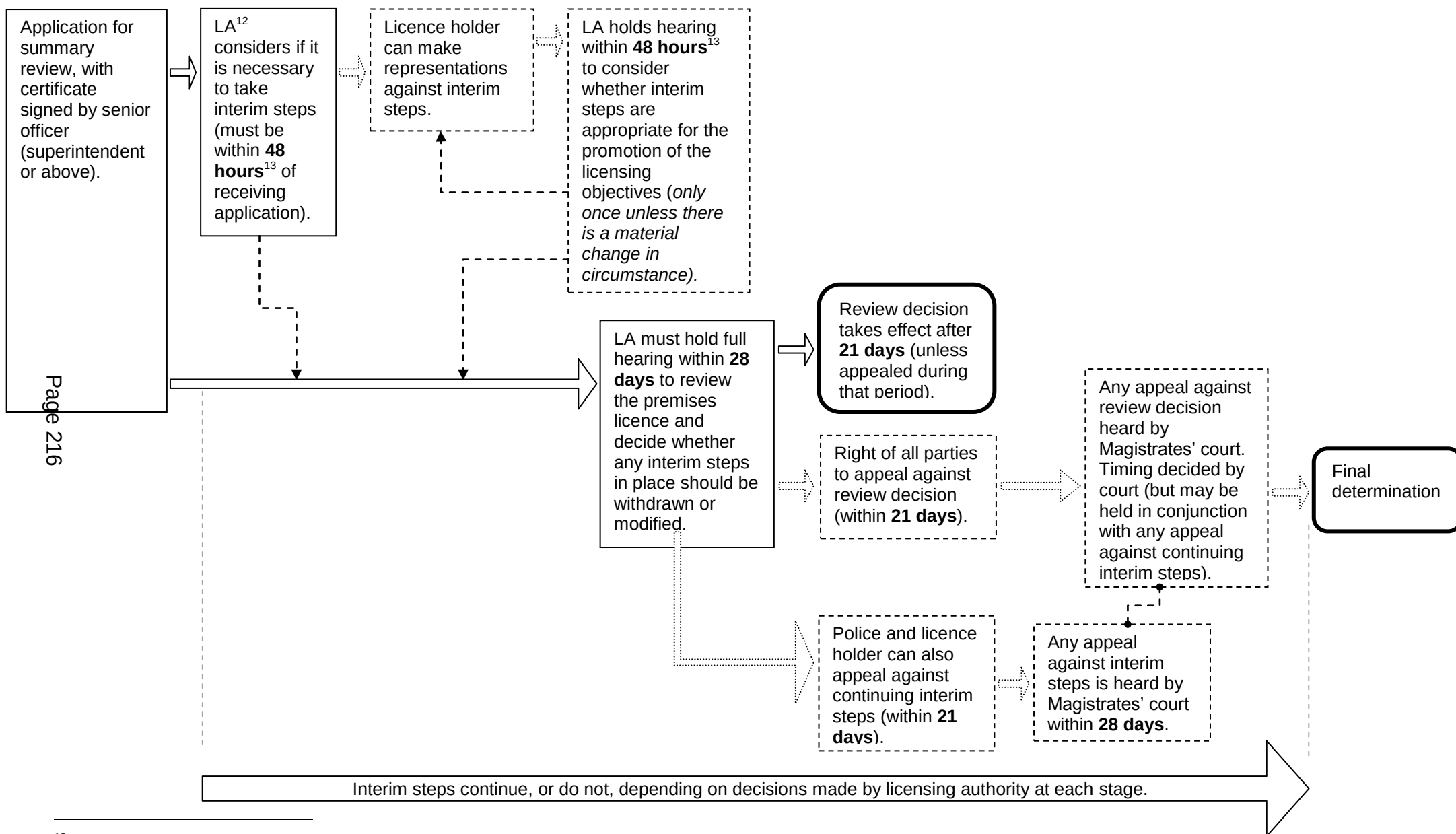
Right of appeal against final review decision

- 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.

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

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.

- 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;

- 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;

- 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

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

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

- 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 dance that is adult entertainment and remains licensable.

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.

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.

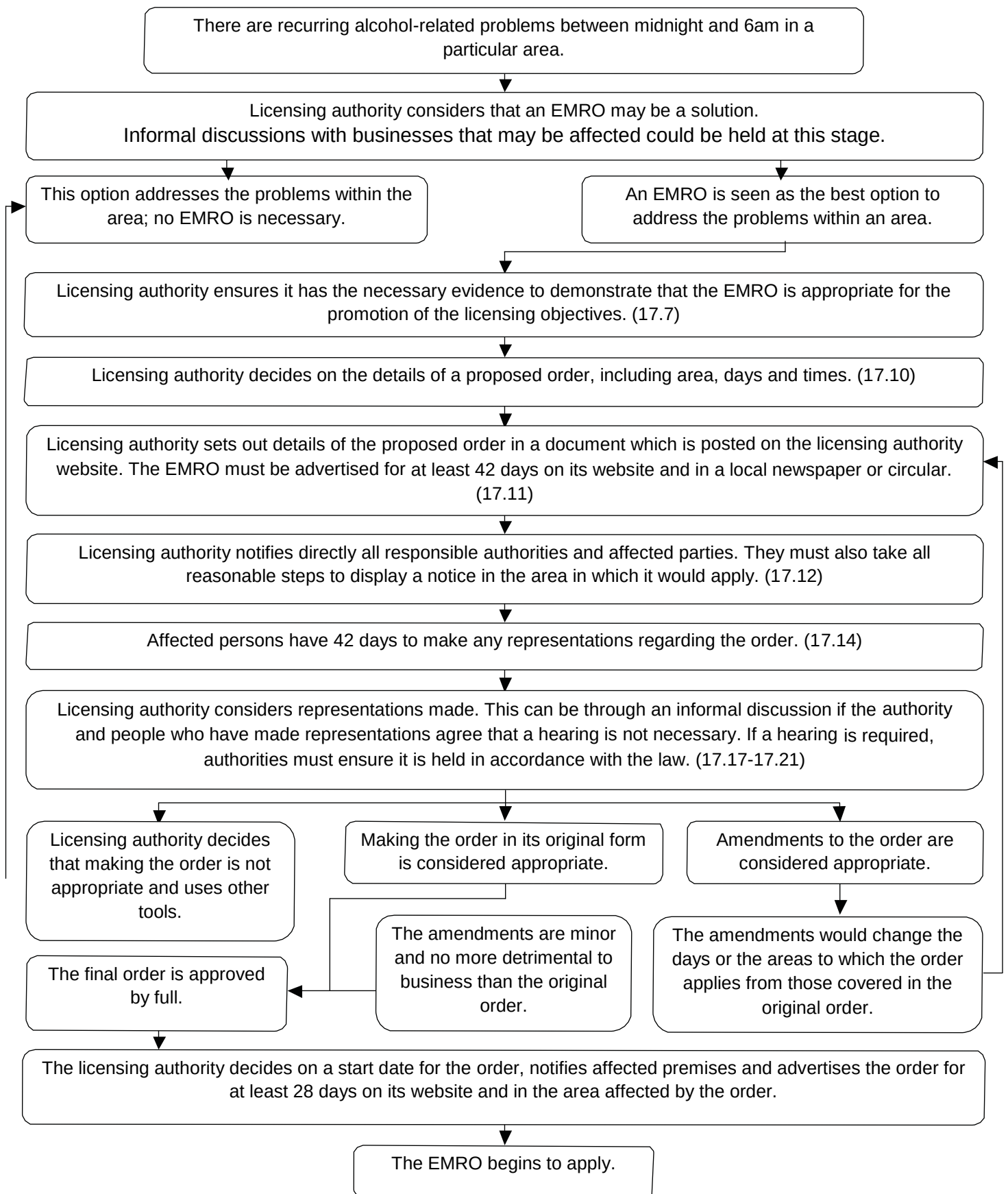
Exceptions to an EMRO

- 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.

- 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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