



**GUIDANCE ISSUED UNDER  
SECTION 182 OF THE LICENSING ACT 2003**

issued by

**THE SECRETARY OF STATE FOR  
CULTURE, MEDIA AND SPORT**

**XXXX 2007**

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The Guidance has been prepared in consultation with other Government Departments, executive agencies and an Advisory Group comprising stakeholder representatives.

It will be kept under constant review in consultation with key stakeholder groups and will be amended or supplemented as necessary at any time.

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# **FOREWORD**

**BY**  
**THE SECRETARY OF STATE FOR CULTURE,  
MEDIA AND SPORT**

When this Guidance was first published in July 2004, we were on the brink of the introduction of wholly new and exciting approach to licensing. The purpose of the regime was about to be given much needed clarity by four statutory objectives becoming paramount when any relevant matters were considered. The objectives are:

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

Thanks to the exceptional efforts of many officers and councillors in local authorities, the Licensing Act 2003 came into force on 24 November 2005 and it immediately began to give local people a bigger voice in licensing decisions and to help local authorities' broader efforts to create safer and more civilised evening and night-time economies.

It also began to add impetus to our aims of providing a better system of regulation for business, greater choice for consumers and where possible, help areas in need of economic regeneration.

We were criticised by some for our conviction that these major changes would have a positive impact on and support our wider strategy for tackling crime and disorder, underage drinking, public nuisance and anti-social behaviour.

We now have a clearer picture of how the Act is working in practice and I am greatly encouraged by the very positive feedback we are receiving from licensing authorities, local residents and the police.

There is good evidence that licensees are beginning to take their responsibilities more seriously and are actively working with the police and each other to eliminate sales of alcohol to underage drinkers and to combat alcohol related crime and disorder.

There is widespread evidence of good and effective partnership working. In many areas, local authorities have set up licensing forums that bring together residents, licensees, responsible authorities such as the police and others to discuss and try to resolve licensing issues. Enforcement has also benefited from this partnership approach with improved targeting of problem premises and better co-ordination and cooperation to clamp down on the irresponsible minority of retailers. The new closure and review powers are working.

Local people are starting to show a much greater understanding of their rights to make objections and seek reviews and are becoming more aware of and engaged in the licensing process. Representations from residents have resulted in new conditions being

placed on thousands of licences and often this has been achieved through mediation without the need to go to a formal hearing.

We will continue to monitor and evaluate the impact of the 2003 Act on crime and disorder and the other licensing objectives. The Licensing Act in isolation cannot provide a remedy to many of the ills of society associated with alcohol misuse. It must be part of a broader strategy to achieve better management of the night-time economy and a better balance between the rights and responsibilities of everyone living and working in each community.

We realise too that we are at the beginning of a long road towards the cultural change that must eventually underpin the modernisation of the law.

While this revised version of the Guidance is my advice to licensing authorities, it is the product of partnership between central Government and a wide range of stakeholders including, local authorities, the police, industry, the voluntary sector, the club movement, musicians and other performers, representatives of the community and a wider public consultation. I am grateful to all those who have participated and look forward to further work together to promote the four licensing objectives.

I am confident that this revised version of the Guidance will encourage the spread of best practice and help to ensure even greater consistency of approach across licensing authorities.

We will, of course, continue to monitor the impact of the Act on the licensing objectives and if necessary, consider the introduction of further legislation with the consent of Parliament to strengthen or alter any provisions.

**Tessa Jowell**  
**Secretary of State for Culture, Media and Sport**

# 1. Introduction

## The Licensing Act 2003

1.1 The 2003 Act, the associated explanatory notes and any statutory instruments made under its provisions may be viewed on the OPSI website [www.opsi.gov.uk](http://www.opsi.gov.uk) All statutory instruments may also be viewed on the DCMS website. The main statutory instruments are:

- The Licensing Act 2003 (Transitional provisions) Order 2005
- The Licensing Act 2003 (Personal licences) Regulations 2005
- The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005
- The licensing Act 2003 (Licensing authority's register) (other information) Regulations 2005
- The Licensing Act 2003 (Hearings) Regulations 2005
- The Licensing Act 2003 (Hearings) (Amendment) Regulations 2005
- The Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005
- The Licensing Act 2003 (Transitional conversions fees) Order 2005
- The Licensing Act 2003 (Fees) (Amendment) Regulations 2005

## 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:

<b>THE LICENSING OBJECTIVES</b>	
•	<b>the prevention of crime and disorder;</b>
•	<b>public safety;</b>
•	<b>the prevent of public nuisance; and</b>
•	<b>the protection of children from harm.</b>

1.3 Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.

1.4 But 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:

- the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers' expectations;
- greater choice for consumers, including tourists, about where, when and how they spend their leisure time;

- the encouragement of more family friendly premises where younger children can be free to go with the family;
- the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;
- the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and
- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.

## **The Guidance.**

1.5 Section 182 of the Licensing Act 2003 (“the 2003 Act”) provides that the Secretary of State must issue, and from time to time, may revise guidance to licensing authorities on the discharge of their functions under the 2003 Act.

### **Purpose**

1.6 The Guidance is provided for licensing authorities carrying out their functions. It also provides information for magistrates hearing appeals against licensing decisions and has been made widely available for the benefit of operators of licensed premises, their legal advisers and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality.

1.7 The police remain key enforcers of licensing law. The Guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. However, the Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

### **Legal status**

**Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must ‘have regard to’ guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent.**

**However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they provide full reasons. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.**

1.8 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation.

## **Licensing Policies**

1.9 Section 5 of the Act requires a licensing authority to prepare and publish a statement of its licensing policy every three years. The policy must be published before the authority carries out any licensing function in relation to applications made under the Act.

1.10 However, making a statement is a licensing function and as such the authority must have regard to the Secretary of State's Guidance when making and publishing its policy. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. But once again, it is important that they should give full reasons for departing from their published statement of licensing policy.

## **Licensable activities**

1.11 For the purposes of the Act, the following are licensable activities:

<b>LICENSABLE ACTIVITIES</b>
<ul style="list-style-type: none"><li>• the sale by retail of alcohol;</li><li>• the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club;</li><li>• the provision of regulated entertainment; and</li><li>• the provision of late night refreshment.</li></ul>

1.12 Further explanation of these terms is provided in Chapter 3.

## **Authorisations**

1.13 The Act provides for four different types of authorisation, as follows:

<b>AUTHORISATIONS</b>
<ul style="list-style-type: none"><li>• Personal licences - to sell or supply alcohol and/or authorise the sale/supply.</li><li>• Premises Licences – to use a premises for licensable activities</li><li>• Club Premises Certificates – to allow a qualifying a club to engage in qualifying club activities as set out in Section 1 of the Act</li><li>• Temporary Event Notices – to carry out licensable activities at a temporary event</li></ul>

## Principles

1.14 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 interested parties, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions.

### Each application on its own merits

1.15 Each application must be considered on its own merit and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case.

### Avoiding duplication of other legal requirements

1.16 The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.

### Hours of opening

1.17 The Government strongly believes that, prior to the introduction of the Licensing Act 2003, fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times; and one of the causes of disorder and disturbance when large numbers of customers were required to leave the premises simultaneously.

1.18 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided.

1.19 The four licensing objectives should be paramount considerations at all times and licensing authorities should always consider the individual merits of a case.

## Partnership working

1.20 Licensable functions under the Act are only one means of promoting the delivery of the objectives described. They can make a substantial contribution in relation to licensed premises, but are not the panacea for all community problems.

1.21 Licensing authorities should work with all partners to deliver the licensing objectives, including responsible authorities, the licensed trade, local people and businesses, town centre managers, Crime and Disorder Reduction Partnerships, performers and local transport authorities and operators.

1.22 The private sector, local residents and community groups in particular have an equally vital role to play in promoting the licensing objectives in partnership with public bodies. The Secretary of State strongly recommends that licensing authorities form licensing liaison groups and forums that bring together all the interested parties on a regular basis to monitor developments and propose possible solutions to any problems that may arise. The Secretary of State also recommends that licensing authorities should hold well publicised open meetings where local people and businesses can give their views on how well they feel the licensing objectives are being met.

## Related legislation and strategies

1.23 The Licensing Act is part of a wider Government strategy to tackle crime, disorder and anti-social behaviour and reduce alcohol harm. Licensing authorities should develop effective strategies with the police for the management of the night-time economy. Central to this would be the enforcement of the law relating to the sales of alcohol to drunk and underage people and drunkenness or disorder on the premises. Targeted enforcement of this kind should have a positive impact on the immediate vicinity of the licensed premises concerned. In addition, following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate, such as preventing customers from taking open containers outside the premises.

### Crime and Disorder Act 1998

1.24 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act.

1.25 Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire authorities to do all they reasonably can to prevent crime and disorder in their area.

1.26 The Government believes that licensing authorities should, as a matter of good practice, involve Crime and Disorder Reduction Partnerships (CDRPs) in decision-making in order to ensure that statements of licensing policy include effective strategies that take full account of crime and disorder implications.

## **Alcohol Harm Reduction Strategy**

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

## **The Anti-Social Behaviour Act 2003**

1.28 Licensing authorities need to be aware of new powers that will be available to local authorities under sections 40 and 41 of the Anti Social Behaviour Act 2003. The Act provides that if the noise from any licensed premises is causing a public nuisance, an authorised environmental health officer would have the power to issue a closure order effective for up to 24 hours. Under this provision, it is for the Chief Executive of the local authority to delegate their power to environmental health officers within their authority. If after receiving a closure order the premises remain open, the person responsible may upon summary conviction receive a fine of up to £20,000 or imprisonment for a term not exceeding three months, or both. This complements the police powers under Part 8 of the 2003 Act to close licensed premises for temporary periods.

## **Violent Crime Reduction Act 2006**

1.29 The Violent Crime Reduction Act 2006 received Royal Assent on 8 Nov 2006. The Act introduces new measures to ensure that police and local communities have the powers they need to tackle guns, knives and alcohol-related violence. Relevant sections will be implemented from 2007.

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

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

1.31 Details of other relevant industry initiatives can be found at Annex J.

## 2. The Licensing Objectives

### Crime and disorder

2.1 The steps any licence holder or club might take to prevent crime and disorder are as varied as the premises or clubs where any licensable activities may be carried on. Licensing authorities should therefore look to the police as the main source of advice on these matters. They should also seek to involve the local CDRP, as recommended in paragraph 1.26 of this Guidance.

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

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

2.3 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. Conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff or agents, but can directly impact on the behaviour of customers on, or in the immediate vicinity of, the premises as they seek entry or leave.

2.4 Licence conditions should not replicate licensing offences that are set out in the 2003 Act. For example, a condition that states that a licence holder shall not permit drunkenness and disorderly behaviour on his premises would be superfluous because this

is already a criminal offence. A condition that states that a licence holder shall not permit the sale of controlled drugs on the premises would be similarly superfluous.

2.5 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have such cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.6 Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are kept informed.

2.7 Text and radio pagers allow premises licence holders, designated premises supervisors and managers of premises and clubs to communicate instantly with the local police and facilitate a rapid response to any disorder which may be endangering the customers and staff on the premises. The Secretary of State recommends that text or radio pagers should be considered appropriate necessary conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises.

2.8 Some conditions primarily focused on the prevention of crime and disorder will also promote other licensing objectives. For example, a condition requiring that all glasses used on the premises for the sale of alcoholic drinks should be made of plastic or toughened glass or not allowing bottles to pass across a bar may be necessary to prevent violence by denying assailants suitable weapons, but may also benefit public safety by minimising the injury done to victims when such assaults take place (for example, facial injuries resulting from broken glass).

2.9 A condition must also be capable of being met. For example, while beer glasses may be available in toughened glass, wine glasses may not. Licensing authorities should carefully consider conditions of this kind to ensure that they are not only necessary but both practical and achievable.

2.10 Similarly, although most commonly made a condition of a licence on public safety grounds, licensing authorities should also consider conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, the licensing authority should consider whether door supervisors are needed to control numbers.

2.11 In the context of crime and disorder and public safety, the preservation of order on premises where there are very large numbers of people and alcohol is supplied for consumption may give rise to genuine concerns about the competency of the management team charged with the maintenance of order.

2.12 The designated premises supervisor is the key person who will usually be charged with day to day management of the premises by the premises licence holder, including the prevention of disorder. However, conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. A condition of this kind could only be justified as necessary in rare circumstances where it could be demonstrated that in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

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

2.14 Communications between the managers of the premises and the police can also be crucial in preventing crime and disorder. Involvement by operators and managers in voluntary schemes and initiatives may be particularly valuable. Conditions requiring dedicated text or pager links between management teams and local police stations can provide early warning of disorder and also can be used to inform other licence holders that a problem has arisen in the area generally. For example, where a gang of youths is causing problems in one public house and their eviction will only result in them going on elsewhere to cause problems on other premises, there is advantage in communication links between the police and other licensed premises and clubs.

2.15 However, while this may be necessary and effective in certain parts of licensing authority areas, it may be less effective or even unnecessary in others. Police views on such matters should be given considerable weight and licensing authorities must remember that only necessary conditions, which are within the control of the licence holder or club, may be imposed.

2.16 The Indecent Displays Act 1981 prohibits the public display of indecent matter, subject to certain exceptions. It should not therefore be necessary for any conditions to be attached to licences or certificates concerning such displays in or outside the premises involved. For example, the display of advertising material on or immediately outside such premises is regulated by this legislation. Similarly, while conditions relating to public safety in respect of dancing may be necessary in certain circumstances, the laws governing indecency and obscenity are adequate to control adult entertainment involving striptease and lap-dancing which goes beyond what is lawful. Accordingly, conditions relating to the content of such entertainment which have no relevance to crime and disorder, public safety, public nuisance or the protection of children from harm could not be justified. In this context, however, it should be noted that it is in order for conditions relating to the exclusion of minors or the safety of performers to be included in premises licence or club premises certificate conditions where necessary. The Local Government (Miscellaneous Provisions) Act 1982 insofar as its adoptive provisions relate to sex establishments – sex shops, sex cinemas in London and sex encounter establishments – also remains in force.

## **Public safety**

2.17 Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will of course be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene.

2.18 In addition, no attempt should be made to use a licensing condition to impose a smoking ban for either health or desirability. These are matters for other legislation and voluntary codes of practice and duplication should be avoided.

2.19 From 1 October 2006 the Regulatory Reform (Fire Safety) Order 2005 replaced previous fire safety legislation. As such any fire certificate issued under the Fire Precautions Act 1971 will have ceased to have effect. Licensing authorities should note that under section 43 of the Regulatory Reform (Fire Safety) Order 2005 any conditions imposed by the licensing authority that relate to any requirements or prohibitions that are or could be imposed by the Order have no effect. This means that licensing authorities should not seek to impose fire safety conditions where the Order applies.

2.20 The exception to this will be in cases where the licensing authority and the enforcing authority for the fire safety order are one and the same body. For example, designated sports-grounds and stands where local authorities enforce the fire safety order. In such circumstances fire safety conditions should not be set in new licences, but conditions in existing licences will remain in force and be enforceable by the licensing authority.

2.21 The Fire Safety Order applies in England and Wales. It covers 'general fire precautions' and other fire safety duties which are needed to protect 'relevant persons' in case of fire in and around 'most premises'. The Order requires fire precautions to be put in place 'where necessary' and to the extent that it is reasonable and practicable in the circumstances of the case.

2.22 Responsibility for complying with the Order rests with the 'responsible person', which may be the employer, or any other person or people who may have control of the premises. Each responsible person must carry out a fire risk assessment which must focus on the safety in case of fire for all 'relevant persons'. The fire risk assessment is intended to identify risks that can be removed or reduced and to decide the nature and extent of the general fire precautions that need to be taken.

2.23 The local fire and rescue authority will enforce the Order in most premises and have the power to inspect the premises to check the responsible person is complying with their duties under the Order. They will look for evidence that the responsible person has carried out a suitable fire risk assessment and acted upon the significant findings of that assessment. If the enforcing authority is dissatisfied with the outcome of a fire risk assessment or the action taken, they may issue an enforcement notice that requires the responsible person to make certain improvements or, in extreme cases, issue

a prohibition notice that restricts the use of all or part of the premises until improvements are made.

2.24 Further information and guidance about the Order and fire safety legislation is available from the Communities and Local Government website [www.communities.gov.uk/fire](http://www.communities.gov.uk/fire)

2.25 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be unnecessary for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if necessary, checks on such equipment to be conducted at specified intervals and for evidence of such checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, if they receive relevant representations from responsible authorities or interested parties, 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 clear their expectations in such respects to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

2.26 “Safe capacities” should only be imposed where necessary for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a capacity has been imposed through other legislation, it would be unnecessary 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, the fire authority may consider it necessary for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. In considering the representations, licensing authorities should give particular weight to those made by the fire authority in such circumstances. Capacities attached to premises licences or club premises certificates may in certain circumstances be necessary in preventing disorder, as overcrowded venues can increase the risks of disorder as crowds become frustrated and hostile.

2.27 The special provisions made for dancing, amplified and unamplified music in section 177 of the 2003 Act apply only to premises with a “permitted capacity” of not more than 200 persons. In this context, the capacity must be where the fire authority has made a recommendation on the capacity of the premises. In the first case, 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 Act, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire authority who will consider it and then decide what the “permitted capacity” of those premises should be.

2.28 Whilst the Cinematograph (Safety) Regulations 1955 (S.I 1995/1129) which contained a significant number of regulations in respect of fire safety provision at cinemas, no longer apply, applicants taking advantage of the “grandfather rights” pursuant to Schedule 8 to the 2003 Act will have been subject to conditions which re-

state those regulations in their new premises licence or club premises certificate. Any holders of a converted licence seeking to remove these conditions and reduce the regulatory burden on them (to the extent to which that can be done while still promoting the licensing objectives), would need to apply to vary their converted licences or certificates. When considering such variation applications or applications for new licences, licensing authorities and responsible authorities should recognise the need for steps to be taken to assure public safety at such premises in the absence of the 1955 Regulations.

2.29 Public safety includes the safety of performers appearing at any premises.

## **Public nuisance**

2.30 The 2003 Act requires licensing authorities (following receipt of relevant representations) and responsible authorities, through representations, to make judgements about what constitutes public nuisance and what is necessary 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 impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.31 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 is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.<sup>1</sup>

2.32 Conditions relating to noise nuisance will normally concern steps necessary 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 in the evening to more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.

2.33 As with all conditions, it will be clear that conditions relating to noise nuisance may not be necessary in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean Neighbourhoods and Environment Act 2005 adequately protect those living in the vicinity of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and

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<sup>1</sup> It should also be noted in this context that it remains an offence under the 2003 Act to sell or supply alcohol to a person who is drunk. This is particularly important because of the nuisance and anti-social behaviour which can be provoked after leaving licensed premises.

responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be necessary.

2.34 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.

2.35 Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance such issues.

2.36 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives.

2.37 Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition following relevant representations from a responsible authority or interested party that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living nearby to a peaceful night.

2.38 The cumulative effects of litter in the vicinity of premises carrying on licensable activities can cause public nuisance. For example, it may be appropriate and necessary for a condition of a licence to require premises serving customers from take-aways and fast food outlets from 11.00pm to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter. Such conditions may be necessary and appropriate in circumstances where customers late at night may have been consuming alcohol and be inclined to carelessness and anti-social behaviour.

## **Protection of children from harm**

2.39 The protection of children from harm includes the protection of children from moral, psychological and physical harm, and this would include the protection of children from too early an exposure to strong language and sexual expletives, for example, in the context of film exhibitions or where adult entertainment is provided.

2.40 However, in the context of many licensed premises such as pubs, restaurants, café bars and hotels, it should be noted that the Secretary of State recommends that the development of family-friendly environments should not be frustrated by overly restrictive conditions in relation to children.













































































































- the presence of SIA registered security teams to control entry for the purpose of compliance with the capacity limit and to deny entry to individuals who appear drunk or disorderly or both.

## Mandatory conditions

10.43 Where the 2003 Act provides for a mandatory condition to be included in a premises licence, it is the duty of the licensing authority issuing the licence to include that condition on the premises licence.

## Designated Premises Supervisor

10.44 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 their licence has been suspended.

10.45 The 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 Licensing Act and conditions attached to the premises licence to promote the licensing objectives.

## Authorisation by personal licence holders

10.46 In addition, the licence must require that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. This in most instances will be the designated premises supervisor who must hold a valid personal licence. 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 material times.

10.47 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 during the course of an evening, but may be absent at times from the premises when a transaction takes place. However, the responsible personal licence holder will not be able to escape responsibility for the actions of anyone authorised to make sales.

10.48 “Authorisation” does not imply direct supervision of each sale of alcohol by a personal licence holder. The question arises as to how sales can be authorised. In the Government’s view it is not possible to state categorically how the requirement of authorisation is satisfied, as the facts and circumstances in each case will differ. Whether or not an authorisation has been given within the meaning of Act would, ultimately, be a matter for a court to determine on the evidence before it when the issue arose.

10.49 Nevertheless, the Secretary of State considers that where an issue comes before a court, the court could be expected to require the authorisation to have been meaningfully and properly carried out and not to have involved any abdication of responsibility. The

**Deleted:** in circumstances where the personal licence holder is absent for longer periods, such as when taking a holiday.

**Deleted:** or whether the frequency or length of absence meant that the personal licence holder could not, in fact, have authorised the sale

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