



Home Office

Revised Guidance issued under section 182 of the Licensing Act 2003

April 2018

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.

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.

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

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.