

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

9.39 The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Any conditions added to the licence must be those imposed at the hearing or those agreed when a hearing has not been necessary.

9.40 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

9.41 In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate.

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

9.42 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

9.43 The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is

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

Considering cases where licensing and planning applications are made simultaneously

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

10. Conditions attached to premises licences and club premises certificates

General

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

Proposed conditions

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

Consistency with steps described in operating schedule

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

Imposed conditions

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

Proportionality

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

Naming, packing and promotion in retail premises

- 10.11 The Government acknowledges that the irresponsible naming, packing or promotion of alcoholic drinks may contribute to alcohol related harms. Where there is direct evidence of specific incidents of irresponsible naming, packing or promotion of alcoholic drinks linked to the undermining of one of the licensing objectives, licensing authorities should, in the exercise of their licensing functions (in particular, in relation to an application for the grant, variation or review of a premises licence), consider whether it is appropriate to impose conditions on licences that require the licence holder to comply with the Portman Group's Retailer Alert Bulletins. This condition should be considered on a case by case basis and in the context of the promotion of the licensing objectives.
- 10.12 The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code,

16. Regulated entertainment

Types of regulated entertainment

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

Overview of circumstances in which entertainment activities are not licensable

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

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

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

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

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

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

²⁰ See paragraphs 16.57-16.61

²¹ See paragraphs 16.65-16.68

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

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

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

provided that the audience does not exceed 500²⁵.

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

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

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

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

Travelling circuses

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

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

Live music

16.26 Live music is licensable:

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

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

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

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

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

⁵² See Chapter 3 of this Guidance

⁵³ See paragraph 16.31

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

⁵⁵ See paragraphs 16.55-16.56

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

Key terms used in relation to live music

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

Recorded music

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

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

⁵⁷ Karaoke is generally classed as a performance of live music

⁵⁸ This would include 'scratching'

⁵⁹ TENs are covered in chapter 7

⁶⁰ See Chapter 3 of this Guidance

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

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

Beer gardens

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

Plays, dance and indoor sport

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

⁶⁶ See paragraphs 16.55-16.56 and chapter 11.

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

⁶⁸ Including on a licence review

⁶⁹ See paragraph 16.6