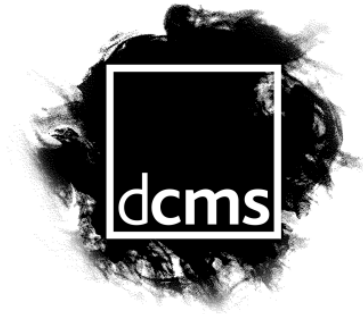




**Draft Guidance issued under Section 182
of the Licensing Act 2003. Tabled before
Parliament on 23 March 2004.**

**This document is subject to approval by
both Houses of Parliament and should
be considered accordingly**

Draft guidance laid before Parliament under section 182 of the Licensing Act 2003, for approval by resolution of each House of Parliament



**DRAFT GUIDANCE ISSUED UNDER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

and

**DRAFT GUIDANCE TO POLICE OFFICERS
ON THE OPERATION OF CLOSURE
POWERS IN PART 8 OF THE LICENSING
ACT 2003**

Laid before Parliament **23** March 2004

issued by

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

XXXX 2004

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FOREWORD

BY

THE SECRETARY OF STATE FOR CULTURE, MEDIA AND SPORT

The Licensing Act 2003 marks the end of the existing outdated licensing regimes. The activities covered by the new legislation will be carried on in a modern, vibrant society that deserves a more responsive and flexible system. The 2003 Act integrates six existing licensing regimes into a single, streamlined and more efficient system of licensing that will significantly reduce red tape.

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

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

But the modernisation of the legislation has also been pursued to support a number of other key aims and purposes. These are of vital importance and should be principle aims for all involved in licensing work. They include:

- the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers' expectations;
- greater choice for consumers, including tourists, about where, when and how they spend their leisure time;
- the encouragement of more family friendly premises where younger children can be free to go with the family;
- the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;
- the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and
- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.

Through the legislation, we hope that local people and visitors to this country will have better opportunities to enjoy their leisure time safely while on, or arriving at or leaving a huge range of venues.

Some licensing in the past has been unfocused and led to disproportionate standard conditions and routine inspection which has hindered the development of business and local economies without any positive gain for society. The Act ensures that premises which are causing problems within our communities can be dealt with appropriately but provides a much lighter touch for those businesses and community activities which benefit and enhance people's lives by providing important opportunities for the enjoyment of leisure time. Similarly, in terms of enforcement, we expect to see a sharp focus on premises failing in terms of the licensing objectives, with other businesses left to go about their legitimate activities without unnecessary interference.

This Guidance is intended to aid licensing authorities in carrying out their functions under the 2003 Act and to ensure the spread of best practice and greater consistency of approach. This does not mean that we are intent on eroding local discretion. On the contrary, the legislation is fundamentally based on local decision-making informed by local knowledge and local people. Our intention is to encourage and improve good operating practice, promote partnership and to drive out unjustified inconsistencies and poor practice.

The Act provides tough powers to enable licensing authorities and the police to bring the minority of badly managed premises into line with the best. Through the review procedures and the extended closure powers, we are equipping the authorities and the enforcement agencies with the tools that they need to deter behaviour that produces disorder or generates public nuisance or threatens public safety or the well being of our children. We prize the protection of children very highly. The risk of harm to children remains a paramount consideration and we are therefore providing extensive guidance on the relevant issues after consultation with a range of children's organisations and the police.

The Prime Minister's Strategy Unit Interim Analytical Report, published in September 2003, refers to alcohol misuse costing the economy up to £20bn a year, of which the crime and disorder costs are up to £7.3bn a year. Alcohol misuse is also a very substantial contributor to the rise in violent crime and the British Crime Survey shows that 47% of victims of violence described their assailant as being under the influence of alcohol at the time. There is also a strong link between alcohol and domestic violence, and even more so between alcohol and low level intimidatory behaviour. It is therefore important that the new licensing regime is used proactively alongside existing measures to tackle all levels of alcohol misuse.

The new legislation goes to heart of many of this Government's policies. It is fundamentally about recognising rights and the acceptance of responsibilities. This modernisation of the licensing laws removes obstacles to the further development of the tourism, retail, hospitality, and leisure industries, but this is not being achieved at the price of weakening their social responsibilities. The new legislation provides industry with greater freedom and flexibility to meet the needs of consumers but balances that with clear responsibilities for the industry and strong powers for the police to control any disorderly premises and for licensing authorities to protect residents from disturbance. We expect the right balances to be struck and this Guidance is intended to help the licensing authorities achieve them.

We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.

Tessa Jowell
Secretary of State for Culture, Media and Sport

1 Background

- 1.1 Section 182 of the Licensing Act 2003 (“the 2003 Act”) provides that the Secretary of State must issue, and from time to time, may revise guidance to licensing authorities on the discharge of their functions under the 2003 Act. This document represents the Guidance and is issued by the Secretary of State for Culture, Media and Sport. The Guidance has been published on the DCMS website and on UK Online. Any local authority or other organisation is free to publish the Guidance on its own website or provide an appropriate link to either of these websites.
- 1.2 The Guidance has been prepared in consultation with other Government Departments, executive agencies and an Advisory Group comprising representatives of the following organisations:
- Alcohol Concern
 - Arts Council
 - Association of Chief Police Officers
 - Association of Licensed Multiple Retailers
 - Association of London Government
 - British Beer and Pub Association
 - Bar, Entertainment and Dance Association
 - British Institute of Innkeeping
 - British Marine Federation
 - British Retail Consortium
 - Business in Sport and Leisure
 - Cinema Exhibitors Association
 - Chartered Institute of Environmental Health
 - Committee of Registered Clubs Associations
 - Editor of Paterson’s Licensing Acts
 - Federation of Licensed Victuallers Association
 - Guild of Master Victuallers
 - Justices’ Clerks Society
 - Licensed Victuallers of Wales
 - Local Authorities Coordinators of Regulatory Services (LACORS)
 - Local Government Association
 - The Magistrates’ Association
 - The Musicians Union
 - National Parliamentary Committee of the Licensed Victuallers Associations
 - The Restaurant Association
 - Theatrical Management Association
 - The Society of London Theatre
- 1.3 In addition, the Guidance takes account of the views of over 650 other interested organisations, residents’ associations, businesses and public bodies that have written to the Government about licensing reform and this Guidance. It does not, of course, precisely reflect the views of all these bodies. Some views and comments have inevitably been incompatible with others and the Secretary of

State has attempted to balance them carefully to ensure that appropriate advice is given to licensing authorities.

- 1.4 The Guidance is provided for licensing authorities carrying out their functions. Furthermore it provides information for magistrates hearing appeals against licensing decisions. It is also being made widely available for the benefit of operators of licensed premises, their legal advisers and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality. The police remain key enforcers of licensing law. The Guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. However, the Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
- 1.5 Part 8 of the 2003 Act also significantly extends the existing powers of the police (a) to seek court orders closing licensed premises in a geographical area that is experiencing or likely to experience disorder; and (b) to close down instantly individual licensed premises that are disorderly, likely to become disorderly or are causing nuisance as a result of noise from the premises. Ministers have previously given undertakings to Parliament that guidance would be issued to police officers about the operation of those powers. Chapter 11 of this Guidance therefore constitutes that guidance.
- 1.6 The Guidance will be kept under constant review in consultation with key stakeholder groups and will be amended or supplemented as necessary at any time to address problems affecting local communities, licensing committees, the police, applicants for licences and club premises certificates, those giving temporary event notices and performers.
- 1.7 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on the authorities under human rights legislation). The Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the Act is a matter for the courts. Licensing authorities and others using the Guidance must take their own professional and legal advice about its implementation.

2 Introduction and Purpose

- 2.1 This Chapter explains the statutory effect of the Guidance and the requirement for licensing authorities to have regard to it when carrying out any function under the 2003 Act.

The Licensing Act 2003

- 2.2 The 2003 Act, the associated explanatory notes and any statutory instruments made under its provisions may be viewed on the HMSO website www.hmso.gov.uk. All statutory instruments may also be viewed on the DCMS website.

The Guidance

- 2.3 Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 2.4 Section 4 further requires that licensing authorities must have regard to their own licensing statement of policy published under section 5. However, it should be noted that the making of such a statement is a licensing function and as such the authority must have regard to the Secretary of State's guidance when making and publishing its policy. A licensing authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. But once again, it is important that they should give full reasons for departing from their published statement of licensing policy.

The licensing objectives

- 2.5 The 2003 Act also provides in section 4 that it is the duty of all licensing authorities to carry out their functions under the Act with a view to promoting the licensing objectives. The licensing objectives are:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.

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

Partnership working

- 2.7 Licensing functions under the 2003 Act are only one means of promoting the delivery of the objectives described. They can make a substantial contribution in respect of the premises affected but cannot be regarded as a panacea for all community problems. Delivery should therefore involve working in partnership for licensing authorities, planning authorities, environmental health and safety authorities, the police, the fire authority, Crime and Disorder Reduction Partnerships, town centre managers, local business, performers and their representatives, local people, local transport authorities, transport operators and those involved in child protection working towards the promotion of the common objectives described. In particular, it is stressed that the private sector and local residents and community groups have an equally vital role to play in partnership with public bodies to promote the licensing objectives. The Secretary of State considers that there is value in the formation of liaison groups that bring together all the interested parties on a regular basis to monitor developments in the area and where problems have arisen, to discuss these and propose possible solutions. In addition, the Secretary of State recommends that all licensing authorities should hold regular open meetings, well publicised amongst the local community, at which the community can express how well it feels the licensing objectives are being met.
- 2.8 It is also important that licensing authorities should guard against the possibility of licensing policies and decisions driving a wedge between the hospitality and leisure industries and performers and those charged with enforcing the licensing regime, including the police. Co-operation and partnership remain the best means of promoting the licensing objectives.
- 2.9 Anti-social behaviour undermines the fabric of our communities - creating an environment of fear and neglect. Effective solutions to these problems are not the responsibility of a single agency or organisation. Residents and tenants, local authorities, victims and witnesses, the police, social services, schools, businesses and many other groups and individuals have a role and a responsibility to tackle anti-social behaviour.
- 2.10 On 14th October 2003, the Government launched the together campaign and published an Action Plan "Together: Tackling Anti-Social Behaviour". The campaign aims to improve the response to tackling anti-social behaviour - including funding for every area of England and Wales, a new together ActionLine, website (www.together.gov.uk live from April 2004) and Academy to provide help and support to practitioners and a range of projects to tackle nuisance families, begging and environmental crime.

British Beer and Pub Association Partnerships Initiative

- 2.11 The Government and the British Beer and Pub Association (BBPA) are committed to encouraging the voluntary participation of licensees' groups in their

local Crime and Disorder Reduction Partnerships; and encouraging CDRPs and local representatives of the hospitality industry to work together in partnership. Since March 2000, 240 CDRPs have sought industry involvement in the work of their partnership. The Government and the BBPA continue to work to encourage further participation.

Alcohol Harm Reduction Strategy

- 2.12 The Government is currently developing an Alcohol Harm Reduction Strategy which can be expected to identify a number of initiatives and priorities which may help to promote one or more of the licensing objectives. When the Strategy is published, licensing authorities should ensure that they familiarise themselves with it.

Crime and Disorder Act 1998

- 2.13 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998¹ when carrying out their functions as licensing authorities under the 2003 Act.
- 2.14 Section 17 recognises that certain key authorities, including local authorities and police and fire authorities, have responsibility for the provision of a wide and varied range of services to and within the community. In carrying out these functions, section 17 places a duty on them to do all they can to reasonably prevent crime and disorder in their area. The purpose of section 17 is simple: the level of crime and its impact is influenced by the decisions and activities taken in the day-to-day business of local bodies and organisations. Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making.
- 2.15 The Government believes that it is good practice to involve Crime and Disorder Reduction Partnerships (CDRPs) in decision-making in order to maximise the effectiveness of reducing crime, misuse of drugs and the fear of crime. Engaging CDRPs will enable local key partners such as small businesses, transport, health authorities and others to have an input and thereby ensure that statements of licensing policy being developed through consultation under section 5(3) of the 2003 Act are well thought out and that solutions that take full account of the crime and disorder implications are reached.

National Pubwatch and local Pubwatch schemes

- 2.16 Pubwatch schemes have been in existence throughout the United Kingdom for over 20 years and range in size from over 200 premises in cities to small rural schemes with as few as 5 premises involved. The basic working principle underpinning a Pubwatch scheme is that the licensees of the premises involved agree on a number of policies to counter individuals who threaten damage,

¹ Section 17 of the Crime and Disorder Act 1998 states: “Without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

disorder, and violence or use or deal in drugs in their premises. Normally, action consists of agreeing to refuse to serve individuals that cause, or are known to have caused, these sorts of problems. Refusal of admission and service to those that cause trouble has proved to be effective in reducing anti-social behaviour. To work effectively any Pubwatch scheme must work closely with the police, licensing authorities and other agencies. National Pubwatch is an entirely voluntary organisation set up to support existing pubwatches and encourage the creation of new pubwatch schemes with the key aim of achieving a safe, secure social drinking environment in all licensed premises throughout the UK helping to reduce drink-related crime.

- 2.17 The National Pubwatch Good Practice Guide provides advice on how such schemes can be established locally and includes Codes of Practice on sharing information, photographs and banning policies with regard to responsibilities under the Data Protection Act 1998. Licensing authorities should familiarise themselves with Pubwatch schemes operating in their areas and support their aims. Information about Pubwatch can be obtained through their website: www.uniquepubs.com/pubwatch.

Safer Clubbing

- 2.18 “Safer Clubbing” concerns drugs and nightclubs. The Home Office, in conjunction with the Department of Health and the DCMS, has also produced the Safer Clubbing Guide that provides comprehensive new advice for nightclub owners, dance event promoters and existing local authority licensing departments on how to ensure the health and safety of anyone attending dance events in England. The Guide can be viewed in full on www.drugs.gov.uk.
- 2.19 Key details describing necessary action for licensing authorities relating to safer clubbing are reproduced in this Guidance at Annex K and are discussed in greater detail in Chapter 7.

Guidance to the Police on Part 8 of the Licensing Act 2003

- 2.20 In October 2001, the Government issued non-statutory guidance to police officers in respect of section 17 of the Criminal Justice and Police Act 2001, which inserted new closure order provisions into the Licensing Act 1964, which concerned their powers to close without notice for up to 24 hours certain licensed premises that were disorderly, likely to become disorderly or excessively noisy. The 2001 guidance is being replaced with guidance reflecting the terms of Part 8 of the 2003 Act and this is contained in Chapter 11 of this Guidance. Until the end of the transitional period (“the second appointed day”), the provisions of the Licensing Act 1964 and the associated 2001 guidance will remain in force; and the new Guidance contained within Chapter 11 of this document will only have effect from the second appointed day. The current 2001 guidance relating to the Licensing Act 1964 may be viewed on the DCMS website.

The Anti-Social Behaviour Act 2003

- 2.21 Licensing authorities need to be aware of new powers that will be available to local authorities when the provisions of sections 40 and 41 of the Anti-Social

Behaviour Act 2003 are commenced. That Act provides that if the noise from any licensed premises is causing a public nuisance, an authorised environmental health officer would have the power to issue a closure order in respect of it effective for up to 24 hours. Under this provision, it will be for the Chief Executive of the local authority to delegate his or her power to environmental health officers within his or her local authority. If after receiving a closure order the premises remain open, the person responsible may upon summary conviction receive a fine of up to £20,000, or imprisonment for a term not exceeding three months, or both. This will complement the police powers under the 2003 Act to close licensed premises for temporary periods described fully in Chapter 11 of this Guidance.

LACORS/TSI Code of Best Practice on Test Purchasing

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

Research

- 2.23 For information on potential alcohol-related harms generally, and the relationship between alcohol and crime specifically, licensing authorities are invited to look at the Prime Minister's Strategy Unit's interim analysis paper which was produced to summarise the evidence based on all forms of alcohol-related harm <http://www.number10.gov.uk/output/Page4498.asp>. Up-to-date information on alcohol-related crime research can be found on the Home Office's alcohol and crime research page <http://www.homeoffice.gov.uk/rds/alcohol1.html>. It is also important for local areas to understand their local alcohol-related crime problems. The Home Office has produced guidance for local agencies into the different sources of data available and how to collect it in order to adequately audit local problems <http://www.homeoffice.gov.uk/rds/dprpubs1.html>. Some key findings from the British Crime Survey in relation to alcohol and crime are:

- Almost half of all violence is alcohol-related (47%)
- Stranger violence and acquaintance violence are the most likely to be committed by someone under the influence of alcohol (58% and 51% respectively)
- One in 5 violent incidents occur in or around a pub or clubs (21%)
- A quarter of the population consider drunk and rowdy behaviour a 'very' or 'fairly' big problem in their local area.

Public safety

- 2.24 There are a number of key safety publications in the context of regulated entertainment with which licensing authorities should be familiar. They include:

- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through www.streetartsnetwork.org/pages/publications

Qualifications supporting the licensing objectives

- 2.25 A range of qualifications, designed to support the licensing objectives, are available from the British Institute of Innkeeping (BII), in addition to the statutory requirement for personal licence holders to have an accredited licensing qualification. These include the National Certificate for Entertainment Licencees, the National Certificate for Licensees (Drugs Awareness), the National Certificate for Door Supervisors and the Barperson’s National Certificate. The BII is also developing a further range of courses and qualifications covering issues such as risk assessment, conflict management, retail operations and the sale of age-restricted products. Further information is available by contacting the BII by e-mail at the following address: info@bii.org.

3 Statements of Licensing Policy

- 3.1 This Chapter provides guidance on the development and preparation of local statements of licensing policy for publication by licensing authorities, the general principles that the Secretary of State recommends should underpin them, and core content to which licensing authorities are free to add.

General

- 3.2 Section 5 of the 2003 Act requires a licensing authority to prepare and publish a statement of its licensing policy every three years. Such a policy must be published before the authority carries out any function in respect of individual applications made under the terms of the 2003 Act. During the three year period, the policy must be kept under review and the licensing authority may make such revisions to it as it considers appropriate, for instance in the light of feedback from the local community on whether the statutory objectives are being met.
- 3.3 Before determining its policy for any three year period, the licensing authority must consult the persons listed in section 5(3) of the 2003 Act. These are:
- (a) the chief officer of police for the area;
 - (b) the fire authority for the area;
 - (c) persons/bodies representative of local holders of premises licences;
 - (d) persons/bodies representative of local holders of club premises certificates;
 - (e) persons/bodies representative of local holders of personal licences; and
 - (f) persons/bodies representative of businesses and residents in its area.
- 3.4 The views of all these persons/bodies listed should be given appropriate weight when the policy is determined. It is recognised that in some areas, it may be difficult to identify persons or bodies representative for all parts of industry affected by the provisions of the 2003 Act, but licensing authorities must make reasonable efforts to identify the persons or bodies concerned.
- 3.5 Licensing authorities should note that the terms of the 2003 Act do not prevent them consulting other bodies or persons before determining their policies. For example, certain authorities may consider it essential to consult the Crime and Disorder Reduction Partnerships (CDRPs), British Transport Police, local Accident and Emergency Departments, bodies representing consumers, local police consultative groups or those charged locally with the promotion of tourism. They may also consider it valuable to consult local performers, performers' unions (such as the Musicians' Union and Equity) and entertainers involved in the cultural life of the local community.
- 3.6 Beyond the statutory requirements, it is for each licensing authority to decide the full extent of its consultation and for it to decide whether any particular person or body is representative of the group described in the statute. When undertaking consultation exercises, licensing authorities should have regard to cost and time. Licensing authorities should note that the Secretary of State will

establish fee levels to provide full cost recovery of all licensing functions including the preparation and publication of a statement of licensing policy, but this will be based on the statutory requirements. Where licensing authorities exceed these requirements, they should note that they would have to absorb those costs themselves.

3.7 Licensing authorities consulting on their first statement of licensing policy should also note the requirements of paragraph 29 of Part 4 of Schedule 8 to the 2003 Act which provides that prior to making its first statement of policy, the authority must consult bodies representative of current licence holders before determining their statement. Current licence holders include those holding:

- justices' licences (off- and on- licences);
- canteen licences issued under the Licensing Act 1964;
- licences issued under Schedule 12 to the London Government Act 1963 (licensing of public entertainment in Greater London);
- licences issued under the Private Places of Entertainment (Licensing) Act 1967;
- licences issued under the Theatres Act 1968;
- licences issued under the Late Night Refreshment Houses Act 1969;
- licences issued under Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 (licensing of public entertainments outside Greater London);
- licences issued under section 1 of the Cinemas Act 1985; and
- licences issued under Part 2 of the London Local Authorities Act 1990 (night cafe licensing).

Fundamental principles

3.8 All statements of policy should also begin by stating the four licensing objectives, which the licensing policy will be determined with a view to promoting. In determining its policy, a licensing authority must have regard to this Guidance and give appropriate weight to the views of those it has consulted. Having regard to this Guidance will be important for consistency, particularly where licensing authority boundaries meet.

3.9 While statements of policy may set out a general approach to the making of licensing decisions, they must not ignore or be inconsistent with provisions in the 2003 Act. For example, a statement of policy must not undermine the right of any individual to apply under the terms of the 2003 Act for a variety of permissions and to have any such application considered on its individual merits.

3.10 Similarly, no statement of policy should override the right of any person to make representations on an application or to seek a review of a licence or certificate where provision has been made for them to do so in the 2003 Act.

3.11 Statements of policies should make clear that licensing is about regulating the carrying on of licensable activities on licensed premises, by qualifying clubs and at temporary events within the terms of the 2003 Act, and that the conditions attached to various authorisations will be focused on matters which are within

the control of individual licensees and others in possession of relevant authorisations. Accordingly, these matters will centre on the premises being used for licensable activities and the vicinity of those premises. Whether or not incidents can be regarded as being “in the vicinity” of licensed premises is a question of fact and will depend on the particular circumstances of the case. In cases of dispute, the question will ultimately be decided by the courts. But statements of licensing policy should make it clear that in addressing this matter, the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of public living, working or engaged in normal activity in the area concerned. A statement of policy should also make clear that licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises and, therefore, beyond the direct control of the individual, club or business holding the licence, certificate or authorisation concerned. Nonetheless, it is a key aspect of such control and licensing law will always be part of a holistic approach to the management of the evening and night-time economy in town and city centres.

The need for licensed premises

- 3.12 There can be confusion about the difference between “need” and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy. “Need” is a matter for planning committees and for the market.

The cumulative impact of a concentration of licensed premises

- 3.13 “Cumulative impact” is not mentioned specifically in the 2003 Act but means in this Guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. For example, the potential impact on crime and disorder or public nuisance on a town or city centre of a large concentration of licensed premises in that part of the local licensing authority area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.
- 3.14 A licensing authority may not impose conditions on or refuse to grant or vary a premises licence or club premises certificate unless it has received a representation from a responsible authority, such as the police or an environmental health officer, or an interested party, such as a local resident or local business which is a relevant representation. It is however important that applicants, responsible authorities and interested parties should know through the statement of licensing policy, whether the licensing authority already considers that a particular concentration of licensed premises in a particular part of its area is considered to be already causing a cumulative impact on one or more of the licensing objectives. Whether an area is nearing this point should be one of the issues on which local residents are consulted. The open meetings recommended at paragraph 2.7 should assist licensing authorities in keeping the situation as to whether an area is nearing this point under review.

- 3.15 In some town and city centre areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport. Queuing in turn may be leading to conflict, disorder and anti-social behaviour. While the general lengthening of licensing hours can be expected to reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater in these cases than the impact of customers of individual premises.
- 3.16 Where, after considering the available evidence and consulting those individuals and organisations listed in section 5(3) of the 2003 Act and any others, a licensing authority is satisfied that it is appropriate and necessary to include an approach to cumulative impact in the licensing policy statement, it should indicate in the statement that it is adopting a special policy of refusing new licences whenever it receives relevant representations about the cumulative impact on the licensing objectives from responsible authorities and interested parties which it concludes after hearing those representations should lead to refusal (see paragraph 3.19 below).
- 3.17 There should be an evidential basis for the decision to include a special policy within the statement of licensing policy. For example, Crime and Disorder Reduction Partnerships will often have collated information which demonstrates cumulative impact as part of their general role on anti-social behaviour; and crime prevention strategies may have already identified cumulative impact as a local problem. Similarly, environmental health officers may be able to demonstrate concentrations of valid complaints relating to noise disturbance.
- 3.18 In summary, the steps to be followed in considering whether to adopt a special policy within the statement of licensing policy are:
- identification of concern about crime and disorder or public nuisance;
 - consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area from which problems are arising and the boundaries of that area; or that the risk factors are such that the area is reaching a point when a cumulative impact is imminent;
 - consultation with those specified by section 5(3) of the 2003 Act as part of the general consultation required in respect of the whole statement of licensing policy;
 - subject to that consultation, inclusion of a special policy about future premises licence or club premises certificate applications from that area within the terms of this Guidance in the statement of licensing policy;

- publication of the special policy as part of the statement of licensing policy required by the 2003 Act.
- 3.19 The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or material variations will normally be refused, if relevant representations to that effect are received, unless it can be demonstrated that the operation of the premises involved will not add to the cumulative impact already being experienced. Applicants would need to address the special policy issues in their operating schedules in order to rebut such a presumption. However, a special policy must stress that this presumption does not relieve responsible authorities or interested parties of the need to make a relevant representation before a licensing authority may lawfully consider giving effect to its special policy. If no representation is received, it would remain the case that any application must be granted in terms that are consistent with the operating schedule submitted. However, responsible authorities, such as the police, or interested parties, can make a written representation maintaining that it is necessary to refuse the application for the promotion of the prevention of crime and disorder and referring to information which had been before the licensing authority when it developed its statement of licensing policy.
- 3.20 Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or need expanding. While a special policy is in existence, applicants will need to demonstrate why the operation of the premises would not add to the cumulative impact being experienced.
- 3.21 The absence of a special policy does not prevent any responsible authority or interested party making representations on a new application for the grant of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

Limitations on special policies relating to cumulative impact

- 3.22 It would normally not be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises. Special policies will address the impact of a concentration of licensed premises selling alcohol for consumption on the premises which may give rise to large numbers of people who have been drinking alcohol on the streets in a particular area.
- 3.23 A special policy should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for licences and certificates that are unlikely to add to the cumulative impact on the licensing objectives to be granted. Following receipt of representations in respect of a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not. If after such consideration, the licensing authority decides that an

application should be refused, it will still be for the licensing authority to show that the grant of the application would undermine the promotion of one of the licensing objectives and if it would, that necessary conditions would be ineffective in preventing the problems involved.

- 3.24 Special policies should never be used as a ground for revoking an existing licence or certificate when relevant representations are received about problems with those premises. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder or nuisance) situation in a town centre would generally not be regarded as a relevant representation if it cannot be positively tied or linked by a causal connection to particular premises that would allow for a proper review of its licence or certificate. In this context, it should be noted that the “cumulative impact” on the promotion of the licensing objectives of a concentration of multiple licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered. A review must relate specifically to individual premises, and by its nature, “cumulative impact” relates to the effect of a concentration of many premises. Identifying individual premises in the context of a review would inevitably be arbitrary. Where it becomes clear that there is a problem in a part of the licensing authority area after a premises licence or club premises certificate has been granted, and it becomes clear that an individual premises are undermining the promotion of the prevention of crime and disorder in that area, the licence may only be reviewed if representations are made about that objective by either an interested party, such as a residents’ association, or a responsible authority such as the police.
- 3.25 Special policies can also not be used to justify rejecting applications to vary an existing licence or certificate except where those modifications are directly relevant to the policy (as would be the case with an application to vary a licence with a view to increasing the capacity limits of the premises) and are strictly necessary for the promotion of the licensing objectives.
- 3.26 A special policy relating to cumulative impact cannot justify and should not include provisions for a terminal hour in a particular area. For example, it would be wrong not to apply the special policy to applications that include provision to open no later than, for example, midnight, but to apply the policy to any other premises that propose opening later. The effect would be to impose a fixed closing time akin to that under the “permitted hours” provisions of the Licensing Act 1964. Terminal hours dictated by the Licensing Act 1964 were abolished to avoid the serious problems that arise when customers exit licensed premises simultaneously. Attempting to fix a terminal hour in any area would therefore directly undermine a key purpose of the 2003 Act.
- 3.27 Special policies must not impose quotas – based on either the number of premises or the capacity of those premises - that restrict the consideration of any application on its individual merits or which seek to impose limitations on trading hours in particular areas. Quotas that indirectly have the effect of pre-determining the outcome of any application should not be used because they have no regard to the individual characteristics of the premises concerned. Public houses, nightclubs, restaurants, hotels, theatres, concert halls and cinemas all could sell alcohol, serve food and provide entertainment but with contrasting

styles and characteristics. Proper regard should be given to those differences and the differing impact they will have on the promotion of the licensing objectives.

Other mechanisms for controlling cumulative effect

3.28 Once away from the licensed premises, a minority of consumers will behave badly and unlawfully. To enable the general public to appreciate the breadth of the strategy for addressing these problems, statements of policy should also indicate the other mechanisms both within and outside the licensing regime that are available for addressing such issues. For example:

- planning controls;
- positive measures to create a safe and clean town centre environment in partnership with local businesses, transport operators and other departments of the local authority;
- the provision of CCTV surveillance in town centres, ample taxi ranks, provision of public conveniences open late at night, street cleaning and litter patrols;
- powers of local authorities to designate parts of the local authority area as places where alcohol may not be consumed publicly;
- police enforcement of the general law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices;
- the prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;
- the confiscation of alcohol from adults and children in designated areas;
- police powers to close down instantly for up to 24 hours any licensed premises or temporary event on grounds of disorder, the likelihood of disorder or noise emanating from the premises causing a nuisance; and
- the power of the police, other responsible authorities or a local resident or business to seek a review of the licence or certificate in question.

These should be supplemented by other local initiatives that similarly address these problems.

Licensing hours

3.29 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government strongly recommends that statements of policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that the concentrations of customers leaving premises

simultaneously are avoided. This is necessary to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists without compromising the ability to resource local services associated with the night-time economy. Providing consumers with greater choice and flexibility is an important consideration.

- 3.30 The term “zoning” is used in this Guidance to refer to the setting of fixed trading hours within a designated area. As experience in Scotland suggests that zoning leads to the significant movement of people across boundaries in search of premises opening later and puts greater pressure on town and city centres than is necessary, it should not be adopted as a policy. Zoning can result in greater disturbance in the streets at particular times and concentrations of disturbance and noise, particularly where licensing authorities seek to adopt fixed “terminal hours” as a matter of policy. It also assumes that the representations of residents in one area should be treated less favourably than others in other areas simply because they live in busy central areas of towns and cities or because residential housing is less dense than in other areas. It is acceptable for a statement of policy to make clear that stricter conditions with regard to noise control will be expected in areas which have denser residential accommodation, but this should not limit opening hours without regard to the individual merits of any application.
- 3.31 With regard to shops, stores and supermarkets, the Government strongly recommends that statements of licensing policy should indicate that the norm will be for such premises to be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are very good reasons for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there. Statements of licensing policy should therefore reflect this general approach.
- 3.32 Chapter 6 of this Guidance provides further advice on the issue of licensing hours.

Children

- 3.33 The 2003 Act makes it an offence to permit children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or primarily for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or where that activity is carried on under the authority of a temporary event notice. In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at other premises supplying alcohol for consumption on the premises under the authority of any premises licence, club premises certificate or temporary event notice. Outside of these hours, the offence does not prevent the admission of unaccompanied children under 16 to the wide variety of premises where the consumption of alcohol is not the exclusive or primary activity at those venues. Accordingly, between 5am and

midnight the offence would not necessarily apply to many restaurants, hotels, cinemas and even many pubs where the main business activity is the consumption of both food and drink. This does not mean that children should automatically be admitted to such premises and the following paragraphs are therefore of great importance notwithstanding the new offences created by the 2003 Act.

- 3.34 It is not intended that the definition “exclusively or primarily” in relation to the consumption of alcohol should be applied in a particular way by reference to turnover, floorspace or any similar measure. The expression should be given its ordinary and natural meaning in the context of the particular circumstances. It will normally be quite clear that the business being operated at the premises is predominantly the sale and consumption of alcohol. Mixed businesses may be harder to pigeon hole and it would be sensible for both operators and enforcement agencies to consult where necessary about their respective interpretations of the activities taking place on the premises before any moves are taken which might lead to prosecution.
- 3.35 The fact that the new offence may effectively bar children under 16 unaccompanied by an adult from premises where the consumption of alcohol is the exclusive or primary activity does not mean that the 2003 Act automatically permits unaccompanied children under the age of 18 to have free access to other premises or to the same premises even if they are accompanied or to premises where the consumption of alcohol is not involved. Subject only to the provisions of the 2003 Act and any licence or certificate conditions, admission will always be at the discretion of those managing the premises. The 2003 Act includes on the one hand, no presumption of giving children access or on the other hand, no presumption of preventing their access to licensed premises. Each application and the circumstances obtaining at each premises must be considered on its own merits.
- 3.36 A statement of licensing policy must not therefore seek to limit the access of children to any premises unless it is necessary for the prevention of physical, moral or psychological harm to them. Licensing policy statements should not attempt to anticipate every issue of concern that could arise in respect of children with regard to individual premises and as such, general rules should be avoided. Consideration of the individual merits of each application remains the best mechanism for judging such matters.
- 3.37 A statement of policy should highlight areas that will give rise to particular concern in respect of children. For example, these should include premises:
- where entertainment or services of an adult or sexual nature are commonly provided;
 - where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking;

- with a known association with drug taking or dealing²;
- where there is a strong element of gambling on the premises (but not, for example, the simple presence of a small number of cash prize gaming machines); and
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

3.38 In the context of paragraph 3.37 above, 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 apply common sense to this matter. However, such entertainment or services, for example, would generally 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.

3.39 A statement of policy should make clear the range of alternatives which may be considered for limiting the access of children where that is necessary for the prevention of harm to children. These, which can be adopted in combination, include:

- limitations on the hours when children may be present;
- limitations on the exclusion of the presence of children under certain ages when particular specified activities are taking place;
- limitations on the parts of premises to which children might be given access;
- age limitations (below 18);
- requirements for accompanying adults (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 those people under 18 from the premises when any licensable activities are taking place.

3.40 Statements of policy should also make clear that conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is necessary, this should remain a

² Police, licensing authorities and licensees need to be aware that following its commencement on the 20th January 2004, a new power is available under the Anti- Social Behaviour Act 2003 to close premises where there is the production supply or use of class A drugs and serious nuisance or disorder. This power provides an extra tool to the police to enable rapid action against a premises where there is a Class A drug problem, enabling its closure in as little as 48 hours should this be necessary. Police authorities are advised to consult the Notes of Guidance on the use of this power (Home Office, 2004) available on the Home Office website. These powers will also be covered in brief in the update to Safer Clubbing available in 2004.

matter for the discretion of the individual licensee or club or person who has given a temporary event notice. Venue operators seeking premises licences and club premises certificates may also volunteer such prohibitions and restrictions in their operating schedules because their own risk assessments have determined that the presence of children is undesirable or inappropriate. Where no relevant representations are made to licensing authority concerned, these volunteered prohibitions and restrictions will become conditions attaching to the licence or certificate and will be enforceable as such. No other conditions concerning the presence of children on premises may be imposed by the licensing authority in these circumstances.

- 3.41 Details of “responsible authorities” are given in Chapter 5 of this Guidance. They include public bodies that must be notified about, and that are entitled to lodge representations about, applications for premises licences or club premises certificates or major variations of such licences or certificates or who may ask the licensing authority to review a premises licence or club premises certificate. Applicants for premises licences and club premises certificates will be required to copy details of their applications to these bodies when an application is made and it must therefore be clear which bodies are concerned. In connection with the protection of children from harm, the responsible authorities include a body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm and is recognised by the licensing authority for that area as being competent to advise it on such matters. A statement of licensing policy should therefore indicate which body the licensing authority judges to be competent in this area and therefore to which applications will need to be copied. In most cases, this may be the Area Child Protection Committee. However, in some areas, the Committee’s involvement may not be practical and the licensing authority should consider alternatives. For example, the local authority social services department. It would be practical and useful for statements of licensing policy to include the correct descriptions of the responsible authorities in any area and appropriate contact details.

The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks

- 3.42 The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel’s decisions are published on the Portman Group’s website, in the trade press and in an annual report. If a product’s packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important weapon in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors. The Secretary of State commends the Code to licensing authorities and recommends that they should commend it in their statements of licensing policy.

Children and cinemas

- 3.43 The statement of policy should make clear that in the case of premises giving film exhibitions, the licensing authority will expect licensees or clubs to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to the recommendations of the British Board of Film Classification or the licensing authority itself. Where a licensing authority intends to adopt its own system of classification, its statement of policy should indicate where the information regarding such classifications will be published and made available to licensees, clubs and the general public.
- 3.44 The 2003 Act also provides that it is mandatory for a condition to be included in all premises licences and club premises certificates authorising the exhibition of films for the admission of children to the exhibition of any film to be restricted in accordance with the recommendations given to films either by a body designated under section 4 of the Video Recordings Act 1984 - the British Board of Film Classification is the only body which has been so designated - or by the licensing authority itself.

Integrating strategies

- 3.45 The Secretary of State recommends that statements of policy should provide clear indications of how the licensing authority will secure the proper integration of its licensing policy with local crime prevention, planning, transport, tourism, race equality schemes, and cultural strategies and any other plans introduced for the management of town centres and the night-time economy. Many of these strategies are not directly related to the promotion of the four licensing objectives, but, indirectly, impact upon them. Co-ordination and integration of such policies, strategies and initiatives are therefore important.

Crime prevention

- 3.46 Licensing policy statements should indicate that conditions attached to premises licences and club premises certificates will, so far as possible, reflect local crime prevention strategies. For example, the provision of closed circuit television cameras in certain premises. Where appropriate it should reflect the input of the local Crime and Disorder Reduction Partnership.

Cultural strategies

- 3.47 In connection with cultural strategies, licensing policy statements should include clearly worded statements indicating that they will monitor the impact of licensing on the provision of regulated entertainment, and particularly live music and dancing. Care will be needed to ensure that only necessary, proportionate and reasonable licensing conditions impose any restrictions on such events. Where there is any indication that such events are being deterred by licensing requirements, statements of licensing policy should be re-visited with a view to investigating how the situation might be reversed. Broader cultural activities and entertainment may also be affected. In developing their statements of licensing

policy, licensing authorities should also consider any views of the local authority's arts committee where one exists.

- 3.48 Over 325 local authorities from all over England and Wales are members of the National Association of Local Government Arts Officers (NALGAO), which is the largest organisation in the country representing local government art interests. Some local authorities do not yet have arts specialists or arts development officers and in such circumstances, a licensing authority may wish to consult NALGAO for practical help and advice.
- 3.49 The United Kingdom ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. Article 15 of the Covenant requires that progressive measures be taken to ensure that everyone can participate in the cultural life of the community and enjoy the arts. It is therefore important that the principles underpinning ICESCR are integrated, where possible, with the licensing authority's approach to the licensing of regulated entertainment.

Transport

- 3.50 A statement should describe any protocols agreed between the local police and other licensing enforcement officers and indicate that arrangements will be made for them to report to local authority transport committees so that those committees may have regard to the need to disperse people from town and city centres swiftly and safely to avoid concentrations which produce disorder and disturbance when developing their policies. When developing the statement licensing authorities should have regard to the existing policies and strategies of the relevant local transport authority, as set out in their local Transport Plan³.

Tourism, employment, planning and building control

- 3.51 A statement should also indicate:
- that arrangements have been made for licensing committees to receive, when appropriate, reports on the needs of the local tourist economy for the area to ensure that these are reflected in their considerations;
 - the licensing authority's intention to keep their licensing committee apprised of the employment situation in the area and the need for new investment and employment where appropriate;
 - that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency. Applications for premises licences for permanent commercial premises should normally be from businesses with planning consent for the property concerned. Licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority planning committee or following appeals against decisions taken by that committee. Similarly, the

³ Local Transport Plans are the mechanism by which local authorities should work in partnership with all appropriate bodies to deliver effective local transport strategies. Effective strategies will include provision of night-time and evening services, where this is appropriate to the local situation. It is for local authorities to identify where and how to take action.

granting by the licensing committee of any variation of a licence which involves a material alteration to a building would not relieve the applicant of the need to apply for planning permission or building control⁴ where appropriate. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder. This would enable the planning committee to have regard to such matters when taking its decisions and avoid any unnecessary overlap.

Promotion of Racial Equality

3.52 A statement of licensing policy should also recognise that:

- the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000, places a legal obligation on public authorities to have due regard to the need to eliminate unlawful discrimination; and to promote equality of opportunity and good relations between persons of different racial groups;
- local authorities are also required under the 1976 Act, as amended, to produce a race equality scheme, assess and consult on the likely impact of proposed policies on race equality, monitor policies for any adverse impact on the promotion of race equality, and publish the results of such consultations, assessments and monitoring;
- Home Office guidance on how to prepare race impact assessments will be available from June 2004 on www.raceimpact.homeoffice.gov.uk;
- the statement of licensing policy should therefore refer to this legislation and in turn, the statement of policy should be referenced in the race equality scheme.

Duplication

3.53 Statements of licensing policy should include a firm commitment to avoid duplication with other regulatory regimes so far as possible. For example, legislation governing health and safety at work and fire safety will place a range of general duties on the self-employed, employers and operators of venues both in respect of employees and of the general public when on the premises in question. Similarly, many aspects of fire safety will be covered by existing and future legislation. Conditions in respect of public safety should only be attached to premises licences and club premises certificates that are “necessary” for the promotion of that licensing objective and if already provided for in other legislation, they cannot be considered necessary in the context of licensing law. Such regulations will not however always cover the unique circumstances that arise in connection with licensable activities, particularly regulated entertainment, at specific premises and tailored conditions may be necessary.

⁴ It should be borne in mind that an alteration is “material” for the purposes of the Building Regulations if it has the potential to affect structural stability, fire safety or access.

- 3.54 It is particularly important that licensing authorities and responsible authorities, including fire authorities, fully appreciate that regulations under which a fire safety inspection would normally be carried out do not apply to ships/boats unless they are in dry dock. The safety regime for passenger vessels is enforced under the Merchant Shipping Acts by the Maritime and Coastguard Agency who operate a passenger ship certification scheme. Accordingly, it will not normally be necessary to duplicate the controls imposed through the certification scheme.

Standardised conditions

- 3.55 Statements of policy should make clear that a key concept underscoring the 2003 Act is for conditions to be attached to licences and certificates which are tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should therefore be avoided and indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case. However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions from which necessary and proportionate conditions may be drawn in particular circumstances. Chapter 7 of this Guidance provides further details and stresses that there will be circumstances where no additional conditions may be necessary in circumstances where existing legislation and regulation already effectively promote the licensing objectives, and where, for whatever reason, licensed premises could not conceivably add to any crime and disorder or other relevant issues.

Enforcement

- 3.56 As part of their statement of policy, the Government strongly recommends that licensing authorities should express the intention to establish protocols with the local police on enforcement issues. This would provide for a more efficient deployment of licensing authority staff and police officers who are commonly engaged in enforcing licensing law and the inspection of licensed premises.
- 3.57 In particular, these protocols should also provide for the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run. In some local authority areas, the limited validity of public entertainment, theatre, cinema, night café and late night refreshment house licences has in the past led to a culture of annual inspections regardless of whether the assessed risks make such inspections necessary. The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. The principle of risk assessment and targeting should prevail and inspections should not be undertaken routinely but when and if they are judged necessary. This should ensure that resources are more effectively concentrated on problem premises.

Live music, dancing and theatre

- 3.58 Statements of licensing policy should also recognise that as part of implementing local authority cultural strategies, proper account should be taken of the need to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre, including the performance of a wide range of traditional and historic plays, for the wider cultural benefit of communities. A natural concern to prevent disturbance in neighbourhoods should always be carefully balanced with these wider cultural benefits, particularly the cultural benefits for children. In determining what conditions should be attached to licences and certificates as a matter of necessity for the promotion of the licensing objectives, licensing authorities should be aware of the need to avoid measures which deter live music, dancing and theatre by imposing indirect costs of a disproportionate nature. Performances of live music and dancing are central to the development of cultural diversity and vibrant and exciting communities where artistic freedom of expression is a fundamental right and greatly valued. Traditional music and dancing are parts of the cultural heritage of England and Wales. Music and dancing also help to unite communities and particularly in ethnically diverse communities, new and emerging musical and dance forms can assist the development of a fully integrated society. It should also be noted that the absence of cultural provision in any area can itself lead to the young people being diverted into anti-social activities that damage communities and the young people involved themselves.
- 3.59 To ensure that cultural diversity thrives, local authorities should consider establishing a policy of seeking premises licences from the licensing authority for public spaces within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give a performance in these places. They would still require the permission of the local authority as the premises licence holder for any regulated entertainment that it was proposed should take place in these areas. It should be noted that when one part of a local authority seeks a premises licence of this kind from the licensing authority, the licensing committee and its officers must consider the matter from an entirely neutral standpoint. If relevant representations are made, for example, by local residents or the police, they must be considered fairly by the committee. Those making representations genuinely aggrieved by a positive decision in favour of a local authority application by the licensing authority would be entitled to appeal to the magistrates' court and thereby receive an independent review of any decision made.
- 3.60 The Secretary of State recommends that licensing authorities should publish contact points in their statements of licensing policy where members of public can obtain advice about whether or not activities fall to be licensed.

Administration, exercise and delegation of functions

- 3.61 The 2003 Act provides that the functions of the licensing authority (including its determinations) are to be taken or carried out by its licensing committee (except those relating to the making of a statement of licensing policy or where another of its committees has the matter referred to it). The licensing committee may delegate these functions to sub-committees or in appropriate cases, to officials

supporting the licensing authority. Where licensing functions are not automatically transferred to licensing committees, the functions must be carried out by the licensing authority as a whole and not by its executive. Statements of licensing policy should indicate how the licensing authority intends to approach its various functions. Many of the decisions and functions will be purely administrative in nature and statements of licensing policy should underline the principle of delegation in the interests of speed, efficiency and cost-effectiveness.

- 3.62 Where under the provisions of the 2003 Act, there are no relevant representations on an application for the grant of a premises licence or club premises certificate or police objection to an application for a personal licence or to an activity taking place under the authority of a temporary event notice, these matters should be dealt with by officers in order to speed matters through the system. Licensing committees should receive regular reports on decisions made by officers so that they maintain an overview of the general situation. Although essentially a matter for licensing authorities to determine themselves, the Secretary of State recommends that delegation should be approached in the following way:

3.63 Recommended delegation of functions

Matter to be dealt with	Full Committee	Sub Committee	Officers
Application for personal licence		If a police objection	If no objection made
Application for personal licence with unspent convictions		All cases	
Application for premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application for provisional statement		If a relevant representation made	If no relevant representation made
Application to vary premises licence/club premises certificate		If a relevant representation made	If no relevant representation made
Application to vary designated premises supervisor		If a police objection	All other cases,
Request to be removed as designated premises supervisor			All cases
Application for transfer of premises licence		If a police objection	All other cases
Applications for interim authorities		If a police objection	All other cases
Application to review premises licence/club premises certificate		All cases	
Decision on whether a complaint is irrelevant frivolous vexatious etc			All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application		All cases	
Determination of a police objection to a temporary event notice		All cases	

4 Personal Licences

- 4.1 This Chapter provides advice about best practice in administering the process for issuing personal licences to sell or supply alcohol. In particular, the Government stresses that the “fit and proper” test associated with the old alcohol licensing regime has been abolished and the tests established by the 2003 Act are the only ones which may now be applied. Moreover, in this context, it must also be stressed that a personal licence is not a qualification that is associated with business competency. The four licensing objectives apply to consideration of applications for personal licences as to all other parts of the Act.

General

- 4.2 In the case of an individual seeking a personal licence under the terms of Part 3 of Schedule 8 to the 2003 Act (transitional provisions) as a “grandfather right”, the qualifications are in summary that:

- the person is the holder of a justices’ licence issued under the provisions of the Licensing Act 1964 at the time of his application;
- the person has provided the justices’ licence or a certified copy of it and a photograph of him/her endorsed to the effect that it is a true likeness;
- if applicable, the person has provided a statement giving details of any relevant or foreign offence of which they have been convicted;
- the police have been given a copy of the application within 48 hours of the application being made; and
- a) the police have not given an objection notice about the grant of a personal licence; or
- b) the police have given an objection notice because of a conviction for an unspent relevant offence or a foreign offence, but the licensing authority has not considered it necessary to reject the application on crime prevention grounds; and
- the applicant has paid the appropriate fee to the licensing authority.

- 4.3 In the case of an application for a personal licence under Part 6 of the 2003 Act, the requirements are that the applicant:

- must be aged 18 or over;
- possesses a licensing qualification accredited by the Secretary of State (or one which is certified as if it is such a qualification or is considered equivalent) or is a person of a description prescribed by the Secretary of State by regulations (NB. Any such secondary legislation may be viewed on the DCMS website);

- must not have had forfeited a personal licence within five years of his application; and
 - a) the police have not given an objection notice about the grant of a personal licence following notification of any unspent relevant offence or foreign offence; or
 - b) the police have given an objection notice because of a conviction for an unspent relevant offence or a foreign offence, but the licensing authority has not considered it necessary to reject the application on crime prevention grounds; and
 - the applicant has paid the appropriate fee to the licensing authority.
- 4.4 Any individual may apply for a personal licence whether or not he is currently employed or has business interests associated with the use of the licence. The issues which arise when the holder of a personal licence becomes associated with particular licensed premises and the personal licence holder is specified as the “designated premises supervisor” for those premises are dealt with in paragraphs 4.18 – 4.23 below. Licensing authorities may not therefore take into account such matters when considering an application for a personal licence.

Criminal record

- 4.5 In the context of applications made under Part 6 of the 2003 Act, the statute does not prescribe how any individual should establish whether or not he has unspent convictions for a relevant offence or foreign offence. In order to substantiate whether or not an applicant has a conviction for an unspent relevant offence, the Secretary of State would expect that all applicants (other than those exercising “grandfather rights” during the period of transition) be required to produce a Criminal Record Bureau certificate to the licensing authority. This applies whether or not the individual has been living for a length of time in a foreign jurisdiction. It does not follow that such individuals will not have recorded offences in this country. All applicants would also be expected to make a clear statement as to whether or not they have been convicted outside England and Wales of a relevant offence or an equivalent foreign offence. This applies to both applicants ordinarily resident in England and Wales as it does to any person from a foreign jurisdiction. Details of relevant offences as set out in the 2003 Act would be expected to be appended to application forms for the information of applicants, together with a clear warning that the making of any false statement is a criminal offence liable to prosecution. Relevant offences are listed in Annex C to this Guidance.
- 4.6 Licensing authorities are required to notify the police when an applicant is found to have an unspent conviction for a relevant offence defined in the 2003 Act or for a foreign offence.
- 4.7 Where an applicant has an unspent conviction for a relevant or foreign offence, and the police object to the application on crime prevention grounds, the applicant is entitled to a hearing before the licensing authority. If the police do

not issue an objection notice and the application otherwise meets the requirements of the 2003 Act, the licensing authority must grant it.

- 4.8 The Secretary of State recommends that, where the police have issued an objection notice, refusal of the application should be the normal course unless there are, in the opinion of the licensing authority, exceptional and compelling circumstances which justify granting the application. For example, certain offences can never become spent. However, where an applicant is able to demonstrate that the offence in question took place so long ago and that he or she no longer has any propensity to re-offend, a licensing authority may consider that the individual circumstances of the case are so exceptional and compelling and any risk to the community so diminished that it is right to grant the application.
- 4.9 If an application is refused, the applicant will be entitled to appeal against the decision. Similarly, if the application is granted despite a police objection notice, the chief officer of police is entitled to appeal against the licensing authority's determination. Licensing authorities are therefore expected to record in full the reasons for any decision that they make.

Licensing qualifications

- 4.10 Details of licensing qualifications currently accredited by the Secretary of State will be notified to licensing authorities and the details may be viewed on the DCMS website.
- 4.11 From time to time, licensing authorities may also be concerned that documents and certificates produced as evidence of the possession of a licensing qualification may be forged or improperly amended. Contact points for issuing authorities regarding the possible forgery of qualifications are also given on the DCMS website. It also provides information about the core content of licensing qualification courses.
- 4.12 The Secretary of State intends to prescribe persons admitted to the Hon Company of the Vintners of the City of London as persons who will not need to possess the licensing qualification. Proof of admission to the Company will therefore be required by licensing authorities receiving such applications. In addition, holders of licences issued by the Board of the Green Cloth and by the University of Cambridge will be prescribed to enable such persons to apply for a personal licence before the second appointed day.
- 4.13 For the purposes of transition, Schedule 8 to the 2003 Act provides that existing holders of justices' licences do not need to hold a licensing qualification before being granted a personal licence. This is because the licensing justices, following a hearing, have already declared the individual concerned to be a "fit and proper" person to sell alcohol. Licensing authorities are not empowered to require such an individual to obtain a licensing qualification before applying for a personal licence during the transitional period. It may well be, of course, that some licensing justices may have required licensees to hold certain licensing qualifications as part of deciding that they are "fit and proper" to hold a licence.

Relevant licensing authority

- 4.14 Personal licences are valid for ten years unless surrendered or suspended or revoked or declared forfeit by the courts. Once granted, the licensing authority which issued the licence remains the “relevant licensing authority” for it and its holder, even though the individual may move out of the area or take employment elsewhere. The personal licence itself will give details of the issuing licensing authority.

Changes in name or address

- 4.15 The holder of the licence is required by the 2003 Act to notify the licensing authority of any changes of name or address. These changes should be recorded by the licensing authority. The holder is also under a duty to notify any convictions for relevant offences to the licensing authority and the courts are similarly required to inform the licensing authority of such convictions, whether or not they have ordered the suspension or forfeiture of the licence. The holder must also notify the licensing authority of any conviction for a foreign offence. These measures ensure that a single record will be held of the holder’s history in terms of licensing matters. Licensing authorities should maintain easily accessible records and maintain a service enabling the police in any area and other licensing authorities to be promptly advised of any details they require about the holder of the personal licence concerned which relate to the discharge of their licensing functions. The 2003 Act authorises the provision and receipt of such personal information to such agencies for the purposes of the Act.

Central database

- 4.16 The licensing authorities, supported by the Government, are considering the development of a central database which will, among other things, include details of all personal licence holders. Future developments relating to the creation of a central database will be reported on the DCMS website.

Renewal

- 4.17 Renewal of the personal licence every ten years provides an opportunity to ensure that the arrangements ensuring that all convictions for relevant and foreign offences have been properly notified to the relevant licensing authority have worked and nothing has been missed, and that all such convictions have been properly endorsed upon the licence. It also provides an opportunity to ensure that the photograph of the holder on the personal licence is updated to aid identification.

Designated premises supervisors

- 4.18 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than that associated with the provision of regulated entertainment and late night refreshment. This is why a personal licence is required by individuals who may be engaged in making and authorising such sales and supplies. Not every person retailing alcohol at premises licensed for that purpose needs to hold a personal

licence, but every sale or supply of alcohol must be at least authorised by such a licence holder. Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. For example, there may be one owner or senior manager possessing a personal licence and several junior managers similarly qualified. The main purpose of the “designated premises supervisor” as defined in the 2003 Act is to ensure that there is always one specified individual, among these personal licence holders, who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder.

- 4.19 By specifying the premises supervisor in the premises licence, it will usually be clear who is in day to day charge of the premises. The Government considers it to be essential that police officers, fire officers or officers of the licensing authority can identify immediately the designated premises supervisor as a person in a position of authority at any premises selling or supplying alcohol. They can do that because a copy of the licence must be held at the premises and a summary displayed. The premises licence will specify the name of the designated premises supervisor who is also a personal licence holder. This should ensure that any problems can be dealt with swiftly by engaging with this key individual. It is stressed that only one designated premises supervisor may be specified in a single premises licence.
- 4.20 In addition, the police are able to object to the designation of a new premises supervisor where, in exceptional circumstances, they believe that the appointment would undermine the crime prevention objective. Police objection is permitted where, for example, a particular designated premises supervisor is first appointed or transfers into particular premises and the presence of that individual in combination with particular premises gives rise to exceptional concerns. For example, this could occur where a personal licence holder has been allowed by the courts to retain his licence despite convictions for selling alcohol to minors (a relevant offence) and he then transfers into premises with some degree of notoriety for underage drinking.
- 4.21 Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put their arguments. The 2003 Act provides that the applicant may apply for the individual to take up his post as designated premises supervisor immediately and therefore, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must confine their consideration to the issue of crime and disorder. They should give comprehensive reasons for their decision and either party would be entitled to appeal if their argument is rejected.
- 4.22 The portability of personal licences from one premises to another is an important concept within the 2003 Act. The Secretary of State expects that objections by the police on the specification of the designated premises supervisor would arise in only genuinely exceptional circumstances. An objection made routinely in individual circumstances that could not be regarded as exceptional would not be in accordance with the 2003 Act. If a licensing authority believes that the police are routinely objecting on un-exceptional grounds, they should raise the matter

with the chief officer of police as a matter of urgency. The 2003 Act provides for the suspension and forfeiture of personal licences by the courts following convictions for relevant offences, including breaches of licensing law. The police can at any stage after the appointment of a designated premises supervisor seek a review of a premises licence on any grounds relating to the licensing objectives if anxieties arise about the performance of such a supervisor. The portability of personal licences is also important to industry because of the frequency with which some businesses move managers from premises to premises. It is therefore not expected that licensing authorities or the police should seek to use the power of intervention as a routine mechanism for hindering the portability of a licence or use hearings of this kind as a fishing expedition to test out the individual's background and character. The Secretary of State therefore expects that such hearings should be rare and genuinely exceptional.

- 4.23 Where a designated premises supervisor is to be newly specified, the normal course is for the premises licence holder – perhaps a supermarket chain or a pub operating company – to apply to the licensing authority (including an application for immediate effect) accompanied by a form of consent by the individual concerned to show that he consents to taking on this responsible role; and to notify the police of the application. The whole premises licence does not have to be provided for amendment. The 2003 Act provides that a part of the licence may be submitted with the application. Ideally, this will require submission of a schedule to the main licence giving personal details of key individuals. This should be amended by the licensing authority and returned following receipt. In circumstances where the police do object to the specification see paragraph 4.21 above.

Convictions and liaison with the courts

- 4.24 Where a personal licence holder is convicted by a court for a relevant offence, the court is under a duty to notify the relevant licensing authority of the conviction and of any decision to order that the personal licence be suspended or declared forfeit. The sentence of the court has immediate effect despite the fact that an appeal may be lodged against conviction or sentence (although the court may suspend the forfeiture or suspension of the licence pending the outcome of any appeal). On receipt of such a notification, the licensing authority should contact the holder and request his licence so that the necessary action can be taken. The holder must then produce his licence to the authority within 14 days. It is expected that the chief officer of police for the area in which the holder resides would be advised if he or she does not respond promptly. On receipt of the licence, the details of the conviction should be recorded in the authority's records and endorsed on the licence, as should any period of suspension if so ordered. The licence should then be returned to the holder. If the licence is declared forfeit, it should be retained by the licensing authority.

Relevant offences

- 4.25 Relevant offences are set out in Schedule 4 to the 2003 Act and the Schedule is reproduced at Annex C.

5 Premises Licences

- 5.1 This Chapter provides advice about best practice for the administration of the processes for issuing, varying, transferring and reviewing premises licences and other associated procedures.

Licensable activities

- 5.2 A premises licence authorises the use of any premises, (which is defined in the 2003 Act as a vehicle, vessel or moveable structure or any place or a part of any premises), for licensable activities described and defined in section 1(1) of and Schedules 1 and 2 to the 2003 Act. 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.

- 5.3 Schedule 1 to the 2003 Act, which is reproduced for convenience at Annex A, sets out what constitutes the provision of regulated entertainment and identifies those activities which are not to be regarded as the provision of regulated entertainment and, as a consequence, are exempt from the regulated entertainment aspects of the licensing regime. Schedule 2, which is reproduced at Annex B, sets out what constitutes the provision of late night refreshment and identifies those activities which are not to be regarded as the provision of late night refreshment and, as a consequence, are exempt from the late night refreshment aspects of the licensing regime.

Small venues providing dancing and amplified or unamplified music

- 5.4 In addition, subsections (1) and (2) of section 177 of the 2003 Act provides that where
- a premises licence or club premises certificate authorises the supply of alcohol for consumption on the premises and the provision of “music entertainment” (live music or dancing or facilities enabling people to take part in those activities),
 - the relevant premises are used primarily for the supply of alcohol for consumption on the premises, and
 - the premises have a permitted capacity limit of not more than 200 persons

any conditions relating to the provision of the music entertainment imposed on the premises licence or club premises certificate by the licensing authority, other than those set out by the licence or certificate which are consistent with the operating schedule, will be suspended except where they were imposed as being necessary for public safety or the prevention of crime and disorder or both.

5.5 In addition, subsection (4) of section 177 provides that where

- a premises licence or club premises certificate authorises the provision of music entertainment (live music and dancing), and
- the premises have a capacity limit of not more than 200 persons

then, during the hours of 8am and midnight, if the premises are being used for the provision of unamplified live music or the facilities enabling people to take part in such entertainment, but no other description of regulated entertainment, any conditions imposed on the licence by the licensing authority, again other than those which are consistent with the operating schedule, which relate to the provision of that music entertainment will be suspended.

5.6 Section 177 can be disapplied in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate. This means that conditions attached to the existing premises licence relating to the provision of music entertainment can be given effect at the relevant times or that new conditions may also be imposed as an outcome of the review process.

5.7 Accordingly, those seeking to take advantage of the exemption relating to both amplified and unamplified music entertainment need to be aware that they must hold a premises licence or club premises certificate covering the supply of alcohol for consumption on the premises and the type of regulated music entertainment involved. Examples of premises used “primarily” for the supply of alcohol for consumption on the premises would include public houses and some qualifying club premises, but would not normally include, for example, a restaurant. For the “unamplified” music exemption, any premises appropriately licensed are included, including restaurants. The area to which the 200 “capacity limit” applies concerns the area covered by the premises licence or club premises certificate and not just to part of those premises unless separately licensed.

Wholesale of alcohol

5.8 The wholesale of alcohol to the general public was not licensable prior to the coming into force of the 2003 Act. Licensing authorities will want to have particular regard to the definition of “sale by retail” given in section 192 of the 2003 Act. Sales which are made to traders for the purpose of their trade (including, for example, another wholesaler) or holders of club premises certificates, premises licences, personal licences or premises users who have given temporary event notices for the purpose of making sales authorised by those permissions or notices, are not licensable. But a sale otherwise made to a member of the public in wholesale quantities is now a licensable activity and subject to the provisions of the 2003 Act.

Internet and mail order sales

- 5.9 In considering applications for premises licences involving internet or mail order sales, where the place where the sale of alcohol takes place is different to the place from which the alcohol is appropriated to the contract, i.e. specifically selected for the particular purchaser, section 190 provides that the sale of alcohol is to be treated as taking place at the place where the alcohol is appropriated to the contract. Thus, for the purposes of the 2003 Act, the sale is treated as being made at the premises from which the alcohol is appropriated to the contract and such premises will be the premises for which an authorisation under the 2003 Act is required for that licensable activity. This would mean, for example, that a call centre would not be the premises for which the appropriate licence is required, but the warehouse where the alcohol is stored and specifically selected for and despatched to the purchaser would be.

Regulated entertainment

- 5.10 Schedule 1 to the 2003 Act sets out what constitutes the provision of regulated entertainment and defines for these purposes both entertainment and entertainment facilities. Subject to the conditions, definitions and the exemptions in Schedule 1, descriptions of entertainment to be regulated by the 2003 Act are:

- a performance of a play
- an exhibition of a film
- an indoor sporting event
- a boxing or wrestling entertainment (indoor and outdoor)
- a performance of live music
- any playing of recorded music
- a performance of dance
- entertainment of a similar description to that falling within the performance of live music, the playing of recorded music and the performance of dance

but only where the entertainment takes place in the presence of an audience and is provided for the purpose (or for purposes which include the purpose) of entertaining that audience.

- 5.11 Subject to the conditions, definitions and the exemptions in Schedule 1, entertainment facilities means facilities for enabling persons to take part in entertainment consisting of:

- making music
- dancing
- entertainment of a similar description to making music or for dancing.

These facilities must be provided for the purpose of, or purposes including the purpose of, being entertained. It is important to note that this is a more limited list in the 2003 Act than all the descriptions of entertainment in the 2003 Act. Accordingly, the provision of a juke box where members of the public could self-select background music for their own enjoyment is not an entertainment facility.

Entertainment facilities include, for example, a karaoke machine provided for the use of and entertainment of customers in a public house or a dance floor provided for use by the public in a nightclub. Musical instruments made available for use by the public at premises for the purpose of them being entertained would constitute an entertainment facility.

5.12 In carrying out their functions, licensing authorities will need to consider whether an activity constitutes the provision of regulated entertainment. Schedule 1 governs the assessment of this. Activities which do not involve the provision of entertainment to others are not licensable under the 2003 Act. For example, the following activities do not amount to regulated entertainment under the regime:

- education – teaching students to perform music or to dance;
- activities which involve participation as acts of worship in a religious context;
- the demonstration of a product – a guitar – in a music shop; or
- the rehearsal of a play or rehearsal of a performance of music to which the public are not admitted.

Much of this involves the simple application of common sense and this Guidance cannot give examples of every eventuality or possible activity. It is only when a licensing authority is satisfied that activities amount to entertainment or the provision of entertainment facilities that it should go on to consider the qualifying conditions, definitions and exemptions in Schedule 1 to see if a provision of regulated entertainment is involved and, as a result, there is a licensable activity to be governed by the provisions of the 2003 Act.

5.13 There are a number of other entertainments, which are not themselves licensable activities, for which live or recorded music may be incidental to the main attraction or performance and therefore not licensable (see below). For example, stand-up comedy is not a licensable activity and musical accompaniment incidental to the main performance would not make it a licensable activity.

5.14 It should be noted that there is nothing in the legislation to prevent shops, stores and supermarkets proposing the inclusion of regulated entertainment in their premises licences. For example, many shops may decide to present a variety of entertainment at Christmas and other festive times or more generally in support of promotional events.

Pub games

5.15 Games commonly played in pubs and social and youth clubs like pool, darts, table tennis and billiards may fall within the definition of indoor sports in Schedule 1, but normally they would not be played for the entertainment of spectators but for the private enjoyment of the participants. As such, they would not normally constitute the provision of regulated entertainment, and the facilities provided (even if a pub provides them with a view to profit) do not fall within the limited list of entertainment facilities in that Schedule (see paragraph 5.11 above). It is only when such games take place in the presence of an

audience and are provided to, at least in part, entertain that audience, for example, a darts championship competition, that the activity would become licensable.

Private events

- 5.16 Private events can involve licensable activities where certain conditions pertain. Entertainment at a private event to which the public are not admitted becomes regulated entertainment, and therefore licensable, only if it is provided for a consideration and with a view to profit. Accordingly, a mere charge to those attending a private event to cover the costs of the entertainment, and for no other purpose, would not make the entertainment licensable as this would not be with a view to profit. The fact that a profit might inadvertently be made would be irrelevant as long as there had not been an intention to make a profit. Furthermore, Schedule 1 to the 2003 Act makes it clear that in relation to entertainment facilities, before an activity becomes regarded as being provided for consideration, a charge has to be made by a person concerned with the organisation or the management of the entertainment or the entertainment facilities who is also concerned in the organisation or management of the entertainment in which those facilities enable persons to take part and it is paid by or on behalf of some or all of the persons for whom that entertainment is, or those facilities are, provided. This means that, for example, a wedding reception for invited guests (at which no charge intended to generate a profit is made to those guests) at which a live band plays and dancing takes place is not regulated entertainment where the organiser or manager of those facilities is not also concerned in the organisation or management of the entertainment and therefore not a licensable activity. Similarly, for example, a party organised in a private house by and for friends at which music and dancing is provided and a charge or contribution is made solely to cover the costs of the entertainment is not a licensable event. Furthermore, any charge made by musicians or other performers or their agents to the organiser of a private event does not make that entertainment licensable unless the guests attending are themselves charged for the entertainment with a view to achieving a profit as explained above.
- 5.17 A private event – for example, a wedding reception - held in a separate room of a public house or a hotel would normally be an event which needs to be covered by the premises licence held by the public house or hotel. For such events, the management of the premises would normally be making available entertainment facilities (for example, a dance floor) and the premises (the room) for the performance of music for the entertainment of those attending. This would unquestionably be done for a charge and with a view to profit.

Incidental music

- 5.18 The incidental performance of live music and incidental playing of recorded music may not be regarded as the provision of regulated entertainment activities under the 2003 Act in certain circumstances. This is where they are incidental to another activity which is not itself entertainment or the provision of entertainment facilities. This exemption does not extend to the provision of other forms of regulated entertainment. Whether or not music of this kind is “incidental” to other activities is expected to be judged on a case by case basis

and there is no definition in the 2003 Act. It will ultimately be for the courts to decide whether music is “incidental” in the individual circumstances of any case. In the first instance, the operator of the premises concerned must decide whether or not he considers that he needs a premises licence. One factor that is expected to be relevant is “volume”. Common sense dictates that live or recorded music played at volumes which predominate over other activities at a venue could rarely be regarded as incidental to those activities. So, for example, a juke box played in a public house at moderate levels would normally be regarded as incidental to the other activities there, but one played at high volume would not benefit from this exemption. Stand-up comedy is not regulated entertainment and musical accompaniment incidental to the main performance would not make it a licensable activity. But there are likely to be some circumstances which occupy a greyer area. In cases of doubt, operators should seek the advice of the licensing authority, particularly with regard to their policy on enforcement.

Spontaneous music, singing and dancing

- 5.19 The spontaneous performance of music, singing or dancing does not amount to the provision of regulated entertainment and is not a licensable activity. The relevant part of the 2003 Act to consider in this context is paragraph 1(3) of Schedule 1 to the Act. This states that the second condition which must apply before an activity constitutes the provision of regulated entertainment is that the premises (meaning “any place”) at which the entertainment is, or entertainment facilities are, provided are made available for the purpose, or purposes which include the purpose, of enabling the entertainment concerned to take place. In the case of genuinely spontaneous music (including singing) and dancing, the place where the entertainment takes place will not have been made available to those taking part for that purpose.

Late night refreshment

- 5.20 Schedule 2 to the 2003 Act provides a more precise definition of what constitutes the provision of late night refreshment than that which has existed in earlier legislation. Licensing authorities, in Greater London particularly, should note the differences. For example, shops, stores and supermarkets selling food that is immediately consumable from 11.00pm will not be licensable as providing late night refreshment unless they are selling hot food or hot drink. The legislation will impact on those premises such as night cafés and take away food outlets where people may gather at any time from 11.00pm and until 5.00am giving rise to the possibility of disorder and disturbance. The licensing regime will not catch premises only selling immediately consumable food, such as, bread, milk or cold sandwiches in all night grocers’ shops and which do not tend to attract these problems.
- 5.21 Some premises provide hot food or hot drink between 11.00pm and 5.00am by means of vending machines established on the premises for that purpose. The supply of hot drink by a vending machine will not be a licensable activity and is exempt under the 2003 Act so long as the machine is one to which the public have access and it is operated by members of the public without any involvement of the staff on the premises with the payment being inserted in the machine. However, this exemption does not apply to hot food. Premises supplying hot

food for a charge by vending machine will be licensable when the food has been heated for the purposes of supply, even though no staff on the premises may have been involved in the transaction.

- 5.22 It is not expected that the provision of late night refreshment as a secondary activity in licensed premises open for other purposes such as public houses, cinemas or nightclubs or casinos should give rise to a need for significant additional conditions. The Secretary of State considers that the key licensing objectives in connection with late night refreshment are the prevention of crime and disorder and public nuisance, and it is expected that both will normally have been adequately covered in the conditions relating to the other licensable activities on such premises.
- 5.23 The supply of hot drink which consists of or contains alcohol is exempt under the 2003 Act as late night refreshment because it is caught by the provisions relating to the sale or supply of alcohol.
- 5.24 The supply of hot food or hot drink free of charge is not a licensable activity. However, where any charge is made for either admission to the premises or for some other item in order to obtain the hot food or hot drink, this will not be regarded as “free of charge”. Supplies by a registered charity or anyone authorised by a registered charity are also exempt. Similarly, supplies made on vehicles – other than when they are permanently or temporarily parked – are also exempt.
- 5.25 Supplies of hot food or hot drink at the appropriate time are exempt from the provisions of the 2003 Act if there is no admission to the public to the premises involved and they are supplies to:
- a member of a recognised club supplied by the club;
 - persons staying overnight in a hotel, guest house, lodging house, hostel, a caravan or camping site or any other premises whose main purpose is providing overnight accommodation.
 - an employee supplied by a particular employer (eg. a staff canteen).
 - a person who is engaged in a particular, profession or who follows a particular vocation (eg. a tradesmen carrying out work at particular premises).
 - a guest of any of the above.

Premises

- 5.26 In determining whether any premises falls to be licensed, the following parts of the 2003 Act are relevant:
- section 1 which outlines the licensable activities;
 - Part 3 which outlines provisions relating to premises licences;
 - Part 4 which outlines provisions for qualifying clubs;

- section 173 which provides that activities in certain locations are not licensable;
- section 174 which provides that premises may be exempted on grounds of national security;
- section 175 which provides that minor raffles and tombolas involving prizes of alcohol are not to be treated as licensable if certain conditions are fulfilled;
- section 176 which prohibits the sale of alcohol at motorway service areas; and restricts the circumstances in which alcohol may be sold at garages;
- section 189 which makes special provision regarding the licensing of vessels, vehicles and moveable structures;
- section 190 which provides that where the place where a contract for the sale of alcohol is made is different from the place where the alcohol is appropriated to the contract then for the purposes of the Act the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract;
- section 191 which defines “alcohol” for the purposes of the Act;
- section 192 which defines the meaning of “sale by retail” for the purposes of the Act;
- section 193 which defines among other things “premises”, “vehicle”, “vessel” and “wine”; and
- Schedules 1 and 2 which define provision of regulated entertainment and late night refreshment.

5.27 Section 191 provides the meaning of “alcohol” for the purposes of the 2003 Act, and it should be noted that a wide variety of foodstuffs contain alcohol but generally in a highly diluted form when measured against the volume of the product. For the purposes of the Act, the sale or supply of alcohol which is of a strength not exceeding 0.5 per cent ABV (alcohol by volume) at the time of the sale or supply in question is not a licensable activity. However, where the foodstuff contains alcohol at greater strengths, for example, as with some alcoholic jellies, the sale would be a licensable activity.

Garages

5.28 Section 176 of the 2003 Act provides that no authority (premises licence, club premises certificate or temporary event notice) under the Act will have effect to authorise the sale or supply of alcohol on or from certain premises. This section of the Act has the effect of restricting the ability to use premises for the sale or supply of alcohol, among other things, if they are used primarily as a garage or form part of premises which are primarily so used. Premises are used as a garage if they are used for one or more of the following:

- the retailing of petrol;
- the retailing of derv;
- the sale of motor vehicles; and
- the maintenance of motor vehicles.

The 2003 Act therefore largely maintains the position which existed under the Licensing Act 1964. It is for the licensing authority to decide in the light of the facts whether or not any premises is used primarily as a garage. Such decisions under the 1964 Act have most recently not been based on an examination of the gross or net turnover of income from non-qualifying products and other products. The approach to establishing primary use so far approved by the courts has been based on an examination of the intensity of use by customers of the premises. For example, if a garage shop in any rural area is used more intensely by customers purchasing other products than by customers purchasing non-qualifying products or services, it may be eligible to seek authority to sell or supply alcohol.

Relevant licensing authority

- 5.29 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 in whose area the greater or greatest part of the premises is situated or where the premises is located equally in two or more areas, the applicant may choose. In the rare cases where such premises exist, it will be important that the licensing authorities concerned maintain close contact about the grant of the premises licence, inspection, enforcement and other licensing functions in respect of these premises.

Authorised persons, interested parties and responsible authorities

- 5.30 In section 13, the 2003 Act defines three key groups that have important roles in the context of applications, inspection, enforcement and reviews of premises licences.
- 5.31 The first group – “authorised persons” - are bodies empowered by the Act to carry out inspection and enforcement roles. The police are not included because they are separately empowered by the Act to carry out their duties. In respect of all premises, the authorised persons include officers of the licensing authority, fire authority inspectors, inspectors locally responsible for the enforcement of the Health and Safety at Work etc Act 1974, and environmental health officers. Local authority officers will most commonly have responsibility for the enforcement of health and safety legislation. But in connection with certain premises, the Health and Safety Executive have this responsibility. In respect of 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 also prescribe other authorised persons by means of regulations. Details of any such secondary legislation may be viewed on the DCMS website.

5.32 The second group – “interested parties” – are the bodies or individuals who are entitled to make representations to licensing authorities on applications for the grant, variation or review of premises licences. In addition, interested parties may themselves seek a review of a premises licence. This group includes:

- a person living in the vicinity of the premises in question;
- a body representing persons living in that vicinity, for example, a residents’ association;
- a person involved in a business in the vicinity of the premises in question; and
- a body representing persons involved in such businesses, for example, a trade association.

Any of these individuals or groups may specifically request a representative to make his, her or its representation on his, her or its behalf. For example, a legal representative, a friend, a Member of Parliament, a Member of the National Assembly for Wales, or a local ward councillor could all act in such a capacity. In the case of the last of these, it would be expected that any councillor who is also a member of the licensing committee and who is making such representations on behalf of the interested party would disqualify him- or herself from any involvement in the decision-making process affecting the premises licence in question. In addition, it is expected that “individuals involved in business” will be given its widest possible interpretation, including partnerships, and need not be confined to those engaged in trade and commerce. It is also expected that the expression can be held to embrace the functions of charities, churches and medical practices.

5.33 It is for the licensing authority to determine in the first instance whether or not representations are relevant representations. This may involve determining whether they have, as a matter of fact, been made by an interested party and whether or not, for example, an individual making a representation resides or is involved in business “in the vicinity” of the premises concerned. However, licensing authorities should be aware that their initial decision on this issue could be subject to legal challenge in the courts. Whether or not an individual resides “in the vicinity of” the licensed premises is ultimately a matter of fact to be decided by the courts, but initially licensing authorities must decide if the individual or body making a representation qualifies as an interested party. In making their initial decision, licensing authorities should consider, for example, whether the individual’s residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises. Where a representation concerns “cumulative impact”, the licensing authority may be unable to consider this factor and would probably need to examine issues such as the proximity of the residence or business. In essence, it is expected that the decision will be approached with common sense and individuals living and working in the neighbourhood or area immediately surrounding the premises will be able to make representations.

5.34 Licensing authorities should consider providing advice on their websites about how any interested party can make representations to them.

- 5.35 The third group – “responsible authorities” – includes 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. All representations made by responsible authorities are relevant representations if they concern the effect of the application on the licensing objectives. For all premises, these include the chief officer of police; the local fire authority; the local enforcement agency for the Health and Safety at Work etc Act 1974 (which may be the local authority in certain circumstances, and the Health and Safety Executive in others); the local authority with responsibility for environmental health; the local planning authority; any body that represents those who are responsible for, or interested in, matters relating to the protection of children from harm and is recognised by the licensing authority for that area as being competent to advise it on such matters; and any licensing authority, other than the relevant licensing authority, in whose area part of the premises are situated.
- 5.36 In respect of the protection of children from harm, it is expected that the body recognised by the licensing authority to be competent to advise will have been indicated in the statement of licensing policy. This is important as applications for premises licences have to be copied to the responsible authorities by the applicant in order for them to make any representations they think are relevant. In many licensing authority areas, it is expected that the body recognised by the licensing authority to be competent in this regard will be the Area Child Protection Committee. However, in some areas, the Committee’s involvement may not be practical and in these circumstances the licensing authority is expected to nominate another body, for example, the local authority social services department.
- 5.37 In relation to a vessel, but no other premises, 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 at a time when it is used for licensable activities; the Environment Agency; the British Waterways Board; and the Secretary of State. The provision of the Secretary of State as a responsible authority in this case means the Secretary of State for Transport who in practice acts through the Maritime and Coastguard Agency, an executive agency of central Government, which has no formal legal existence.
- 5.38 The Maritime and Coastguard Agency is the lead responsible authority for public safety, including fire safety, issues affecting passenger vessels. The safety regime for passenger vessels is enforced under the Merchant Shipping Acts by the Maritime and Coastguard Agency who operate a passenger ship certification scheme. Fire authorities, the Health and Safety Executive and local authority health and safety inspectors should normally be able to make “nil” returns in respect of passenger vessels and rely on the Maritime and Coastguard Agency to make any necessary representations in respect of this licensing objective. 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 will require consideration by the other responsible authorities concerned with public safety, including fire safety.

- 5.39 The Secretary of State for Culture, Media and Sport may prescribe other responsible authorities by means of regulations. Any such secondary legislation may be viewed at the DCMS website. The Secretary of State expects to prescribe Crime and Disorder Reduction Partnerships in due course.

Applications for premises licences

- 5.40 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 (which includes 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. “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. It is not for the licensing authority to decide who is the most appropriate person to hold the licence. For example, in respect of most leased public houses, a tenant may run or propose to run the business at the premises in agreement with a pub owning company. Both would be eligible to apply for the appropriate licence and it is for these businesses or individuals to agree contractually amongst themselves who should do so. It is not for the licensing authority to interfere in that decision. However, in the case of a managed public house, the pub operating company should apply for the licence as the manager (an employee) would not be entitled to do so. Similarly, with cinema chains, the normal holder of the premises licence would be the company owning the cinema and not the cinema manager (an employee of the main company).
- 5.41 In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for licensable activities at the premises. 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. The Secretary of State recommends that 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 terms of accountability.
- 5.42 Where a public house is owned or a tenancy is held jointly by a husband and wife or other partnerships of a similar nature and both actively involve themselves in the business of carrying on licensable activities at the premises, 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, need to be made jointly. Applicants would need to consider whether, in these circumstances, a joint application provides sufficient flexibility for their business or whether a single application, coupled with the flexible provisions in the 2003 Act in respect of transfer and interim authorities, is a preferable course.

- 5.43 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 so apply and any such secondary legislation may be viewed on the DCMS website.
- 5.44 There is nothing in the 2003 Act which prevents an application being made for a premises licence at premises for which a premises licence is already held. For example, a premises licence authorising the sale of alcohol may be held by one individual and another individual could apply for a premises licence in respect of the same premises or part of those premises which would authorise regulated entertainment. This also ensures that one business could not seek premises licences, for example, for all potential circus sites in England and Wales and thereby prevent other circuses from using those sites even though they had the permission of the landowner. Similarly, there is nothing to stop a temporary event notice being given for a premises in respect of which a premises licence is in force.
- 5.45 An 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 (applications for premises which are not vessels are not, for example, to be sent to the Maritime and Coastguard Agency). The application must be accompanied by:
- the required fee (details of fees may be viewed on the DCMS website);
 - an operating schedule (see below);
 - a plan of the premises in a prescribed form to which the application relates; 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.

Regulations containing provisions on fees and the prescribed form of applications and plans may be viewed on the DCMS website.

The operating schedule

- 5.46 The operating schedule will form part of the completed application form for a premises licence. An operating schedule should include information which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory. For example, it should include a description of the style and character of the business to be conducted on the premises (for example, a supermarket, or a cinema with six screens and a bar, or a restaurant, or a public house with two bars, a dining area and a garden open to customers). Where alcohol is being sold for consumption on the premises in public houses, bars and nightclubs, it would also be valuable to know the extent to which seating is to be provided because research has shown that the amount of seating can be relevant to the prevention of crime and disorder. It should also indicate the type of activities available on

the premises, whether licensable under the 2003 Act or not. While “a performance of dance” with the exception of morris dancing is a licensable activity, the type of dancing, which is unaffected by the licensing requirement, may give rise to issues concerning the steps needed to protect children from harm and more generally conditions which would be appropriate. An operating schedule should therefore describe the type of dancing in broad terms and disclose if the dancing involves striptease or lap-dancing. Similarly, if dancing is to take place, it should be clear whether this would involve dancing by members of the public or by professional performers or both and in what setting. If music is to be provided, it is important that clear indication is given of the type of music to be provided. In the case of passenger vessels, it will also be valuable for the area within any vessel where licensable activities will be taking place to be described. This type of information is essential so that responsible authorities and interested parties can form a proper view as to what measures may be necessary to ensure public safety and prevent public nuisance. An operating schedule must also set out the following details:

- the relevant licensable activities to be conducted on the premises;
- the times during which it is proposed that the relevant licensable activities are to take place (including the times during each day of the week, during particular holiday periods and during particular seasons, if it is likely that the times would be different during different parts of the year);
- any other times when the premises are to be open to the public;
- where the licence is required only for a limited period, that period;
- where the licensable activities include the supply of alcohol, the name and address of the individual to be specified as the designated premises supervisor;
- where the licensable activities include the supply of alcohol, whether the alcohol will be supplied for consumption on or off the premises or both;
- the steps which the applicant proposes to take to promote the licensing objectives.

Examples of specimen operating schedules may be viewed on the DCMS website. Other details to be included in the operating schedule will be set out in regulations made from time to time by the Secretary of State which may be viewed on the DCMS website.

Steps to promote the licensing objectives

- 5.47 In preparing an operating schedule, the Secretary of State recommends that applicants should be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. This does not mean that applicants must check their operating schedules with responsible authorities before submitting them, but when uncertain, the responsible authorities can provide expert advice on matters relating to the licensing objectives. For example, the best source of advice on crime prevention is the local police. In preparing operating schedules, applicants should have regard to statements of licensing policy published by the licensing authority for their area. All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Licensing

authorities and responsible authorities are therefore expected so far as possible to publish material about the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. To minimise the burden on licensing authorities and applicants, it may be sensible for applicants to seek the views of the key responsible authorities before formally submitting applications and having completed drafts of their own operating schedules (after considering the effect on the four licensing objectives). For example, on matters relating to crime and disorder, the police and local authority community safety officers, and local community groups, might be consulted and on matters relating to noise, local environmental health officers might be consulted. Such co-operative effort should minimise the number of disputes which arise in respect of operating schedules. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives that they have set out in the operating schedule will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

- 5.48 Where permission is to be sought for regulated entertainment involving the provision of live music or other cultural activity, applicants may wish to consider consulting the local authority arts officer or local representatives of the Musicians' Union before completing their operating schedule.
- 5.49 The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises.
- 5.50 In respect of some premises, it is entirely possible that no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that it is proposed to take to promote each of the licensing objectives and in particular, the protection of children from harm.
- 5.51 Further advice on the steps that the Secretary of State would expect to be needed to promote the licensing objectives is given below.

Advertising applications

- 5.52 Regulations governing the advertising of applications for the grant or variation or review of premises licences will be contained in secondary legislation made by the Secretary of State and can be viewed on the DCMS website. They include the requirement that a brief summary of the application setting out matters such as the proposed licensable activities and the proposed hours of opening should be clearly displayed on an A3 size notice immediately on or outside the premises for the period during which representations may be made, together with information about where the details of the application may be viewed. So far as possible, as well as putting in place arrangements for interested parties to view a record of the application in the licensing register as described in Schedule 3 to the 2003

Act, it is expected that licensing authorities will also include these details on their websites. Charges made for copies of the register should not exceed the cost of preparing such copies.

Casinos and bingo clubs

5.53 Casinos and bingo clubs are the subject of separate legislation with regard to the licensing of gaming – the Gaming Act 1968. When granting, varying or reviewing licences authorising the sale of alcohol for consumption on such premises and/or the provision of regulated entertainment and/or late night refreshment at such premises, licensing authorities should not duplicate any conditions imposed by virtue of such legislation. Where applicants wish to carry on activities licensable under the 2003 Act, they will need to prepare and submit an operating schedule, but in detailing the steps to be taken in promoting the four licensing objectives the applicant may refer to the statutory conditions in respect of his gaming licence where relevant. In addition, any conditions which are attached to premises licences should not prevent the holder from complying with the requirements of the 1968 Act and its supporting regulations.

5.54 In considering applications for premises licences, licensing authorities and responsible authorities should note:

- the licensing of such premises for gaming remains the responsibility of magistrates, meeting as gaming licensing committees, who have the power to impose such restrictions on the hours during which gaming will be permitted to take place on such premises as appear to them to be necessary for the purpose of preventing disturbance or annoyance to the occupiers of other premises in the vicinity and, in the case of casinos, restrictions limiting the purposes, other than gaming, for which such premises may be used.
- licences under Part II of the Gaming Act 1968 fall to be renewed annually and renewal may be refused if, among other things, the holder of the licence applying for such renewal is not a fit and proper person to be the holder of a licence under the 1968 Act. Such a licence may also be cancelled, or a certificate of consent issued by the Gaming Board for Great Britain revoked, on similar grounds.
- such premises are regulated by the Gaming Board for Great Britain which issues guidelines for the casino and bingo club industries, and failure to comply is taken into account in assessing whether holders of licences under Part II of the 1968 Act have acted in a fit and proper manner. The Gaming Board's current guidelines may be viewed on its website: www.gbgb.org.uk
- under the provisions of the 1968 Act, such premises may operate only as private clubs, with participation in the gaming (and in practice admission to the premises) restricted to members (and only then when at least 24 hours has elapsed since an application for membership) and their bona fide guests. The principal purpose of casinos and bingo clubs is gaming and the sale of alcohol is incidental to that purpose and similarly, sales may only be made to members and their bona fide guests.

- the provision of entertainment in such premises is incidental to gaming and in determining whether to permit casinos to provide entertainment of a type that constitutes regulated entertainment under the 2003 Act, gaming licensing committees should take into account guidance contained in the Gambling Circular 7 dated 5 August 2002 issued by the Gambling and National Lottery Division of the DCMS. The circular may be viewed on the DCMS website. The Secretary of State accordingly considers that the licensing objectives will have been or will be in the main adequately considered by gaming licensing committees in respect of an application for gaming licences and duplication of conditions should be avoided when considering applications under the 2003 Act where relevant representations have been made.

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

- 5.55 Outdoor sports stadia are the subject of separate legislation with regard to health and safety and fire safety. When granting, varying or reviewing premises licences, licensing authorities should not therefore duplicate any conditions relating to such legislation. The sports events taking place at such outdoor stadia do not fall within the definition of the provision of regulated entertainment under the 2003 Act; with the exception of boxing and wrestling matches. No premises licence should therefore seek to impose times when such events that are not licensable under the 2003 Act may take place. Consideration of applications for premises licences should be limited to those activities that are licensable under the 2003 Act; i.e. the sale of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
- 5.56 Major stadia will often have several bars and restaurants, including bars generally open to all spectators as well as bars and restaurants to which members of the public do not have free access. Alcohol will also be supplied in private boxes and viewing areas. A premises licence may make separate arrangements for public and private areas or for restaurant areas on the same premises. It may also designate areas where alcohol may not be consumed at all or at particular times. History demonstrates that certain sports events are more likely than others to give rise to concerns about the safety of, and disorder among, spectators. Premises licences can and should make different provision for different sports events where licensable activities take place because of that history. Further details are provided in Chapter 6 of this Guidance. Because of the issues of crowd control that arise in and around such grounds, it is expected that licensing authorities will give considerable weight to the views of the local chief officer of police when representations are made concerning licensable activities, such as the sale of alcohol, taking place at such premises.

Sports stadia with roofs that open and close

- 5.57 Under the provisions of the 2003 Act, major sports grounds with roofs that open and close, such as the Millennium Stadium in Cardiff, are not within the definition of an “indoor sporting event” for the purposes of the Act. As a result events taking place in such stadia do not come within the descriptions of entertainment for the purposes of the provision of regulated entertainment and are not licensable for this purpose under the 2003 Act.

Vessels

- 5.58 The 2003 Act applies in relation to a vessel (which includes a ship or a boat) which is not permanently moored or berthed as if it were premises situated in a place where it is usually moored or berthed. The relevant licensing authority for considering an application for a premises licence in respect of a vessel is therefore the licensing authority for the area in which it is usually moored or berthed. However, an activity is not a licensable activity if it takes place aboard a vessel engaged on an international journey. An “international journey” means a journey from a place in the United Kingdom to an immediate destination outside the United Kingdom or a journey from outside the United Kingdom to an immediate destination in the United Kingdom. A vessel that is permanently moored or berthed is premises situated at that place.
- 5.59 Where a premises licence is sought in connection with a vessel which will be navigated whilst licensable activities take place, the licensing authority should be concerned, following the receipt of relevant representations, with the promotion of the licensing objectives on-board the vessel. It should not focus on matters relating to safe navigation or operation of the vessel, the general safety of passengers or emergency provision, all of which are subject to regulations which must be met before the vessel is issued with its Passenger Certificate and Safety Management Certificate. It is expected that, if the Maritime and Coastguard Agency is satisfied that the vessel complies with Merchant Shipping standards for a passenger ship, the premises will normally be accepted as meeting the public safety objective of the regime. In respect of other public safety aspects of the application, representations made by the Maritime and Coastguard Agency on behalf of the Secretary of State should be given particular weight.

International airports and International ports

- 5.60 Under the 2003 Act, the Secretary of State may designate a port, hoverport or airport, if it appears to the Secretary of State that there is a substantial amount of international traffic, so that an activity is not a licensable activity if it is carried on at such designated locations. The Secretary of State may also preserve existing designations made under earlier legislation. Details of the ports, hoverports and airports so designated may be viewed on the DCMS website.
- 5.61 Where a port has been designated by the Secretary of State, the areas at the ports which are “airside” or “wharfside” are included in the exemption in the 2003 Act from the licensing regime. These are areas to which the non-travelling public do not have access and are subject to stringent bye-laws, and the exemption is to enable the provision of refreshment of all kinds to travellers at all times of the day and night. Other parts of designated ports, hoverports and airports are subject to the normal licensing controls.

Vehicles

- 5.62 Under the 2003 Act, alcohol may not be sold on a moving vehicle and the vehicle may not be licensed for that purpose. However, licensing authorities may consider applications in respect of a vehicle for the sale of alcohol when it is

parked or stationary. For example, mobile bars could sell alcohol at special events as long as they were parked. Any permission granted would relate solely to the place where the vehicle is parked and where sales are to take place.

- 5.63 It should also be noted that the provision of any entertainment or entertainment facilities on premises consisting of or forming part of any vehicle while it is in motion and not permanently or temporarily parked is not to be regarded as a regulated entertainment for the purposes of the 2003 Act. For example, a band performing on a moving float in a parade would not require a premises licence if performances only take place while the vehicle is in motion.

Trains and aircraft

- 5.64 Under the 2003 Act, railway vehicles and aircraft engaged on journeys are exempted from the licensing regime. However, licensing authorities should note that some defunct aircraft and railway carriages are used as restaurants and bars, remaining in a fixed position. Licensing authorities may consider applications made in respect of such premises and they are subject to the provisions of the 2003 Act. It should also be noted that under the 2003 Act, the sale of alcohol to a minor anywhere in England and Wales has been made a criminal offence. Until the 2003 Act came into force, such sales were only offences if they took place on licensed premises. This is no longer the case. Accordingly, the sale of alcohol aboard a train or aircraft to a minor is now a criminal offence.

Considering applications for new and major variations of premises licences

- 5.65 A major variation is one that does not relate simply to a change of the name or address of someone named in the licence or an application to vary the licence to specify a new individual as the designated premises supervisor. The approach taken in the 2003 Act to applications for new and major variations is based on five main policy aims. These are that:

- the main purpose of the licensing regime is to promote the licensing objectives;
- applicants for premises licences or for major variations of such licences are expected to conduct a thorough risk assessment with regard to the licensing objectives when preparing their applications. This risk assessment will inform any necessary steps to be set out in an operating schedule to promote the four licensing objectives;
- operating schedules, which form part of an application, should be considered by professional experts in the areas concerned, such as the police and environmental health officers, when applications for premises licences and club premises certificates are copied to them by applicants;
- local residents and businesses are free to raise relevant representations, which relate to the promotion of the licensing objectives, about the proposals contained in an application; and

- the role of licensing authority is primarily to regulate the carrying on of the licensable activity when there are differing specific interests in those activities to ensure that the licensing objectives are promoted in the wider interests of the community.

When considering applications, it is expected that licensing authorities will seek to uphold these policy aims.

- 5.66 When a licensing authority receives an application for a new or a major variation of a premises licence, it must determine whether the application has been made properly in accordance with section 17 of the 2003 Act, and in accordance with regulations made by the Secretary of State under sections 17(4), 17(5), 54 and 55 of the Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with the regulations.
- 5.67 Where an application has been lawfully made and provided that no responsible authority (for example, the chief officer of police or an environmental health authority) makes a representation about an application and no interested party seeks to do so, then no hearing would be required and the application must be granted in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions in the Act. This should be undertaken as a simple administrative process by the licensing authority's officials by whom the proposals contained in the operating schedule to promote the licensing objectives should be translated into clear and understandable conditions consistent with the proposals in the operating schedule. In these circumstances, it is expected and particularly important that licensing authorities do not attempt to second-guess the views of the professional and expert consultees, for example, those of the police, the fire authority and environmental health authority. Accordingly, if operating schedules are prepared efficiently, often in consultation with responsible authorities, it is expected that the likelihood of hearings being necessary following relevant representations would be significantly reduced.
- 5.68 Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e. those which are not frivolous or vexatious and which relate to the licensing objectives (see paragraph 5.70 – 5.77 below). A hearing will be required for the licensing authority to consider the representations, at which the parties should be invited to comment upon the representations made and if necessary, to provide clarification of their own representations. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations. The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website. As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation which gave rise to the

hearing. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation. In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

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

- 5.69 The determination should be given forthwith and reasons provided to support the determination. This is important not least in anticipation of an appeal by any of the parties. After considering all the relevant issues, it is open to the licensing authority to grant the application subject to such conditions that are consistent with the operating schedule, and these can be modified to such an extent that the licensing authority considers necessary for the promotion of the licensing objectives. Any conditions so imposed must be necessary for the promotion of the licensing objectives. There is no power for the licensing authority to attach a condition which is merely aspirational: it must be necessary. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Alternatively, the licensing authority may refuse the application on the grounds that refusal is necessary 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.
- 5.70 Where a representation is made under the provisions of the 2003 Act by an interested party (for example, a local business or a resident living in the vicinity of the premises), there is a preliminary stage at which the licensing authority must consider whether the representation is relevant. This is dealt with in more detail below. If the licensing authority decides it is not relevant, a hearing would not be required in relation to that representation and in the absence of representations from other interested parties or responsible authorities, the application must be granted. The aggrieved interested party whose representation is not regarded as “relevant” may challenge the licensing authority’s decision by way of judicial review.
- 5.71 With regard to applications to vary the hours during which alcohol may be sold in shops, stores and supermarkets, the Secretary of State recommends that the norm should be for such premises to be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are very good reasons for restricting those hours. Where representations are received from the police, for example, in the case of some shops known to be a focus of disorder and disturbance because youths gather there, a limitation may be necessary.
- 5.72 In the context of variations, which may involve structural alteration to or change of use of the building, it should be noted that the decision of the licensing authority will not exempt an applicant from the need to apply for building control where appropriate.

Relevant, vexatious and frivolous representations

- 5.73 A representation would only be “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. A representation that fails to do this is not “relevant” for the purposes of the 2003 Act. It is not intended, for example, that the consideration of the application should be a re-run of the planning application which would have considered a wider range of matters. Premises licences authorise the activities within the scope of the 2003 Act that it is proposed should take place on the premises. For example, a representation from a local businessman which argued that his business would be commercially damaged by the new business for which an application is being made under Part 3 of the 2003 Act would not be relevant. On the other hand, a representation to the effect that nuisance caused by the new business would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance are inadequate would amount to relevant representations and must be considered provided the other conditions necessary to be a relevant representation were fulfilled.
- 5.74 After a premises licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre would generally not be regarded as relevant if it cannot be positively tied or linked by a causal connection to particular premises which would allow for a proper review of its licence. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house. In this context, it should be noted that the “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may only give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered: it cannot give rise to a relevant representation after a licence has been granted or varied when a review of a licence may be sought. A review must relate specifically to a particular premises licence relating to an individual premises, and by its nature “cumulative impact” relates to the indirect effect of a concentration of many premises. Identifying one for a review by reason of cumulative impact on the licensing objectives would inevitably be arbitrary.
- 5.75 It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious. The interested party making representations may not consider the matter to be frivolous or vexatious, but the test is whether the licensing authority is of the opinion they are frivolous or vexatious. The licensing authority must determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. A trivial complaint may not always be frivolous, but it would have to be pertinent in order to be relevant. An interested party aggrieved by a rejection of his representations on these grounds may challenge the authority’s decision by way of judicial review.

- 5.76 Decisions as to whether representations are relevant should not be made on the basis of any political judgement which would undermine a natural approach to the issue. This may be difficult for ward councillors receiving 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; i.e. the decision would be that the representations are relevant. Any ward councillor who considers that his own interests are such that he is unable to consider the matter independently should disqualify himself.
- 5.77 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application for the grant or variation of a premises licence.

Transfers of premises licences

- 5.78 The 2003 Act provides for any person who may apply for a premises licence, which includes a business, to apply for the transfer of a premises licence to him, her or it. Notice of the application has to be given to the chief officer of police. Where an applicant is an individual he or she must be 18 years old or over. A transfer of a premises licence would often arise when a business involving licensable activities is sold to a new owner. A transfer of the licence only changes the identity of the holder of the licence and does not alter the licence in any other way.
- 5.79 In the vast majority of cases, it is expected that a transfer will be a very simple administrative process and section 43 of the 2003 Act provides a mechanism whereby the transfer can be given immediate effect on the receiving of an application by the licensing authority until it is formally determined or withdrawn. This is to ensure that there should be no interruption to normal business at the premises. If the police raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence accordingly and return it to the new holder.
- 5.80 In exceptional circumstances where the chief officer of police believes the transfer may undermine the crime prevention objective, the police may object to the transfer. Such objections are expected to be rare and arise because the police have evidence that the business or individuals seeking to hold the licence or business or individuals linked to such persons are involved in crime (or disorder). For example, the police would rightly seek to prevent a company having a licence transferred to it in respect of licensed premises if they had evidence that the premises may be used to launder money obtained from drugs crime. Where an objection is made, the licensing authority must hold a hearing at which the authority will consider the objection. The authority's consideration would be confined to the issue of the crime prevention objective and the hearing should not be permitted to stray into other extraneous matters. The burden would be on the police to demonstrate to the authority that there were good grounds for

believing that the transfer of the licence would undermine the crime prevention objective. The licensing authority must give clear and comprehensive reasons for its eventual determination in anticipation of a possible appeal by either party.

- 5.81 It is stressed that such objections (and therefore such hearings) should only arise in truly exceptional circumstances. If the licensing authority believes that the police are using this mechanism to vet transfer applicants routinely and to seek hearings as a fishing expedition to inquire into applicants' backgrounds, it is expected that they would raise the matter immediately with the chief officer of police.

Applications to change the designated premises supervisors

- 5.82 Paragraphs 4.18 to 4.23 above cover designated premises supervisors and applications to vary a premises licence covering sales of alcohol by specifying a new designated premises supervisor.

Provisional statements

- 5.83 Where premises are being or are about to be constructed for the purpose of being used for one or more licensable activities, or are being or about to be extended or otherwise altered for that purpose, the necessary investment may not be committed unless investors have some assurance not only that the project has appropriate planning permission but that they have some degree of assurance that a premises licence covering the desired licensable activities would be granted for the premises when the building work is completed.
- 5.84 The 2003 Act does not define the words "otherwise altered", but the alteration must relate to the purpose of being used for one or more licensable activities. For example, a premises licence should indicate the whole of or part of the premises which are licensed for one or more licensable activity. If the building is to be altered to allow a previously unlicensed area to be used for a licensable activity, a provisional statement may be sought in respect of the additional area.
- 5.85 It is open to any person falling within section 16 of the 2003 Act to apply for a premises licence before new premises are constructed or extended or changed. Nothing in the 2003 Act prevents such an application. This would be possible where clear plans of the proposed structure exist and an operating schedule is capable of being completed about the activities to take place there, the time at which such activities will take place, the proposed hours of opening, where the applicant wishes the licence to have effect for a limited period, that period, the steps to be taken to promote the licensing objectives, and where the sale of alcohol is involved, whether supplies are proposed to be for consumption on or off the premises (or both) and the name of the designated premises supervisor the applicant wishes to specify. On granting such an application, the authority of the licence would not have immediate effect but the licensing authority would include in the licence the date upon which it would have effect. A provisional statement will therefore normally only be required when the information described above is not available.

- 5.86 The 2003 Act therefore provides for a person, if an individual aged 18 or over, who has an interest in the premises to apply for a “provisional statement”. A provisional statement does not have limited duration but with the potential for there to be material changes over time, the longer there is a delay before a premises licence is applied for the greater potential for representations made in respect of an application for a premises licence not to be excluded. “Person” in this context includes a business. The applicant could be a firm of architects or a construction company or a financier. The application would include the particulars of the premises, describe the work to be done and the licensable activities that it is planned would take place at the completed premises. Plans would also be included. The application must be advertised and notified to responsible authorities in a similar way to the arrangements for applications for premises licences and as set out in regulations. Responsible authorities and interested parties may make representations. Where no representations are made, a provisional statement must be issued to that effect. Where relevant representations are made, a hearing must be arranged by the licensing authority to consider them. The need for a hearing can be dispensed with only by agreement of the licensing authority, the applicant for the provisional statement and all the parties who made relevant representations.
- 5.87 When a hearing is held, the licensing authority must decide whether, if the premises were constructed or altered in the way proposed in the schedule of works and if a premises licence was sought for those premises, it would consider it necessary for the promotion of the licensing objectives to attach conditions to the licence, to rule out any of the licensable activities applied for, to refuse to specify the person nominated as premises supervisor, or to reject the application. It will then issue the applicant with a provisional statement setting out the details of that decision together with its reasons. The licensing authority must copy the provisional statement to each person who made relevant representations and the chief officer of police for the area in which the premises is situated. The licensing authority should give full and comprehensive reasons for its decision. This is important in anticipation of an appeal by any aggrieved party.
- 5.88 When a person applies for a premises licence in respect of premises (or part of the premises or premises which are substantially the same) for which a provisional statement has been made, representations by responsible authorities and interested parties will be excluded in certain circumstances. These are where:
- the application for a licence is in the same form as the licence described in the provisional statement; and
 - the work in the schedule of works has been satisfactorily completed;
 - given the information provided in the application for a provisional statement, the responsible authority or interested party could have made the same, or substantially the same, representations about the application then but failed to do so without reasonable excuse; and
 - there has been no material change in the circumstances relating either to the premises or to the area in the vicinity of those premises since the provisional statement was made.

- 5.89 Licensing authorities should exclude representations in these circumstances. It will be important for investment and employment opportunities in their areas for provisional statements to function properly by providing a limited assurance. But it should be recognised that a great deal of time may pass between the issue of a provisional statement and the completion of a premises in accordance with a schedule of works. Genuine and material changes in circumstances may arise during the intervening years.
- 5.90 It should be noted that any decision of the licensing authority on an application for a provisional statement would not relieve an applicant of the need to apply for building control.
- 5.91 A provisional statement may not be sought or given for a vessel, a vehicle or a moveable structure (see section 189 of the 2003 Act).

Interim authorities

- 5.92 The 2003 Act provides special arrangements for the continuation of permissions under a premises licence when the holder of a licence dies suddenly or becomes bankrupt or mentally incapable. In the normal course of events, the licence would lapse in such circumstances. Because there may also be some time before, for example, the deceased person's estate can be dealt with or an administrative receiver appointed this could have a damaging effect on those with interests in the premises, such as an owner or lessor, as well as for employees working at the premises in question; and could bring unnecessary disruption to customers' plans. The Act therefore provides for the licence to be capable of being reinstated in a discrete period of time in certain circumstances.
- 5.93 These circumstances arise only where a premises licence has lapsed owing to the death, incapacity or insolvency of the holder. In such circumstances, an "interim authority" notice may be given to the licensing authority within seven days beginning the day after the licence lapsed. It should also be copied to the chief officer of police. The premises licence would lapse until such a notice is given and carrying on licensable activities in that time would be unlawful. Such activity will be an offence as an unauthorised licensable activity under section 136(1)(a) of the 2003 Act, to which there is a "defence of due diligence" provided in section 139. This may be relevant where, for example, the manager of particular premises is wholly unaware for a period of time that the premises licence holder has died. As soon as an interim authority notice is given within the seven day period, the business may continue to carry on any licensable activities permitted by the premises licence.
- 5.94 An interim notice may only be given either by a person with a prescribed interest in the premises as set out by the Secretary of State in regulations which may be viewed on the DCMS website; or by a person connected to the former holder of the licence (normally a personal representative of the former holder or a person with power of attorney or where someone has become insolvent that persons insolvency practitioner).
- 5.95 The effect of giving the notice is to reinstate the premises licence as if the person giving the notice is the holder of the licence and thereby allow licensable activities

to continue to take place pending a formal application for transfer. The maximum period for which an interim authority notice may have effect is two months.

- 5.96 The interim authority notice ceases to have effect unless by the end of the initial 7 day period a copy of the notice has been given to the chief officer of police. Within 48 hours of the giving of the copy of the notice, and if satisfied that in the exceptional circumstances of the case failure to cancel the interim authority would undermine the crime prevention objective, the police may give a notice to that effect to the licensing authority. In such circumstances, the licensing authority must hold a hearing to consider the objection notice and cancel the interim authority notice if it determines that it is necessary to do so for the promotion of the crime prevention objective.
- 5.97 In respect of these matters, it is expected that licensing authorities will be alert to the urgency of the circumstances and the need to consider the objection quickly.
- 5.98 It should also be noted that by virtue of section 50 of the 2003 Act where the premises licence lapses (because of death, incapacity or insolvency of the holder etc) or by its surrender, but no interim authority notice has effect, a person who may apply for the grant of a premises licence under section 16(1) may apply within 7 days of the lapse for the transfer of the licence to him with immediate effect pending the determination of the application - causing the licence to be reinstated from the point at which the transfer application was received by the licensing authority. The person applying for the transfer must copy his application to the chief officer of police.

Reviews

- 5.99 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.
- 5.100 At any stage, following the grant of a premises licence, a responsible authority, such as the police or the fire authority, or an interested party, such as a resident living in the vicinity of the premises, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. In addition, a review of the licence will normally follow any action by the police to close down the premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a notice of magistrates' court's determination sent to the licensing authority. Licensing authorities may not initiate their own reviews of premises licences. Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may however request reviews on any matter which relates to the promotion of one or more of the licensing objectives.

- 5.101 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.
- 5.102 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.
- 5.103 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It would therefore be good practice for authorised persons and responsibilities authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review.
- 5.104 Where the request originates with an interested party – e.g. a local resident, residents’ association, local business or trade association – the licensing authority must first consider whether the complaint made is not relevant, vexatious, frivolous or repetitious. Relevance, vexation and frivolousness were dealt with in paragraphs 5.73 – 5.77 above. A repetitious representation is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in respect of the same premises licence which has already been determined; or
 - representations considered by the licensing authority when the premises licence was first granted; or
 - representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and
 - in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.
- 5.105 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a second bite of the cherry following the failure of representations to persuade the licensing authority on earlier occasions. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, the Secretary of State recommends that more than one review originating from an interested party should not be permitted within a period of twelve months on similar grounds save in compelling circumstances or where it arises following a closure order.

- 5.106 Following receipt of a request for a review from a responsible authority or an interested party or in accordance with the closure procedures described in Part 8 of the 2003 Act, the licensing authority must arrange a hearing. The arrangements for the hearing must follow the provisions set out by the Secretary of State in regulations. The details may be viewed on the DCMS website. The Secretary of State considers it particularly important that the premises licence holder is fully aware of the representations made in respect of the premises, any evidence supporting the representations and that he or his legal representatives has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 5.107 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.
- 5.108 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.
- 5.109 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:
- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - to suspend the licence for a period not exceeding three months;
 - to revoke the licence.
- 5.110 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the

concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response. For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual. Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

- 5.111 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Accordingly temporary changes or suspension of the licence for up to three months may be imposed. This could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. Accordingly, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for a review.

Reviews arising in connection with crime

- 5.112 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.
- 5.113 Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps are necessary to be taken in connection with the premises licence for the promotion of the crime prevention objective. It is important to recognise

that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licensee and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any necessary steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.

5.114 As explained above, it is not the role of a licensing authority to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. There is therefore no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. As stated above, at the conclusion of a review, it will be for the licensing authority to determine on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing objectives in respect of the licence in question, regardless of any subsequent judgment in the courts about the behaviour of individuals.

5.115 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

5.116 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures

effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered. We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

- 5.117 It should be noted that it is unlawful to discriminate or to refuse service on grounds of race or by displaying racially discriminatory signs on the premises. Representations made about such activity from responsible authorities or interested parties would be relevant to the promotion of the crime prevention objective and justifiably give rise to a review.

Right of freeholders etc to be notified of licensing matters

- 5.118 A person (which will include a business or company) with a property interest in any premises situated in the licensing authority's area may give notice of his interest to the authority using a prescribed form and on payment of a fee prescribed by the Secretary of State. Details of fees and forms will be available on the DCMS website. It is entirely at the discretion of such persons whether they choose to register or not. It is not a legal requirement. Those who may take advantage of this arrangement include the freeholder or leaseholder, a legal mortgagee in respect of the premises, a person in occupation of the premises or any other person prescribed by the Secretary of State. Any regulations regarding individuals so prescribed will also be viewable on the DCMS website. The notice will have effect for 12 months but a new notice can be given every year. Whilst the notice has effect, if any change relating to the premises concerned has been made to the licensing register (which the licensing authority has a duty to keep under section 8 of the 2003 Act), the licensing authority must notify the person who registered an interest of the matter to which the change relates. The person will also be notified of their right under section 8 to request a copy of the information contained in any entry in the register. In cases relating to interim authority notices (see above), it is important that such communications are dealt with promptly.

AWP (Amusements with prizes) machines

- 5.119 Licensing authorities should note that Schedule 6 (minor and consequential amendments) to the 2003 Act amends the Gaming Act 1968 in respect of the grant of "section 34 permits" for AWP (amusements with prizes) machines in premises licensed for the sale of alcohol for consumption on the premises. On the bringing into force of this amendment, responsibility for the grant of these permits will transfer from the licensing justices to the relevant licensing authority. This is not a "licensing function" under the 2003 Act and the authority for the grant or refusal of such permits will continue to derive from Schedule 9 to the 1968 Act. Local authorities already have responsibility for the grant of permits for AWP machines on other premises and therefore will be aware of the issues that surround them. The following guidance under this sub-heading does not therefore form part of the Guidance issued under section 182 of the 2003 Act in this document but is provided merely to assist licensing authorities in

understanding their new responsibility for AWP machines in connection with premises licensed for the sale of alcohol for consumption on those premises.

- 5.120 Permits last for a minimum period of three years but may be issued for longer periods. The current fee for the grant or renewal of a permit under section 34 of the 1968 Act is £32.
- 5.121 The Secretary of State recommends that applicants for permits be advised that they may make applications by post and that provided the fee has been paid, they need not attend a hearing unless notified to do so. Applicants to licensing authorities must be holders of premises licences authorising the sale of alcohol for consumption on the premises. It has been the practice for a number of years for companies who rent or lease machines to licence holders to make application for the grant and renewal of permits, and where such applications are made the company should make it clear that the application is made on behalf of, and with the agreement of, the premises licence holder. In the absence of such information, the application should be postponed for the premises licence holder's consent to be notified.
- 5.122 Licensing authorities are not permitted to attach conditions on the grant of a section 34 permit other than a condition limiting the number of machines authorised under it. The Secretary of State also recommends that licensing authorities should not require applicants to provide a plan of the premises indicating where the machines are to be sited.
- 5.123 It is recommended that licensing authorities should indicate that its licensing committee and sub-committees will be prepared to grant permits authorising up to two machines without a hearing. If licensing authorities consider it appropriate, they may choose, at their discretion, not to hold hearings in respect of applications concerning larger numbers of such machines.
- 5.124 There is no requirement under the 1968 Act for the police to be notified of an application.
- 5.125 Some licensing authorities may be concerned that children are able to play machines authorised under a permit in licensed premises. Parliament has, however, placed no restrictions on the age at which such machines may be played (other than those in amusement arcades). It is therefore a matter for the discretion of the premises licence holder and any adults accompanying the children concerned whether they are entitled to play such machines. In the case of premises used exclusively or primarily for the consumption of alcohol, all children under the age of 16 will only be lawfully permitted entry to the premises if accompanied by adults. The British Amusement Catering Trade Association (BACTA), the gaming machines trade representative body, have a code of practice in respect of children and gaming machines to which their members are expected to adhere.
- 5.126 Under paragraph 10A of Schedule 9 to the Gaming Act 1968, all such machines must be located in a bar of the premises. The 2003 Act amends this paragraph in respect of the meaning of "bar" and licensing authorities should note that "bar" in this context means any place which, by virtue of the premises licence,

may be used for the supply of alcohol, and which is exclusively or mainly used for the supply and consumption of alcohol.

Large scale temporary events requiring premises licences

5.127 Licensing authorities should note that a premises licence may be sought for a short, discrete period. The 2003 Act also provides for the giving of temporary event notices. These are dealt with later in this Guidance. Temporary event notices are subject to various conditions and limitations. These concern:

- duration - they are limited to events lasting for up to 96 hours (this relates to the period during which licensable activities may be carried on, and does not relate to preparation and setting up time, packing away or clearing up time);
- scale – they cannot involve the presence of more than 499 people at any one time;
- use of the same premises – the same premises cannot be used on more than 12 occasions in any calendar year, but are subject to the overall aggregate of 15 days irrespective of the number of occasions on which they have been used ; and
- the number of notices given by one individual within a given period of time – a personal licence holder is limited to 50 notices in one year, and any other person to five notices in the same period.

5.128 If these conditions are not fulfilled, a temporary event at which licensable activities are to take place may not be a permitted temporary activity carried on under the authority of a temporary event notice but would require a premises licence, if the premises or place at which the event is to take place is currently unlicensed for the activity or activities involved. The procedures for applying for and granting such a licence are identical to those for an unlimited duration premises licence except that it should be stated on the application that the period of the licence will be limited. Licensing authorities should note that they should clearly specify on such a licence when it comes into force and when the permission ends. Where the sale of alcohol is involved, there will need to be a designated premises supervisor specified who must be a personal licence holder.

5.129 Temporary events may range from relatively small local events, like fairs, which may last for four or five days, to major pop festivals lasting only one day. Despite the temporary duration of such major events, they can attract huge crowds of more than 100,000 and the risks to public safety and to crime and disorder as well as public nuisance may be considerable. Licensing authorities are expected to make clear in local publicity that they should be given early notice of such major events to allow responsible authorities to discuss operating schedules with the organisers well before a formal application is submitted. Many of these events will give rise to special considerations in respect of public safety. Operating schedules should therefore reflect an awareness of these matters and in particular, advice given in the following documents will be relevant:

- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through www.streetartsnetwork.org/pages/publications

6 Hours of Trading

- 6.1 This Chapter provides guidance on good practice in respect of any condition imposed on a premises licence or club premises certificate in respect of hours of trading or supply.

Shops, stores and supermarkets

- 6.2 It is recommended that shops, stores and supermarkets selling alcohol should generally be permitted to match the hours during which they may sell alcohol with their normal trading hours during which other sales take place, unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance. Accordingly, if the law permits the shop to open for 24 hours or limits such opening, for example, on Sundays, the licensing authority should generally permit the sale of alcohol during those hours unless there are very good reasons as to why it is necessary not to do so.
- 6.3 Some shops may however be known to be a focus for disturbance because youths congregate there and engage in nuisance and anti-social behaviour, including trying to pressurise shop staff to make unlawful sales of alcohol. Where relevant representations are made by an interested party or a responsible authority (particularly, the police) concerning applications for premises licences for such places, or in connection with existing licences, licensing authorities should consider a restriction on opening hours as one mechanism of combating such problems if this would be necessary.

Workers' rights

- 6.4 In determining an application for a premises licence or club premises certificate and the hours at which the premises might provide licensable activities to the public, it is not for the licensing authority to consider such matters as the rights of the workers employed on the premises who may be asked to work longer hours. There are existing protections under the Working Time Regulations 1998, (SI 1998/1833), the Employment Rights Act 1996 (as amended) and under the general employment law and laws of contract (which make it unlawful for one party to a contract of employment to vary its terms and conditions without the other's consent). Those existing protections are available to provide adequate protection against abuse. Against this background, the impact on workers of any extended hours permitted by a premises licence or a club premises certificate is a contractual matter to be resolved between the employer and the employees, and licensing authorities should not seek to intervene in these matters.

Principle of flexibility

- 6.5 The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol for consumption on the premises, rapid binge drinking close to closing times; and are a key cause of disorder and disturbance when large numbers of customers are required to leave premises simultaneously. This creates excessive pressures at places where fast

food is sold or public or private transport is provided. This in turn produces friction and gives rise to disorder and peaks of noise and other nuisance behaviour. It is therefore important that licensing authorities recognise these problems when addressing issues such as the hours at which premises should be used to carry on the provision of licensable activities to the public.

- 6.6 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through longer opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided. We will monitor the impact of the 2003 Act on crime and disorder and the other licensing objectives. If necessary in the light of these findings, we will introduce further legislation with the consent of Parliament to strengthen or alter any provisions.

Zoning

- 6.7 Zoning is used in this Guidance to refer to the setting of fixed trading hours within a designated area. Experience in Scotland has demonstrated that zoning leads to the significant movement of people across boundaries in search of premises opening later and puts greater pressure on town and city centres than is necessary. Zoning was attempted in Edinburgh for a period of eighteen months in the early 1990s when five zones were created. This had to be abandoned in 1993 because of the problems created for the police and significant improvements in terms of the reduction of disorder and disturbance were noted following its removal. The Government also considers that zoning risks treating residents and persons involved in business in one area preferentially over others simply because they have chosen to live in busy central areas of towns and cities. Under the 2003 Act any person involved in a business in the vicinity or any residents in the vicinity of licensed premises have the same rights to make representations concerning applications for and reviews of premises licences and club premises certificates, including hours of trading and to have those representations considered by the same standards regardless of where they live or conduct their business.
- 6.8 In relation to the prevention of public nuisance, in each individual case that arises following representations, the licensing authority should consider the potential for nuisance associated with the style, characteristics and activities of the business to be carried on at the premises in order to examine the potential steps which could be taken to reduce the risk of nuisance occurring. This will particularly apply in areas of residential accommodation. The licensing authority should consider restricting the hours of trading only where this is necessary because of the potential impact on the promotion of the licensing objectives from fixed and artificially-early closing times.
- 6.9 Above all, licensing authorities should not fix predetermined closing times for particular areas.

Staggered closing times

- 6.10 Licensing authorities should also not seek to engineer “staggered closing times” by setting quotas for particular closing times, for example, by allocating closing times of 11.00pm, 12 midnight, 1.00am, 2.00am, 3.00am etc to specific premises. In the Government’s view, this would only serve to replace the current peaks of disorder and disturbance after 11.00pm and after 2.00am with a series of smaller peaks, minimising any potential improvement in the prevention of crime and disorder or public nuisance and would not be necessary to promote the licensing objectives. The general principle should be to support later opening so that customers leave for natural reasons slowly over a longer period. This prevents any artificial concentrations. At present, permitted hours for ordinary public houses are set at times that research evidence suggests are artificially early, causing a high proportion of customers to remain until the fixed closing time. The benefit of later closing times, even if many are similar, is that customers will leave for a variety of reasons at a variety of times. For example, if all the public houses in a single street could open until 3.00am, this would allow customers a far longer period than now to leave and disperse from that area.

Relaxation of opening hours for local, national and international occasions

- 6.11 It should normally be possible for applicants for premises licences and club premises certificates to anticipate special occasions which occur regularly each year – such as bank holidays – and to incorporate appropriate opening hours for these occasions in their operating schedules. Similarly, temporary event notices – in respect of which a personal licence holder may give fifty each year – should be sufficient to cover events like Golden Wedding Anniversaries or 21st Birthday parties which take place at premises which do not have a premises licence or club premises certificate. However, with the passage of time exceptional events of local, national or international significance will arise which could not or have not been anticipated. Such events can give rise to the need to vary the conditions of large numbers of premises licences and club premises certificates. In such circumstances, it will be open to the Secretary of State to make a licensing hours order to provide for premises with a premises licence or club premises certificate to open for specified, generally extended, hours on these special occasions. Examples might include a one-off local festival, a Royal Jubilee, a World Cup or an Olympic Games.
- 6.12 Such events should be genuinely exceptional and the Secretary of State will not consider making such an order lightly. Licensing authorities (or any other persons) approaching the Secretary of State about the making of such an order are advised that they should give at least six months notice before the celebration in question. Before making such an order, the Secretary of State is required to consult such persons as she considers appropriate, and this would generally enable a wide-range of bodies to make representations to her for consideration. In addition, such an order will require the approval of both Houses of Parliament. Six months would be the minimum period in which such a process could be satisfactorily completed.

“Drinking up time”

- 6.13 It is important to note that “opening hours”, the times when premises are open to the public, are not necessarily identical to the hours during which licensable

activities may take place. In the case of the sale by retail of alcohol (or supply of alcohol by or on behalf of a club to, or to the order of, a member of a club) for consumption on the premises, it must also be noted that “consumption” of alcohol is not a licensable activity. Accordingly, the authorised period specified in the premises licence, club premises certificate or temporary event notice relates to the period during which alcohol may be sold or supplied. It is therefore permissible for premises to allow the consumption of previously purchased alcohol, within the authorisation, outside the hours authorised for the sale or supply of alcohol.

Closing early

- 6.14 Just as under the Licensing Act 1964 there is no requirement obliging a justices’ licence holder to remain open during the period of permitted hours if he or she wishes to close earlier, there is no obligation under the 2003 Act requiring the holder of a premises licence or club premises certificate to remain open for the entire period permitted by his licence or certificate. If, for example, a public house has no trade on a particular evening, the licence holder is entitled to close the premises.

7 Conditions Attached to Premises Licences and Club Premises Certificates

General

- 7.1 This Chapter of the Guidance provides advice and recommendations concerning best practice in respect of conditions attached to premises licences and club premises certificates. Conditions may only be imposed on licences and certificates where they are necessary for the promotion of one or more of the four licensing objectives. Conditions may not be imposed on licences and certificates for other purposes.⁵ Also, for example, conditions relating to night café and take away outlets operating from 11.00pm must relate to the night time operation of the premises, and must not be used to impose conditions which relate to day time operation and cannot be imposed on day time operators.
- 7.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions the holder of the premises licence or the club premises certificate will be required to take or refrain from taking at all times when licensable activities are taking place at the premises in question.
- 7.3 All interests – licensing authorities, licence and certificate holders, authorised persons, the police, other responsible authorities and local residents and businesses - should be working together in partnership to ensure collectively that the licensing objectives are promoted.
- 7.4 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which should be undertaken by applicants or clubs 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 that it is proposed to take to promote the licensing objectives. The operating schedule or club operating schedule must also set out the proposed hours of opening. The proposals must then be notified to the expert bodies who are the responsible authorities described in the 2003 Act to provide them with an opportunity to scrutinise the application. Interested parties, such as local residents, may also make representations at this stage following the advertising of the application by the applicant. Where the responsible authorities and interested parties do not raise any representations about the application made to the licensing authority, it is the duty of the authority to grant the licence or certificate subject only to conditions that are consistent with the operating schedule or club operating schedule and any mandatory conditions prescribed in the 2003 Act itself.

⁵ Although no conditions may be imposed in respect of matters unrelated to the licensing objectives, licensing authorities should bear in mind that there are a number of powers available to local authorities, in particular in Part IV of the Environmental Protection Act 1990 to impose, for example, Street Litter Control Notices, which will allow local authorities to cope with the problems of litter from premises such as takeaway restaurants. This can ensure that the authority are able to cope better with extended opening hours within existing service provision.

- 7.5 The licensing authority may not therefore impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants and clubs to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.
- 7.6 Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both. Further details of these offences are given in Chapter 14 of this Guidance.
- 7.7 Under former licensing regimes, 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.

Disabled people

- 7.8 Licensing authorities should guard against well meaning conditions which are intended to provide for the safety of people or performers with disabilities, but which actively deter operators from admitting or employing such people, and responsible authorities should guard against making representations to suggest such provision. It is important that proper steps should be taken to provide for the safety of people and performers with disabilities, but conditions should be avoided which would enable an operator to justify their exclusion by reference to the condition. It is the policy of the Government that facilities for people and performers with disabilities should be provided at places of entertainment and the Secretary of State encourages licence holders and clubs to provide facilities enabling their admission and reminds them of the duties imposed by the Disability Discrimination Act 1995. The law provides that any person providing a service to the public must make reasonable adjustments to enable disabled people to access the service. No licensing condition should therefore be attached to a licence or certificate which conflicts with or duplicates this requirement. From October 2004 service providers will be under a new duty to make reasonable adjustments to any physical features which make it impossible or unreasonably difficult for disabled persons to access a service, or they have to provide the service by a reasonable alternative means. Access to buildings and their facilities is also a matter addressed in Building Regulations and planned alterations affecting access may involve the need to apply for building control.
- 7.9 Licensing authorities should therefore be ready to offer advice to applicants for licences and certificates about how to achieve this. Conditions which state that “wheelchairs and similar equipment shall not be allowed on the premises except in accordance with the terms of any consent issued by the licensing authority” can be ambiguous and be used to justify exclusion and may be ultra vires. Conditions should therefore be positively worded and assume the presence of people with disabilities on licensed premises.

- 7.10 In addition, Government guidelines exempting guide and assistance dogs from health and safety requirements have been in place since 1995. Any condition of a licence or certificate which states that “pets” may not be present on licensed premises for public safety reasons, must include a clear indication that the condition does not apply to guide or assistance dogs. Further advice can be obtained from the Disability Rights Commission’s website www.drc-gb.org.
- 7.11 Currently, the Disability Discrimination Act 1995 does not require physical modifications to be made to existing vessels to accommodate the disabled, but it is proposed that the industry should develop best practice guidelines for the safety of disabled passengers on vessels. The intention is that these would be published by the Disabled Persons Transport Advisory Committee. In the meantime, where it is proposed to attach any conditions relating to the public safety of disabled people on passenger vessels the views of the Maritime and Coastguard Agency should always be taken into account.

Race equality

- 7.12 Following receipt of representations, licensing authorities should also guard against imposing any condition on a licence or certificate which appear to apply to a wide group of people, but in fact would have an indirect discriminatory impact on particular ethnic groups. For example, a representation requesting that “No Travellers” or “No Caravan-Dwellers” be displayed inside or on premises purportedly to prevent crime or disorder should not be accepted not least because it would conflict with the authority’s race equality scheme.

Duplication with other statutory provisions

- 7.13 The only conditions which should be imposed on a premises licence or club premises certificate are those which are necessary and proportionate for the promotion of the licensing objectives. Accordingly, if other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. For example, employers and self-employed persons are required by the Management of Health and Safety at Work Regulations 1999 (S.I 1999/3242) to assess the risks to their workers and any others (for example, members of public visiting the premises) who may be affected by their business so as to identify what measures are needed to avoid or control risks. Further, where other legislation confers powers on inspection and enforcement agencies in relation to separate activities or concerns, the 2003 Act does not affect the continued use of such powers (and any conditions attached to a premises licence where necessary would be in addition to these); for example, the powers of an environmental health officer in respect of statutory nuisance under the Environmental Protection Act 1990. However, these general duties will not always adequately cover specific issues that arise on the premises in connection with, for example, certain types of entertainment. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence. The safety regime for passenger vessels is enforced under the Merchant Shipping Acts by the Maritime and Coastguard Agency (an executive agency of the Department

for Transport) who operate a passenger ship certification scheme. Fire authorities, the HSE and local authority health and safety inspectors should normally be able to make “nil” returns in respect of passenger vessels and rely on the Maritime and Coastguard Agency to make any necessary representations in respect of this licensing objective.

Consistency with steps described in operating schedule

7.14 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 interested parties, 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 by the Act itself.

7.15 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule or club operating schedule. Some applicants for licences or certificates supported by legal representatives or trade associations can be expected to express steps necessary to promote the licensing objectives in clear and readily translatable terms. However, it must be recognised that some applicants will express the terms of their operating schedules less precisely or concisely. Ensuring that conditions are consistent with the operating schedule will then be more difficult. It must be remembered that conditions if broken may give rise to criminal prosecution or lead to 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. It must be clear to the holder of the licence or club, to enforcement officers and to the courts what duty has been placed on the holder or club in terms of compliance. For example, a condition relating to the safe capacity of premises following representations by the fire authority should be expressed in clear and simple terms, for example:

“The maximum occupancy of the building at any one time will be restricted in respect of the ground floor to 300 persons and in respect of the first floor to 100 persons.”

It should also be made clear whether a limit on capacity includes or excludes staff and performers working at the premises. For the sake of consistency, the Secretary of State recommends that capacity limits, where considered necessary and appropriate should include staff and performers. Where relevant representations have been made by either a responsible authority or an interested party and following a hearing the licensing authority has determined that the steps needed to promote the licensing objectives proposed by the applicant should be modified, the licensing authority will be able to revise the conditions expressed in the operating schedule or club operating schedule in terms that it considers necessary. But clarity and simplicity should guide all such decisions.

7.16 It should be noted that in preparing schedules, as stated earlier in the Guidance, it is in the interests of applicants to consult with responsible authorities about the steps that are necessary to take to promote the licensing objectives. Ideally, therefore, there will be opportunities for the experts and the applicants to agree a

way forward before applications are finalised and representations are lodged which necessitate a hearing.

Proportionality

- 7.17 By providing that only necessary conditions may be imposed, the 2003 Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. As has been said earlier, this effectively rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues. For example, charities, community groups, voluntary groups, churches, schools and hospitals which host smaller events and festivals will not usually be pursuing these events commercially with a view to profit and will inevitably operate within limited resources. While the Secretary of State will set fees centrally for licences and certificates, licensing authorities and responsible authorities should be alive to the indirect costs that can arise because of conditions attached to licences. These could be a deterrent to the holding of events that are valuable to the community or for the funding of good and important causes. Such bodies may be loath to pursue appeals against any unnecessary conditions because of the costs involved. Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose. Public safety concerns (and the concerns identified in the other objectives) should not of course be ignored and in considering a proportionate response to the licensing needs for such events, the physical safety of those attending such events should remain a primary objective.
- 7.18 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.
- 7.19 Licensing authorities and responsible authorities should also have proper regard for the history of certain events and activities. If over a significant period of time, regular events of a particular kind have not given rise to problems of disorder and nuisance or concerns about safety or children, responsible authorities will be expected to have regard to this when scrutinising an application in respect of the activities involved, and not make representations unless there are new issues which could cause them to do so. For example, since 1961 events involving up to two musicians performing live music in premises licensed for the sale of alcohol under the Licensing Act 1964 have enjoyed a disapplication from the requirements for a public entertainment licence. Local authorities will be aware of premises where this freedom has caused local nuisance for residents and where it has not. This local knowledge is important. Where premises have not caused such problems, the provision of small-scale live music should not normally give rise to the need to attach any conditions to the premises licence or club premises certificate other than those which are mandatory under the 2003 Act. On the other hand, where in the minority of cases problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through

representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.

Crime and disorder

- 7.20 Annex D provides examples of conditions (not an exhaustive list of examples) which relate to the prevention of crime and disorder on licensed premises and can be used where necessary and appropriate to the particular circumstances of any individual premises. Accordingly, the Annex should be treated as a pool of conditions from which the necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be applied universally irrespective of circumstances.
- 7.21 The steps any licence holder or club might take to prevent crime and disorder are as varied as the premises or clubs where any licensable activities may be carried on. The example pool of conditions in Annex D cannot therefore cover every possible scenario. Licensing authorities should therefore look to the police as the main source of advice on these matters.
- 7.22 The Government's expectation is that the police will have a key role in undertaking the following tasks:
- developing a constructive working relationship with licensing authority licensing officers and bodies such as the Area Child Protection Committee;
 - developing a constructive working relationship with designated premises supervisors and other managers of premises, including those premises where late night refreshment is provided;
 - advising, where necessary, on the development of a venue drug policy;
 - agreeing the protocols for actions taken by door supervisors in relation to illegal drugs or violent behaviour, in particular when police officers should be called immediately;
 - advising on and approving search procedures and the storage procedures for confiscated drugs;
 - gathering and sharing intelligence on drug dealing and use with partner organisations and local nightclubs;
 - advising on the installation and monitoring of security devices such as CCTV;
 - advising on the provision of safe transport home in consultation with community safety colleagues;
 - working with venue owners and managers to resolve drug-related problems and problems of disorder, drunkenness and anti-social behaviour; and

- advising on the protection of employees on licensed premises who may be targets for attacks and reprisals.

- 7.23 The essential purpose of the licence or certificate in this context is to regulate behaviour on premises and access to them where this relates to licensable activities and the licensing objectives. As has been said above, conditions attached to licences cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and his staff or agents, but can directly impact on the behaviour of those under the licensee's direction when on his premises or in the immediate vicinity of the premises as they seek entry or leave.
- 7.24 Licence conditions should not replicate licensing offences that are set out in the 2003 Act. For example, a condition that states that a licence holder shall not permit drunkenness and disorderly behaviour on his premises would be superfluous because this is already a criminal offence. A condition that states that a licence holder shall not permit the sale of controlled drugs on the premises would be similarly superfluous.
- 7.25 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of close circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have such cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure certain areas are properly covered and to ensure that there is no subsequent dispute over the terms of the condition. Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are informed of such instances where the knowledge about certain premises, its style or characteristics give rise to a need for such requirements.
- 7.26 Text and radio pagers enabling premises licence holders, designated premises supervisors and managers of premises and clubs to communicate instantly with the local police can provide for rapid response to situations of disorder which may be endangering the customers and staff on the premises. The Secretary of State recommends that text or radio pagers should be considered appropriate necessary conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises.
- 7.27 Some conditions primarily focused on the prevention of crime and disorder will also promote other licensing objectives. For example, a condition requiring that all glasses used on the premises for the sale of alcoholic drinks should be made of plastic or toughened glass or not allowing bottles to pass across a bar may be necessary to prevent violence where such activity is likely to occur, by denying

assailants suitable weapons, but may also benefit public safety by minimising the injury done to victims when such assaults take place (for example, facial injuries resulting from broken glass). A condition must also be capable of being met, for example, while beer glasses may be available in toughened glass, wine glasses may not. Conditions of this kind therefore need careful consideration to ensure that they are not only necessary but both practical and achievable. Similarly, although most commonly made a condition of a licence on public safety grounds, consideration can also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, consideration should also be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.

- 7.28 In the context of crime and disorder and public safety, the preservation of order on premises where alcohol is supplied for consumption and to which very large numbers of people are admitted may give rise to genuine concerns about the competency of the management team charged with the maintenance of order on those premises. The designated premises supervisor is the key person who will usually be charged with day to day management of the premises by the premises licence holder and therefore with preventing disorder there. No conditions relating to the management competency of designated premises supervisors should normally be attached to premises licences. Such a condition could only be justified as necessary in rare circumstances where it could be demonstrated that in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained and licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act ensure, for example, that the prevention of disorder is in sharp focus for all such managers, licence holders and clubs.
- 7.29 Furthermore, again in the context of crime and disorder, where appropriate, communications between the managers of the premises and the police can be of great importance. Involvement by operators and managers in voluntary schemes and initiatives may be particularly valuable. Conditions requiring dedicated text or pager links between management teams and local police stations can provide early warning of disorder and also can be used to inform other licence holders that a problem has arisen in the area generally. For example, where a gang of youths is causing problems in one public house and their eviction will only result in them going on elsewhere to cause problems on other premises, there is advantage in communication links between the police and other licensed premises and clubs. However, while this may be necessary and effective in certain parts of licensing authority areas, it may be less effective or even unnecessary in others. Police views on such matters should be given considerable weight and licensing authorities must remember that only necessary conditions, which are within the control of the licence holder or club, may be imposed.
- 7.30 The Indecent Displays Act 1981 makes provision prohibiting the public display of indecent matter, subject to certain exceptions. It should not therefore be

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

Public safety

- 7.31 Annex E provides examples of conditions which relate to public safety, including fire safety, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate, necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.
- 7.32 Licensing authorities and responsible authorities should note that the public safety objective is concerned with the physical safety of the people using the relevant premises and not with public health, which is dealt with in other legislation. There will of course be occasions when a public safety condition could incidentally benefit health, but it should not be the purpose of the condition as this would be ultra vires the 2003 Act. Accordingly, conditions should not be imposed on a premises licence or club premises certificate which relate to cleanliness or hygiene. In addition, no attempt should be made to use a licensing condition to impose a smoking ban for either health or desirability. These are matters for other legislation and voluntary codes of practice and duplication should be avoided. Details of the voluntary Public Places Charter on Smoking to which many licensed premises are signatories can be viewed on www.airinitiative.com.
- 7.33 Where there is a requirement in other legislation for premises open to the public or for employers to possess certificates attesting to the safety or satisfactory nature of certain equipment or fixtures on the premises, it would be unnecessary for a licensing condition to require possession of such a certificate. However, it would be permissible to require as a condition of a licence or certificate, if necessary, checks on such equipment to be conducted at specified intervals and for evidence of such checks to be retained by the premises licence holder or club provided this does not duplicate or gold-plate a requirement in other legislation. Similarly, it would be permissible for licensing authorities, following the receipt of relevant representations from responsible authorities or interested parties, to attach conditions which required equipment of particular standards to be

maintained on the premises. Responsible authorities – such as health and safety authorities – should therefore make clear their expectations in such respects to enable prospective licence holders or clubs to prepare effective operating schedules and club operating schedules.

- 7.34 “Safe capacities” should only be imposed where necessary for the promotion of public safety or the prevention of disorder on the relevant premises. For example, if a fire certificate for certain premises includes certain conditions, it would be unnecessary to reproduce them in a premises licence. Indeed, it would be wrong to lay down conditions which produce conflict with other legal requirements. However, if the fire certificate has been granted for premises when their future use for a licensable activity was not known, the fire authority may consider it necessary for a new capacity to be attached to the premises which would apply at any material time when the licensable activities are taking place and make representations to that effect. In considering the representations, licensing authorities should give particular weight to those made by the fire authority in such circumstances. Capacities attached to premises licences or club premises certificates may in certain circumstances be necessary in preventing disorder, as overcrowded venues can increase the risks of disorder as crowds become frustrated and hostile.
- 7.35 The special provisions made for dancing, amplified and unamplified music in section 177 of the 2003 Act applies only to premises with a “permitted capacity” of not more than 200 persons. In this context, the capacity must either be one imposed through the premises’ fire certificate or where the certificate does not include a capacity or one does not exist, the fire authority must be asked to make a recommendation on the capacity of the premises. In the first instance, any application for a premises licence or club premises certificate in respect of premises without an existing permitted capacity where the applicant wishes to take advantage of the special provisions set out in section 177 of the 2003 Act, the applicant should conduct their own risk assessment as to the appropriate capacity of the premises. They should send their recommendation to the fire authority who will consider it and then decide what the “permitted capacity” of those premises should be.
- 7.36 An order made under the 2003 Act will repeal the Cinematograph (Safety) Regulations 1955 (S.I 1995/1129) which contained a significant number of regulations in respect of fire safety provision at cinemas. Applicants taking advantage of the “grandfather rights” pursuant to Schedule 8 to the 2003 Act will be subject to conditions which re-state those regulations in their new premises licence or club premises certificate. To reduce the regulatory burden on them (to the extent to which that can be done while still promoting the licensing objectives), such applicants would also need to apply to vary their converted licences or certificates. For those who are not exercising “grandfather rights” or who are seeking to vary a converted licence, licensing authorities and responsible authorities should recognise the need for steps to be taken to assure public safety at such premises in the absence of the 1955 Regulations. Annexes E and F set out example conditions which should be considered as appropriate and necessary when preparing a risk assessment to ensure necessary public safety from fire.
- 7.37 Public safety includes the safety of performers appearing at any premises.

Public nuisance

- 7.38 Annex G provides examples of conditions which relate to public nuisance, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of conditions from which appropriate and necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.
- 7.39 The 2003 Act requires licensing authorities following receipt of relevant representations and, through the making of representations, responsible authorities to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences and club premises certificates to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 7.40 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 for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.⁶
- 7.41 Conditions relating to noise nuisance will normally concern steps necessary to control the levels of noise emanating from premises from simple mechanisms like ensuring that doors and windows are kept closed after a particular time in the evening to more sophisticated mechanisms like sound level inhibitors on amplification equipment or sound proofing. Any conditions necessary to promote the prevention of public nuisance should be tailored to the style and characteristics of premises and the type of activities expected to take place there.
- 7.42 As with all conditions, it will be clear that conditions relating to noise nuisance may in certain circumstances not be necessary where the provisions of Environmental Protection Act 1990 and of the Noise Act 1996 adequately protect those living in the vicinity of the premises in question. 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 necessary.

⁶ It should also be noted in this context that it remains an offence under the 2003 Act to sell or supply alcohol to a person who is drunk. This is particularly important because of the nuisance and anti-social behaviour which can be provoked after leaving licensed premises.

- 7.43 Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- 7.44 Measures to control light pollution will also require careful thought. Bright lighting outside premises considered necessary to prevent crime and disorder may itself give rise to light pollution for some neighbours. Applicants, licensing authorities and responsible authorities will need to balance such issues.
- 7.45 In the context of preventing public nuisance, it is again essential that conditions are focused on measures within the direct control of the licence holder or club. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, club or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from a responsible authority or interested party that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.
- 7.46 The cumulative effects of litter in the vicinity of premises carrying on licensable activities can cause public nuisance. For example, it may be appropriate and necessary for a condition of a licence to require premises serving customers from take-aways and fast food outlets from 11.00pm to provide litter bins in the vicinity of the premises in order to prevent the accumulation of litter from its customers. Such conditions may be necessary and appropriate in circumstances where customers late at night may have been consuming alcohol and be inclined to carelessness and anti-social behaviour. As with all conditions, the licensing authority will have to consider whether such a requirement is necessary having regard to the licensable activities carried on, the type and characteristics of the premises.

The protection of children from harm

- 7.47 Annex H provides examples of conditions which relate to the protection of children from harm, and could be used where necessary in the particular circumstances of any individual premises. These should be treated as a pool of

conditions from which appropriate and necessary conditions for premises licences and club premises certificates may be drawn to tailor a licence or certificate to particular premises. It is important that they should not be treated as standard conditions.

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

7.49 However, in the context of many licensed premises such as pubs, restaurants, café bars and hotels, it should be noted that the Secretary of State does not wish to see the development of family-friendly environments frustrated by overly restrictive conditions in respect of children where there is no good reason to impose them. It should be noted that conditions relating to any of the licensing objectives may not be lawfully imposed unless they are necessary. The Secretary of State intends that the admission of children to premises holding a premises licence or club premises certificate should normally be freely allowed without restricting conditions unless the 2003 Act itself imposes such a restriction or there are good reasons to restrict entry or to exclude children completely. The changes in the 2003 Act to the law concerning consumption of alcohol by minors on licensed premises now mean the focus for licensing authorities, the police and other authorised persons should be on the enforcement of those laws.

7.50 Conditions relating to the access of children which are necessary to protect them from harm are self evidently of great importance. As mentioned in connection with statements of licensing policy in Chapter 3 of this Guidance, issues will arise about the access of children in connection with premises:

- where adult entertainment is provided;
- where there have been convictions of the current management 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 in the company of adults during a table meal);
- where requirements for proof of age cards or other age identification to combat the purchase of alcohol by minors is not the norm;
- with a known association with drug taking or dealing;
- where there is a strong element of gambling on the premises (but not small numbers of cash prize machines);
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

- 7.51 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. Such trading practices should be obvious from the operating schedule or club operating schedule provided with the relevant application allowing the framing of an appropriate, time-limited condition. Similarly, gambling may take place in part of a leisure centre but not in other parts of those premises. This means that the access of children will need to be carefully considered by applicants, licensing authorities and responsible authorities. In many respects, it should be possible to rely on the discretion and common sense of licence and certificate holders. However, licensing authorities and responsible authorities should still expect applicants when preparing an operating schedule or club operating schedule to state their intention to exercise such discretion and where they are necessary, to set out the steps to be taken to protect children from harm when on the premises.
- 7.52 Conditions, where they are necessary, should reflect the licensable activities taking place on the premises and can include:
- where alcohol is sold, requirements for the production of proof of age cards or other age identification before sales are made to individuals under 18 years (be the age limit 18 or 16 as in the case of the consumption of beer, wine and cider in the company of adults during a table meal);
 - limitations on the hours when children may be present;
 - limitations on the presence of children under certain ages when particular specified activities are taking place;
 - limitations on the parts of the premises to which children may have access;
 - age limitations (below 18);
 - limitations or exclusions when certain activities are taking place;
 - requirements for 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.
- 7.53 The Secretary of State considers that representations made by the children protection bodies and the police in respect of individual applications should be given considerable weight when they address necessary issues regarding the admission of children.
- 7.54 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.

7.55 Where a condition adopts the approach of the licensing authority classifying films, it should normally be expressed in terms which require the cinema or venue operator to submit any film that it intends to exhibit 28 days before it is proposed to show it. This is to allow the authority time to classify it and advise the licence holder or club of the age restrictions that will apply in that instance.

7.56 Films would normally be classified by the British Board of Film Classification or the licensing authority in the following way:

- U Universal – suitable for all
- PG – Parental Guidance. Some scenes may be unsuitable for young children.
- 12A – Passed only for viewing by persons aged 12 years or older or younger persons accompanied by an adult.
- 15 – Passed only for viewing by persons aged 15 years and over.
- 18 – Passed only for viewing by persons aged 18 years and over.
- Restricted 18 – Passed only for viewing by persons aged 18 years or over who are members of a properly constituted club or their guests aged 18 or over.

7.57 Against the background of such classifications, a condition might be expressed in the following terms:

“Where a programme includes a film in the 12A, 15 or 18 category no person appearing to be under the age of 12 (and unaccompanied in that case), 15 or 18 as appropriate shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position a notice in the following terms –

**PERSONS UNDER THE AGE OF [INSERT APPROPRIATE AGE]
CANNOT BE ADMITTED TO ANY PART OF THE
PROGRAMME**

Where films of different categories form part of the same programme, the notice shall refer to the oldest age restriction.

This condition does not apply to members of staff under the relevant age while on duty provided that the prior written consent of the person’s parents or legal guardian has first been obtained.”

7.58 Moreover, in connection with a film exhibition, conditions should normally specify that immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the category of the film. For a film passed by the licensing authority conditions should

require notices to be displayed both inside and outside the premises so that persons entering can readily read them and be aware of the category attached to any film or trailer.

- 7.59 The admission of children to theatres, as with other licensed premises, should not normally be restricted. However, theatres may present a range of diverse activities. The admission of children to the performance of a play should normally be at the discretion of the licence holder and no condition restricting their access to plays should be attached. However, theatres may also present a wide range of entertainment including, for example, variety shows incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be necessary. Entertainments may also be presented at theatres specifically for children. It may be necessary to consider whether a condition should be attached to a premises licences or club premises certificates which requires the presence of a sufficient number of adult staff on the premises to ensure the well being of the children during any emergency.
- 7.60 The British Board of Film Classification invests considerable resources and expertise in the classification of films. The Secretary of State therefore recommends that licensing authorities should not duplicate this effort by choosing to classify films themselves. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role. Licensing authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

Safer clubbing – drugs in clubs

- 7.61 The Government outlined its commitment to addressing drugs in clubs in 1998 in its strategy ‘Tackling Drugs to Build a Better Britain’. In 2001 the Home Office and the London Drug Policy Forum produced guidance entitled ‘Safer Clubbing’ which, building on the earlier success of ‘Dance Till Dawn Safely’, was nationally welcomed and proved an extremely useful document for licensing officers, club managers and promoters. The aim of reducing the potential for harm through better management of dance venues was affirmed in the 2003 ‘Updated Drug Strategy’ which may be viewed with ‘Safer Clubbing’ at www.drugs.gov.uk
- 7.62 A key element of the strategy described in ‘Safer Clubbing’ is the use of necessary and appropriate licensing conditions to control the environment at relevant premises. A check-list of the most important measures described in ‘Safer Clubbing’ are reproduced in Annex J (modified to refer to provisions of the 2003 Act). The Secretary of State commends this document for use by the police, all licensing authorities, all responsible authorities and all authorised persons under the 2003 Act.
- 7.63 ‘Safer Clubbing’ recommends that every Drug Action Team which has clubs in its area, should take the lead in getting the police, club owners and promoters, local authorities and local drug agencies to sit down together and plan a strategy which ensures that dance events take place in as safe an environment as possible.

There may also be the need to involve existing multi-agency partnerships, such as Crime and Disorder Reduction Partnerships, or town centre management groups, in developing a strategy.

7.64 “Safer Clubbing” also shows that clubs themselves have a responsibility to develop a drugs policy and in many cases will wish to contact the Drug Action Team (DAT) in order to pursue this. Clubs and their owners will need to work with the police, local and licensing authorities and drug services, as represented on the DAT, to develop a drug policy combating drugs dealing and use and ensuring the safety of their venue. Certain factors exacerbate the risks to the safety of those taking drugs. These include taking combinations of controlled drugs and/or mixing these with alcohol and becoming overheated and exercising to exhaustion. All these factors are commonly found at dance events. Many drugs, and combinations of drugs, are used in the club setting and staff should be trained to recognise symptoms and there should be appropriate provision of trained first aiders. Recreational drug misuse frequently involves Ecstasy, from which approximately 80-100 people have died in the last ten years. The majority of these deaths have been due to acute heat stroke. In most cases the heat stroke has been caused by a combination of factors:

- Ecstasy causes body temperature to rise significantly;
- non-stop dancing increases this already elevated temperature;
- poor ventilation, over-heated venues and over-crowding, increase temperature further;
- inadequate intake of water (or other non-alcoholic drinks) exacerbates dehydration and impairs the body’s ability to cool itself; and
- taking alcohol or other drugs with Ecstasy can further cause the body to overheat.

7.65 Licensing conditions can impact on all these factors. In addition, licensing authorities are encouraged to ensure that their officers engage in the following key activities:

- providing clear information on the licensing authority’s policy on safer clubbing in its local statement of policy;
- providing clear information on how to prepare operating schedules or club operating schedules in support of applications for premises licences or club premises certificates;
- providing induction training to councillors serving on licensing committees;
- advising venue owners on how to establish and maintain a safe environment;

- advising venue owners, in partnership with police licensing officers, on developing a venue drug policy;
- advising venue operators what to do in the event of an emergency where drugs are known or suspected to be involved;
- ensuring that sufficient first aiders are always present at a venue and are trained to a high standard;
- informing clubbers of their rights;
- liaising with police licensing and other officers to ensure good communication about potentially dangerous venues;
- encouraging venues to use outreach services;
- encouraging venues to provide safe transport home;
- surveying clubbers on their views of the safety aspects of different local venues;
- monitoring the operation of clubs at times of peak occupancy;
- ensuring that door supervisors are properly registered with the Security Industry Authority;
- ensuring that door supervisors have been properly trained; and
- encouraging the provision of free cool water and “chill out areas” so that clubbers do not become overly exhausted or dehydrated.

7.66 Safer Clubbing has been directly aimed at late night club type venues which have been associated with drug misuse. It will be updated in 2004 to take account of the need to ensure the safety of people attending events at all licensed premises which can now operate the type of music events at which people are more likely to take drugs.

Mandatory conditions where a premises licence authorises supply of alcohol

7.67 Where the 2003 Act provides for a mandatory condition to be included in a premises licence, it is the duty of the licensing authority issuing the licence to include that condition on the premises licence. The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or his or her licence has been suspended. In addition, the licence must require that every supply of alcohol under the premises licence must be made or authorised by a

person who holds a personal licence. This does not mean that the condition should require the presence on the premises at all material times of the designated premises supervisor. Similarly, the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make such sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol during the course of an evening, but may be absent at times from the premises when a transaction takes place. However, the personal licence holder will not be able to escape responsibility for the actions of those he authorises to make such sales.

The performance of plays

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

Censorship

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

Door supervision

- 7.70 Under the terms of the 2003 Act, whenever a condition is included in a premises licence that at any time individuals must be present at the premises to carry out a security activity (for example, door supervisors), the licence must include a condition requiring that each such person must be licensed by the Security Industry Authority. Further details can be found in the Private Security Industry Act 2001 (as amended by the 2003 Act). The 2001 Act also sets out a number of exemptions primarily relating to premises staging plays or exhibiting films or that are casinos or bingo halls licensed under the Gaming Act 1968 (or premises where a club premises certificate is in force when activities are being carried on under the authority of that certificate).
- 7.71 It should be noted that a condition may provide for stewards and other persons whose role is not to carry out a security activity but to provide advice about and ensure the safety of those visiting the premises. Such individuals need not be registered with the Security Industry Authority (SIA). This underlines the need for clarity when expressing any condition to be attached to a premises licence. In addition, there will be cinemas and theatres carrying on other licensable activities on the premises as well as their primary function of exhibiting films or presenting plays. The Secretary of State recommends that such premises should

not normally require door supervision by individuals registered with the SIA in such premises, but the circumstances of all applications should, of course, be considered individually.

- 7.72 It is therefore important that conditions being included in licences or certificates are clear and unambiguous about their requirements. For example, a licence may include a requirement for staff at the premises to be present to undertake a certain activity (for example, in a safety context) or for stewards to organise, advise and direct members of the public. If the licensing authority intends that certain individuals (for example, door supervisors) should carry out security activities as defined in the 2001 Act, this should be explicit and therefore give rise to the need for the mandatory condition on a premises licence. It should be equally clear where such arrangements (and the mandatory condition) are not required.

Copyright and royalties

- 7.73 Copyright law is intended to safeguard the livelihood of authors, composers, arrangers, playwrights, film-makers, publishers and makers of recordings and is extremely important and offences relating to copyright are made “relevant offences” by the 2003 Act. Conditions attached to premises licences should not require adherence to requirements in the general law that the use of copyright material must be authorised. However, because the existing law protects these rights, a condition included in a premises licence or club premises certificate could not be considered necessary for the promotion of one of the licensing objectives. Licensing authorities should however strongly remind applicants of the need to obtain Performing Right Society licences and Phonographic Performances Ltd licences and to observe other copyright arrangements; and that failure to observe the law in this area could lead to an application for the review of the premises licence or the club premises certificate on grounds of the crime prevention objective.

Major art and pop festivals, carnivals, fairs and circuses

- 7.74 Licensing authorities should publicise the need for the organisers of major festivals and carnivals to approach them at the earliest opportunity to discuss arrangements for the licensing of those activities falling under the 2003 Act. In respect of some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations within the premises. This would involve the preparation of a substantial operating schedule, and licensing authorities should offer advice and assistance about its preparation. In particular, the licensing authority should act as a co-ordinating body for the input from the responsible authorities that will eventually be notified formally about the proposal and who can make representations before an application is made.
- 7.75 For other events, applications for many connected premises licences may be made which in combination will represent a single festival. It is important that licensing authorities should publicise the need for proper co-ordination of such arrangements and will need to ensure that responsible authorities are aware of the connected nature of the individual applications. Licensing authorities should encourage such applicants to establish a co-ordinating committee to ensure a

strategic approach to the development of operating schedules. The purpose would be to ensure that conditions are not included in licences which conflict with each other, make compliance uncertain or would be difficult to enforce.

- 7.76 In the case of circuses and fairgrounds, much will depend on the content of any entertainment presented. For example, at fairgrounds, a good deal of the musical entertainment may be incidental to the main attractions and rides at the fair which are not themselves regulated entertainment. However, in the case of a circus, music and dancing are likely to be main attractions themselves (and would be regulated entertainment) amidst a range of other activities which are not all regulated entertainment.
- 7.77 Particular regard should be paid to the relevant guidance provided in the publications listed at paragraph 5.129 of this Guidance in respect of such events.
- 7.78 In addition, in the context of festivals and carnivals, local authorities should bear in mind their ability (mentioned in Chapter 3) to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas where festivals and carnivals might take place. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give performances in these places, although they would need the permission of the local authority to put on the event. Care should be exercised to ensure that there is no confusion between the role of enforcing licensing legislation, which falls to the licensing authority, and the role of providing advice and assistance to festival and carnival organisers from other parts of the local authority.

Discounting and sales promotions

- 7.79 Because of local concerns about the potential for drunkenness and disorder, licensing authorities may be minded to agree local voluntary Codes of Practice in respect of the discounting of the costs of alcoholic drinks, “happy hours” and sales promotions whereby drinks are offered free in certain circumstances; or to consider adding conditions to premises licences to that end. No generalised voluntary arrangements should be promoted by licensing authorities and no standard conditions should be routinely attached to premises licences in an area which relate to drinks promotions. The promotion of price fixing or the creation of cartels is unlawful, and there would also be serious risks of breaching competition law. It is in order for licensing authorities to encourage adoption locally of voluntary industry codes of practice which cover irresponsible drinks promotions such as that produced by the British Beer and Pub Association (the BBPA’s Guidelines on On-Trade Promotions). In general, it would be necessary to consider each application on its individual merits, tailoring any conditions carefully to cover only irresponsible promotions in the particular and individual circumstances of any premises where these are necessary for the promotion of the licensing objectives. In addition, when considering any relevant representations from responsible authorities, such as the police, or interested parties, such as local residents, which demonstrate a clear causal link between sales promotions or price discounting and levels of crime and disorder on or in

the vicinity of the premises, it would appropriate for the licensing authority to consider whether the imposition of a new condition prohibiting irresponsible sales promotions or the discounting of prices of alcoholic beverages at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice. There will often be very fine lines between what is and is not lawful within the scope of their power under the 2003 Act.

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

7.80 Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons. A comprehensive review of the research conducted in the last twenty-five years into alcohol and crime and its relationship to licensed premises, “Alcohol and Crime: Taking Stock” by Ann Deehan, Home Office Crime Reduction Research Series Paper 3 can be viewed on www.crimereduction.gov.uk/drugsalcohol8.htm. It shows that the environment within such establishments can have a significant bearing on the likelihood of crime and disorder arising on the premises. Key points on preventing crime and disorder include:

- controlling the capacity to prevent overcrowding and frustration to customers;
- ensuring adequate seating for customers; and
- ensuring the provision of door security teams at the premises to control capacity and ensure already drunk or disorderly individuals are not admitted.

7.81 Where necessary and appropriate, conditions can be attached to premises licences for the promotion of the prevention of crime and disorder at such premises (if not volunteered by the venue operator and following representations made on such grounds) which require adherence to:

- a prescribed capacity;
- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of SIA registered security teams to control entry for the purpose of compliance with the capacity limit and to deny entry to individuals who appear drunk or disorderly or both.

8 Permitted Temporary Activities (Temporary Event Notices)

- 8.1 This Chapter describes best practice in respect of the system for administering the arrangements in the 2003 Act for the temporary carrying on of the sale or supply of alcohol, the provision of regulated entertainment or the provision of late night refreshment at premises which is not authorised by a premises licence or club premises certificate.

General

- 8.2 The most important aspect of the system of permitted temporary activities is that no authorisation as such is required for these events from the licensing authority. The system involves notification of an event to the licensing authority and the police, subject to fulfilling certain conditions. In general, only the police may intervene to prevent such an event taking place or to agree a modification of the arrangements for such an event; and it is characterised by an exceptionally light touch bureaucracy. The licensing authority may only ever intervene of its own volition if the limits set out in the 2003 Act on the number of temporary event notices that may be given in various circumstances would be exceeded. Otherwise, the licensing authority is only required to issue a timely acknowledgement.
- 8.3 It should be noted that the giving of a temporary event notice does not relieve the premises user from any requirements under planning law for appropriate planning permission where it is required.
- 8.4 Such a light touch is possible because of the limitations directly imposed on the use of the system by the 2003 Act itself. The limitations apply to:
- the number of times a person (the “premises user”) may give a temporary event notice (50 times per year for a personal licence holder and 5 times per year for other people);
 - the number of times a temporary event notice may be given in respect of any particular premises (12 times in a calendar year);
 - the length of time a temporary event may last for these purposes (96 hours);
 - the maximum aggregate duration of the periods covered by temporary event notices at any individual premises (15 days); and
 - the scale of the event in terms of the maximum number of people attending at any one time (less than 500).
- 8.5 In any other circumstances, a full premises licence or club premises certificate would be required for the period of the event involved. A person may also choose to apply for a premises licence or club premises certificate if they do not wish to take advantage of the light touch arrangements.

- 8.6 Many premises users giving temporary event notices will not have commercial backgrounds or ready access to legal advice. They will include, for example, people acting on behalf of charities, community and voluntary groups, schools, churches and hospitals all of which may stage public events to raise funding at which licensable activities will take place. Licensing authorities should therefore ensure that local publicity about the system of permitted temporary activities is clear and understandable and should strive to keep the arrangements manageable and user-friendly for these groups.

Where there is a personal licence holder involved

- 8.7 A personal licence holder will be able to give a temporary event notice in relation to licensable activities, including the sale of alcohol at any premises on up to 50 occasions in each year for up to four days on each occasion (subject to the limitations for each premises – see paragraph 8.8 below), subject to informing the licensing authority and the police for the area in which the event is to take place of relevant details. These details are:

- the licensable activities to take place during the event;
- the period (not exceeding 96 hours) during which it is proposed to use the premises for licensable activities;
- the times during the event period that the premises user proposes that the licensable activities shall take place;
- the maximum number of persons (being less than 500) which it is proposed should, during those times, be allowed on the premises at the same time;
- where the licensable activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or off the premises or both; and
- any other matters prescribed by the Secretary of State.

- 8.8 The Secretary of State does not currently intend to prescribe any further requirements, but any relevant regulations made by the Secretary of State will be notified to the licensing authorities and the police, and may be viewed on the DCMS website.

- 8.9 A personal licence holder may also use his or her allocation of 50 temporary event notices at premises in respect of which a premises licence or club premises certificate has been granted. However, only 12 notices may be granted in respect of the same premises and in respect of those premises there is an overriding maximum aggregate duration of 15 days. So, for example, a premises user may give notice in respect of premises licensed only for the sale of alcohol for consumption on those premises that those premises are to be used for an ad hoc event for regulated entertainment, such as the performance of live music, through this system. Alternatively, a temporary event notice could be used in

respect of the sale of alcohol for a period beyond the normal hours during which alcohol may sold at the premises under its premises licence for an ad hoc occasion. Another example would be the provision of late night refreshment (eg the supply of hot food) at the end of a quiz night. In both of these examples, a temporary event notice could only be used if no more than 499 people were to be present and if the ad hoc event is something that is predictable and anticipated to occur on a number of occasions it is expected that the licensable activities would form part of the application for a premises licence.

- 8.10 On each occasion at least 10 working days notice must be given, but there is nothing to prevent simultaneous notification of multiple events at a single time so long as the first event is at least ten days away. For example, an individual personal licence holder wishing to exhibit and sell beer at a series of country shows may wish to give several notices simultaneously. However, this would only be possible where the events are to take place in the same licensing authority (and police area) and the premises to be used at the show would be occupied by no more than 499 people at any one time.
- 8.11 Although, as stated above, ten working days is the minimum possible notice that may be given, licensing authorities should publicise locally their preferences in terms of forward notice and encourage notice givers to provide the earliest possible notice of events likely to take place. Licensing authorities should also consider publicising a preferred maximum time in advance of an event that applications should be made. For example, if an application is made too far in advance of an event, it may be difficult for the police to make a sensible assessment and could lead to objections that could be otherwise avoided.
- 8.12 Section 193 of the Act defines “working day” as any day other than a Saturday, a Sunday, Christmas Day, Good Friday, or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales. “Ten working days” notice means ten working days exclusive of the day on which the event is to start.
- 8.13 Licensing authorities may not seek to attach any terms, limitations or restrictions on the carrying on of licensable activities at such events under the authority of a temporary event notice. It is however desirable for licensing authorities to provide local advice about proper respect for the concerns of local residents; of other legislative requirements regarding health and safety, noise pollution or the building of temporary structures; of other necessary permissions, for example, with regard to road closures or the use of pyrotechnics in public places; with regard to local bye-laws; and the need to prevent anti-social behaviour by those attending. Local publicity should also remind premises users of relevant offences under licensing law including the laws governing sales of alcohol to minors or to any person who is drunk, and of the police powers to close down events with no notice on grounds of disorder, the likelihood of disorder or because of public nuisance caused by noise emanating from the premises. These matters may be covered in the licensing authority’s statement of licensing policy.
- 8.14 A purpose of the notification requirement is to enable the licensing authority to check that the limitations set down in Part 5 of the 2003 Act are being observed and to intervene if they are not. Where the application is not within the

parameters described above, the licensing authority will issue a counter notice to the person giving the notice – the premises user. Where the temporary event notice is in order, the fee prescribed by the Secretary of State paid, the event falls within the limitations in the Act, and there has been no police intervention on crime prevention grounds, the licensing authority will record the notice in its register and send an acknowledgement to the premises user.

- 8.15 In the case of an event proceeding under the authority of a temporary event notice, failure to adhere to the requirements of the 2003 Act, such as the limitation of no more than 499 being present at any one time, would mean that the event was unauthorised. In such circumstances, the premises user would be liable to prosecution.

Police intervention

- 8.16 The second and more important purpose of the notification requirement is to afford the police the opportunity to consider whether they should object to the event taking place for reasons of preventing crime and disorder. Such cases might arise because of concerns about the scale, location or timing of the event. The general run of cases where alcohol is supplied away from licensed premises at a temporary bar under the control of a personal licence holder (eg at weddings or small social, community, charitable or sporting events) should not give rise to the use of these police powers. The 2003 Act provides that the police may issue an objection notice because they believe the event would undermine the crime prevention objective set out in the Act. The police must issue any objection notice within 48 hours of being notified, but they can subsequently withdraw their objection notice. If the police do not intervene, they will still be able to rely on their powers of closure under Part 8 of the 2003 Act should disorder or noise nuisance subsequently arise. The issuing of such an objection notice requires the consideration of the objection by the licensing authority at a hearing. Consideration by the licensing authority is confined to the crime prevention objective. It may not, for example, uphold a police objection notice on grounds of public nuisance. At the hearing, the police and the premises user may be heard by the relevant licensing committee. A hearing would not be necessary if the objection notice is withdrawn by the police.
- 8.17 The possibility of police intervention is another reason why event organisers should be encouraged by local publicity not to rely on giving the minimum amount of notice and to contact local police licensing officers at the earliest possible opportunity about their proposals.
- 8.18 The police may withdraw their objection notice at any stage if the proposed premises user agrees to modify his proposal to meet their concerns. For example, if the premises user agrees to modify the period during which alcohol may be sold. The licensing authority will then be sent or delivered a copy of the modified notice by the police as proof of their agreement.

Where no personal licence holder is involved

- 8.19 The 2003 Act provides that any individual person aged 18 or over may give a temporary event notice whether or not they hold a personal licence. They will

not therefore have met the tests and qualifications described in Part 6 of the Act. Where alcohol is not to be sold, this should not matter. However, many events will involve combinations of licensable activities. In the absence of a premises user holding a personal licence showing these tests and qualifications have been met, the Act limits the number of notices that may be given by any non-personal licence holder to 5 occasions per year. In every other respect, the Guidance and information set out in paragraphs 8.2 to 8.14 above applies.

- 8.20 In addition to the points made in paragraphs 8.15 to 8.17, the police will be alive to notifications given by individuals in the area known to have a criminal background. They can also be expected to give particular attention to events staged primarily for children and will be able to intervene, for example, if they have exceptional concerns about any premises user with a known background in paedophilia.
- 8.21 It should be noted that temporary event notices may be given in respect of club premises covered by club premises certificates by non-personal licence holders. This means, for example, that a club which under its certificate is normally only permitted to supply alcohol to its members and their guests may during the period covered by a temporary event notice (subject to the limitation on numbers and occasions) under the authority of the notice and the responsibility of the individual giving the notice (the premises user) admit members of the public and sell alcohol to them as well as provide regulated entertainment. Only 12 such notices may be given in respect of the same club premises in any calendar year and the maximum aggregate duration of 15 days will also apply.

Additional limitations

- 8.22 Licensing authorities on receiving temporary event notices will also need to check that other requirements of Part 5 of the 2003 Act are met. For example, a temporary event notice would be void unless there is a minimum of 24 hours between events notified by the premises user in respect of the same premises. This is to prevent evasion of the 96 hour limit on such events and the need to obtain a full premises licence or club premises certificate for more major or permanent events. In addition, for these purposes, a notice is treated as being from the same premises user if it is given by an associate. The 2003 Act defines an associate as being:

- the spouse of that person;
- a child, parent, grandchild, grandparent, brother or sister of that person or their spouse; or
- an agent or employee of that person or their spouse;

A person living with another person as his or her husband or wife is treated for these purposes as his or her spouse.

Closures of temporary events by the police

- 8.23 In October 2001, the Government issued non-statutory Guidance to police officers in respect of section 17 of the Criminal Justice and Police Act 2001 (which amended the Licensing Act 1964), which concerned their powers to close

without notice for up to 24 hours certain licensed premises that were disorderly, likely to become disorderly or causing disturbance by excessive noise. The 2003 Act extended these powers to include in addition premises covered by temporary event notices. That original Guidance has been replaced to reflect the terms of Part 8 of the 2003 Act and the details are set out in Chapter 11 of this Guidance. The powers in section 17 of the 2001 Act also only related to premises selling alcohol for consumption on the premises. These powers now extend to premises being used under a temporary event notice in respect of any licensable activity under the 2003 Act.

9 Club Premises Certificates

- 9.1 This Chapter provides advice about best practice for the administration of the processes for issuing, varying, and reviewing club premises certificates and other associated procedures.

General

- 9.2 The 2003 Act recognises that premises, to which public access is restricted and where alcohol is supplied other than for profit, give rise to different issues for licensing law than those presented by commercial enterprises selling direct to the public. For this reason, it preserves aspects of earlier alcohol licensing law as it applied to “registered members clubs”. These clubs are organisations where members have joined together for particular social, sporting or political purposes and then combined to buy alcohol in bulk as members of the organisation for supply in that context. They commonly include Labour, Conservative and Liberal Clubs, the Royal British Legion, other ex-services clubs, working men’s clubs, miners welfare institutions, social and sports clubs.
- 9.3 There are technically no sales by retail of alcohol by the club at such premises except to guests when guests make a purchase. Where members are involved, there is no sale at that point (as the member owns part of the alcohol stock) and the money passing across the bar when there is a supply of alcohol to a member is merely a mechanism to preserve equity between members where one may consume more than another. This explains why the 2003 Act often refers to the supply of alcohol in the context of clubs and not just to the sale by retail.
- 9.4 Clubs have traditionally not been “licensed” because “sales” do not take place there. They have registered with the magistrates’ courts having established that they qualify to be treated exceptionally. The 2003 Act preserves this special treatment and requires the club to “qualify” to be outside the normal premises licence arrangements. The grant of a club premises certificate means that a qualifying club is entitled to certain benefits. These include:
- the authority to supply alcohol to members and sell it to guests on the premises to which the certificate relates without the need for any member or employee to hold a personal licence;
 - the absence of a requirement to specify a designated premises supervisor (see Chapter 5);
 - more limited rights of entry for the police and authorised persons because the premises are considered private and not generally open to the public;
 - the club premises not being subject to police powers of instant closure on grounds of disorder and noise nuisance (except when being used under the authority of a temporary event notice or premises licence) because they operate under their codes of discipline and rules which are rigorously enforced ; and

- not being subject to potential orders of the magistrates' court for the closure of all licensed premises in an area when disorder is happening or expected.
- 9.5 Such qualifying clubs should not be confused with proprietary clubs, which are clubs run commercially by individuals, partnerships or businesses for the purposes of profit and which require a premises licence and are not eligible to be qualifying clubs.
- 9.6 A qualifying club will be permitted under the terms of a club premises certificate to sell and supply alcohol to its members and their guests only. In order to be a qualifying club instant membership is not permitted and members must wait at least two days between their application and their admission to the club. Any qualifying club may choose to obtain a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public, including the sale of alcohol to them. However, an individual on behalf of a club may give temporary event notices in respect of the premises to cover a period of up to 96 hours on up to 12 occasions each calendar year so long as no more than 499 people attend the event and subject to an overall maximum duration in the year of 15 days and on such occasions may sell alcohol to the public or hire out their premises for use by the public.
- 9.7 Previously, registered members clubs also enjoyed another privilege of being outside the normal licensing regime: the freedom to sell alcohol to minors and allow them to consume it on the club premises. Although in recent years most clubs have operated voluntary rules which prohibit sales and supply of alcohol to those under 18 years old, the 2003 Act has removed this privilege and the sale or supply of alcohol to children in such clubs is now unlawful.
- 9.8 The new authority for the supply of alcohol and provision of other licensable activities on qualifying club premises is a club premises certificate and this is issued by the licensing authority.

Qualifying conditions

- 9.9 Section 62 of the 2003 Act sets out five general conditions which a relevant club must meet to be a qualifying club. Section 63 also sets out specified matters for licensing authorities to enable them to determine whether a club is established and conducted in good faith – the third qualifying condition. Section 64 sets out additional conditions which only need to be met by clubs intending to supply alcohol to members and guests. The full details in respect of these sections of the 2003 Act are reproduced in Annex I.

Associate members and guests

- 9.10 As well as their own members and guests, qualifying clubs are also able to admit associate members and their guests (i.e. members and guests from another qualifying club) to the club premises when qualifying club activities are being carried on without compromising the use of their club premises certificate. This reflects traditional arrangements where such clubs make their facilities open to members of other clubs which operate reciprocal arrangements.

Applications for the grant or variation of club premises certificates

- 9.11 The arrangements for applying for or seeking to vary club premises certificates are extremely similar to those in respect of a premises licence. Licensing authorities should therefore look to Chapter 5 of this Guidance on the handling of such applications and to Chapter 6 in respect of hours of opening. In those Chapters most of the references to the premises licence, premises licence holders and applicants can be read for the purposes of this Chapter as club premises certificates, qualifying clubs and club applicants.

Steps needed to promote the licensing objectives

- 9.12 Club operating schedules prepared by clubs, as with operating schedules for premises licences, must include the steps the club intends to take to promote the licensing objectives. These will be translated into conditions included in the certificate, unless the conditions have been modified by the licensing authority following consideration of relevant representations by responsible authorities or interested parties. Guidance on these conditions is given in Chapter 7 of this Guidance.
- 9.13 The Secretary of State wishes to emphasise that non-profit making clubs make an important and traditional contribution to the life of many communities in England and Wales and bring significant benefits. Their activities also take place on premises to which the public do not generally have access and they operate under codes of discipline applying to members and their guests. In determining what conditions should be included in certificates, licensing authorities should bear these matters in mind and when considering representations from responsible authorities and interested parties, they should bear in mind that conditions should not be attached to certificates unless they can be demonstrated to be strictly necessary. The indirect costs of conditions will be borne by individual members of the club and cannot be recovered by passing on these costs to the general public as would be the case for commercial enterprises or where a club had chosen to carry on the licensable activities at their premises for the public under the authority of a premises licence.

Sex equality

- 9.14 Notwithstanding its importance to society generally, equal treatment on the grounds of gender is not a licensing objective. Conditions should not therefore be imposed which interfere with the arrangements for granting membership or voting within the club. While the Secretary of State believes that all qualifying clubs should adopt fair and equal procedures for admitting people to membership, electing club officials and on voting rights, this a matter for the general law governing sex discrimination. Club premises certificates are not an appropriate vehicle for securing gender equality. It would also be inappropriate to apply one set of rules to qualifying clubs and another set of rules to clubs that do not engage in qualifying club activities and do not therefore require club premises certificates. Licensing authorities should not therefore seek to challenge the bona fides of any qualifying club on these grounds.

Temporary event notices

- 9.15 Licensing authorities should note paragraph 8.20 of this Guidance in connection with permitted temporary activities in club premises.

10 Appeals

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

General

- 10.2 Other than in the case of personal licences, an appeal has to be made to the magistrates' court for the petty sessions area (or any such area) in which the premises concerned are situated. In the case of personal licences, the appeal must be made to the magistrates' court for the petty sessions area in which the licensing authority (or any part of it) which made the decision is situated.
- 10.3 An appeal has to be commenced by the giving of a notice of appeal by the appellant to the justices' chief executive for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision to be appealed against.
- 10.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant licence holder, club or premises user against the representations of a responsible authority or an interested party or the objections of the chief officer of police, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal and the person who made the relevant representation or the chief officer of police will be the appellants.
- 10.5 On determining an appeal, the court may:
- dismiss the appeal;
 - substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
 - remit the case to the licensing authority to dispose of it in accordance with the direction of the court.
- 10.6 The court may make such order as to costs as it thinks fit.
- 10.7 The court, on hearing any appeal, may therefore review the merits of the decision on the facts and consider points of law or address both.

Licensing policy statements and section 182 Guidance

- 10.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court concerned will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if

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

Giving reasons for decisions

- 10.9 In anticipation of such appeals, it is therefore important that licensing authorities should give comprehensive reasons for its decisions. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority’s statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

Implementing the determination of the magistrates’ courts

- 10.10 As soon as the decision of the magistrates’ courts has been promulgated, licensing authorities should not delay its implementation. Any attempt to delay such implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, necessary action should be taken forthwith unless ordered by the magistrates’ court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates’ courts and normal rules of challenging decisions of magistrates’ courts will apply.

Provisional statements

- 10.11 For the avoidance of confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. Following the receipt of relevant representations and the consideration of them, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be necessary for the promotion of the licensing objectives when, and if, an application was made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.

11 Police Powers to Close Premises

- 11.1 Part 8 of the Licensing Act 2003 significantly extends the existing powers of the police (a) to seek court orders to close licensed premises in a geographical area that is experiencing or likely to experience disorder; and (b) to close down instantly individual licensed premises that are disorderly, likely to become disorderly or are causing nuisance as a result of noise from the premises by making these powers available in relation to premises licensed for the provision of regulated entertainment and late night refreshment and to premises in respect of which a temporary event notice has effect. Ministers have previously given undertakings to Parliament that guidance would be issued to police officers about the operation of those powers. This Chapter therefore constitutes that guidance.

General

- 11.2 This guidance has no binding effect on police officers who, within the terms of their force, orders and the law, remain operationally independent. The guidance is provided to support and assist police officers in interpreting and implementing Part 8 of the 2003 Act in the interests of public safety, the prevention of disorder and the reduction of anti-social behaviour. Part 8 of the 2003 Act can assist in the overall strategy to reduce anti-social behaviour.
- 11.3 It is recognised that this guidance cannot cater for every circumstance and that instances may arise where officers will determine the need to operate in ways which will not wholly conform to it. However, at all times, senior police officers deploying the powers in question should seek to ensure that their actions are appropriate, proportionate and necessary in all the circumstances.
- 11.4 Police officers reading this guidance may also find it beneficial to familiarise themselves with the terms of:
- The explanatory notes accompanying the 2003 Act;
 - Part 3 of the Environmental Protection Act 1990; and
 - The Noise Act 1996
- 11.5 Since 1872, the right of licensees to sell and supply alcohol to the general public has co-existed alongside a number of offences which may be committed in the course of exercising that right, and the licensed trade has long understood these social responsibilities. Part 7 of the 2003 Act provides that licensees, designated premises supervisors, members or officers of clubs, premises users who have given a temporary event notice under Part 5 and certain staff of licensed premises commit offences if they allow disorderly conduct on licensed premises or if they sell alcohol to a person who is drunk. These offences may also be committed by such persons not necessarily themselves selling alcohol but allowing sales or supplies to take place. Running alongside these offences, however, are powers afforded to licence holders and such other persons to expel from premises those who are drunk and disorderly.
- 11.6 The extended police powers in Part 8 of the 2003 Act underline the social responsibilities and requirement to maintain order at their premises which fall on

those in the hospitality, leisure and entertainment industry; and the need to enforce the new provisions will usually arise where there has been a failure to comply with the duties referred to above.

- 11.7 The arrangements in section 160 of the 2003 Act (orders to close premises in an area experiencing disorder) will generally be used by the police, with the sanction of the courts, where contingency planning is possible, though may be used in an emergency too. The arrangements in sections 161 – 170 will generally be used only where unanticipated events arise and emergency action proves necessary.
- 11.8 The Government intends that the extended police powers contained in sections 161 - 170 of the 2003 Act should place licence holders, those giving temporary event notices and designated premises supervisors, who will usually have day to day management control of the premises, under pressure to maintain order and minimise anti-social behaviour on licensed premises, and thereby to deter disorder and nuisance behaviour often caused by excessive consumption of alcohol. The powers are intended to make these individuals more alive to their responsibilities to the wider community. As such, the potential as well as the actual use by the police of these powers should itself be beneficial in terms of preventing disorder on and noise nuisance from the relevant premises. The powers therefore have significant deterrent value. In addition, an effective police licensing policy, promoting good crime prevention strategies and professional practice among holders of premises licences and designated premises supervisors, should result in the extended powers being used minimally. It will be noted that in relation to those premises which do not sell or supply alcohol there will be no individual identified as a designated premises supervisor for the purposes of the 2003 Act. However, the provisions in Part 8 of the 2003 Act include the manager of the premises within the definition of “appropriate person” who must be given notice of a closure order so that these powers can be effectively used without obstacle. Good practice should involve an effective working liaison and system of communication between the police and managers of licensed premises. It is recognised that a great deal will depend on the willingness of licensees, managers, designated premises supervisors and premises users to involve themselves in a partnership approach, but those licensees who fail to take a socially responsible attitude will place themselves at greater risk of police action under these powers than other licensees, managers, designated premises supervisors and premises users who actively co-operate.

Orders to close premises in an area experiencing disorder

- 11.9 Section 160 of the 2003 Act replaces and extends the longstanding powers of section 188 of the Licensing Act 1964. Under section 160 a police officer of the rank of superintendent or above may ask a magistrates’ court to make an order requiring all premises holding premises licences or subject to a temporary event notice which are situated at or near the place of the disorder or anticipated disorder to be closed for a period up to 24 hours. The court may not make such an order unless it is satisfied that it is necessary to prevent disorder. A constable may use necessary force to close any premises covered by such an order.
- 11.10 Such orders should therefore normally be sought where public order problems are anticipated, as a result of intelligence or publicly available information, which

may very often be fuelled by the ready availability of alcohol. Examples of future events which might justify action by the police under section 160 of the 2003 Act could include football fixtures with a history of public order problems; and political demonstrations which are thought likely to be hi-jacked by extreme or violent groups. Accordingly, if a football match is taking place on a Saturday, and intelligence is received on the preceding Thursday, which indicates that fans may cause disorder, a senior police officer should not rely on the powers in sections 161 – 170 of the 2003 Act (instant closure without court involvement) on that Thursday specifying closure of premises near the football ground during the following Saturday. This is because the orders under sections 161 - 170 must be made and served at the time the senior police officer forms his or her reasonable belief that the disorder is happening or is imminent, or that the noise nuisance is being caused, and such orders will come into force as soon as they are served. However, where it is possible to anticipate disorder in this way, the courts should be involved and make the decision on the application of a police officer of the rank of superintendent or above as to whether widespread closure is justified.

- 11.11 When seeking an order under section 160 of the 2003 Act, the burden of proof will fall on the police to satisfy the court that their intelligence or evidence is sufficient to demonstrate that such action is necessary. Police officers should recognise that such action may do serious damage to the businesses affected (and in circumstances where those businesses are being conducted properly) and disrupt the activities of consumers and other law-abiding citizens. It is therefore essential that orders are sought only where necessary to prevent disorder.
- 11.12 Where serious disorder is anticipated, many holders of premises licences and premises users who have given temporary event notices will want to co-operate with the police, not least for the protection of their premises and customers. So far as possible, and where time is available, police officers should initially seek voluntary agreement to closure in an area for a particular period of time. The courts should therefore only be involved where other alternatives are not available.

Closure orders for identified premises

- 11.13 Disorder and noise nuisance will more commonly arise in circumstances that cannot readily be anticipated. Section 161 of the 2003 Act provides that a senior police officer of the rank of inspector or above may make an order closing individual premises covered by premises licences or a temporary event notice for up to 24 hours where disorder is taking place, or is likely to take place imminently or a nuisance is being caused by noise emanating from the premises. Such orders may only be made where it is necessary in the interests of public safety or to prevent the nuisance caused by noise coming from the premises. These powers should not be used where it has been possible to anticipate the disorder arising, for example, in connection with intelligence about likely future disorder at a football fixture or in connection with a demonstration. The appropriate course then is to seek a court order in respect of an application under section 160 of the 2003 Act.

Conduct of the premises licence holder

- 11.14 Section 161 of the 2003 Act also provides that the senior police officer must consider the premises licence holder's conduct and that of the manager or designated premises supervisor or premises user who has given a temporary event notice in respect of the premises before making a closure order. This means that if the licence holder or manager or designated premises supervisor or premises user has acted incompetently, inadequately or has actually provoked or caused the problems, the officer may take that into account when deciding whether to make a closure order. On the other side of the coin, if the licensee, manager or designated premises supervisor or premises user has called the police in promptly and acted sensibly in his or her attempts to prevent disorder or noise nuisance, that good conduct should also be taken into account.
- 11.15 In this context, it must be understood that the powers to close licensed premises are not a penalty to be imposed on the licence holder. Part 7 of the 2003 Act contains offences of allowing disorderly conduct on licensed premises for which, on conviction, a court may impose an appropriate penalty on a licence holder. Similarly, the Environmental Protection Act 1990 and the Noise Act 1996 provide for penalties to be imposed by the courts on those who are convicted of causing a statutory noise nuisance. The powers in sections 161 - 170 of the 2003 Act are, first and foremost, designed to protect the public whether a licensee or manager or any other person is at fault or not. This means that even if the licence holder, managers or other persons have done all they can to prevent the disorder or noise nuisance, a senior police officer may on occasions, still believe that closure is necessary to safeguard the public or to prevent the public nuisance. These will be fine judgements, appropriately pitched at a senior police rank. But the police's overriding consideration should always be the public interest.
- 11.16 However, police officers should bear in mind that decisions to close licensed premises, or premises where a temporary event notice has effect, will almost always have a seriously damaging commercial impact on the business involved, and possibly on the livelihoods of licence holders, managers, premises users and members of staff or disrupt a community or charitable event that has been planned for a considerable period of time. It should be noted in this context that premises where a premises licence or temporary event notice has effect will normally be legitimate outlets carrying on the sale and supply of alcohol, providing regulated entertainment or late night refreshment in accordance with their authorisations. The 2003 Act therefore requires the senior police officer to consider whether good or bad practice on the part of the licensee/manager/designated premises supervisor/premises user has been exhibited in the context of the problem being investigated. It is therefore important that not only bad practice is considered; good practice, conduct and intentions should normally weigh in favour of a decision not to proceed by compulsory closure of the premises under a police order. On many occasions, other options will be available to the police, some of which are discussed below.

Voluntary co-operation

- 11.17 The police should, whenever possible, seek the voluntary co-operation of licensees, premises users, designated premises supervisors and managers in resolving incidents of disorder, potential disorder and noise nuisance rather than move directly to a decision to use a closure order.

- 11.18 Police officers should be aware that any decision to deploy the powers available to them to make a closure order under the 2003 Act in respect of premises to which a premises licence relates will almost inevitably lead, after an initial hearing before the courts, to a review by the licensing authority of the licence which involves determining whether or not it is necessary for the promotion of the licensing objectives to exercise its powers to take any steps in relation to the licence including its revocation. A decision by the licensing authority to proceed on that basis will therefore involve police attendance at the hearing and the preparation of material relating to the review. Senior police officers will only want to commit such resources if necessary and justified in the public interest.
- 11.19 If police officers are aware that any premises are showing signs of problematic behaviour relating to disorder, excessive drunkenness or noise which is disturbing local residents, it is sensible to provide early warnings and reminders to licensees, managers and designated premises supervisors of their responsibilities and duties under licensing law; and of the police powers of closure. It should also be underlined that if the police are obliged to deploy their powers, the ultimate consequences could include revocation of the premises licence, and the continued closure of the premises until the conclusion of any appeal proceedings before the courts.
- 11.20 Similarly, where despite warnings, licensed premises exhibit problems over a period of time, but no single instance is sufficient in itself to justify closure action, it is open to the police to seek a review of the premises licence under Part 3 of the 2003 Act in the normal way.
- 11.21 Where the police attend an incident, following complaints about disorder or noise nuisance to local residents, or attend at the request of the licensee, and a senior police officer of inspector rank or above reasonably believes that closure is necessary under the terms of the 2003 Act, police officers should advise the licence holder, designated premises supervisor, premises user or manager of the premises immediately. Wherever possible, police officers should then give the licence holder, manager, designated premises supervisor or premises user an opportunity to close the premises voluntarily, on police advice, until the following day. A closure order will normally only have to be made if police advice is disputed or rejected and it becomes necessary to take action to impose closure. When giving advice to close voluntarily, police officers should make clear that they are not engaging in a negotiation. The view of the senior police officer will be final until a court decides otherwise.
- 11.22 However, even if the licensee, designated premises supervisor, manager or premises user is willing to close voluntarily, it will remain open to the senior police officer to decide to serve a closure order, if he or she judges that to be the right course of action in all the circumstances. It is recognised that circumstances could arise which necessitate such action.
- 11.23 Against this background, police officers should also note that a decision not to make a closure order or to agree to voluntary closure will not prevent a later decision by the police to seek a review of the premises licence by a licensing authority, if that course of action is judged appropriate.

“In the vicinity” of licensed premises

- 11.24 A closure order may be made on grounds of disorder on or in the vicinity of and related to the premises. A question therefore arises as to how far from the premises incidents can take place which relate to the premises and still fall within the term “in the vicinity of”. Whether or not an incident is “in the vicinity of” and “related to” the licensed premises are ultimately matters of fact to be decided by the courts. However, it is important to note that the provisions require a causal connection between any disorder or likely disorder and the licensed premises themselves. The senior police officer cannot close the premises under this provision unless “closure is necessary in the interests of public safety.” Accordingly, closure of those particular premises must directly impact on the danger to the public safety being caused by the disorder, or likely disorder, taking place or expected imminently to take place on or in the vicinity of and related to the premises. The disorder and the premises must therefore be connected. This issue also arises in the context of any extension of a closure order.
- 11.25 Some licensees, premises users, designated premises supervisors and managers of licensed premises may consider it unfair that they should be held accountable for incidents taking place outside their immediate control. However, as explained elsewhere, closure orders were not designed as penalties but as a means of ensuring public safety and the prevention of public nuisance.
- 11.26 It should also be noted that the interpretation of “in the vicinity” does not arise in the context of “nuisance caused by noise coming from premises” because section 161 of the 2003 Act requires that the noise is emanating from the premises rather than any other source. In other words, noise from the premises itself is relevant: noise from customers in the street beyond the premises cannot be taken into account.

“Likely” disorder

- 11.27 A further question arises as to when any future disorder is likely to take place to justify a closure order being made. The 2003 Act requires that the disorder should be likely to be imminent. As said in the geographical context, there also has to be a causal connection between the likely disorder and the particular licensed premises involved, which makes closure of those particular premises under this provision necessary in the interests of public safety. This means that the expected incident must be happening or be imminent in which case, closure of the licensed premises should actively diminish the probability that disorder will take place in the immediate future.

“Public nuisance caused by noise coming from the premises”

- 11.28 The 2003 Act does not define the term “public nuisance”. Parliament has decided not to constrain the interpretation of the term by providing a more restrictive definition. Whether or not there is “public nuisance” will depend upon the circumstances of the particular case. Ultimately any questions of interpretation will be decided by the courts. However this means that senior police officers are required to judge reasonably whether the noise is causing a nuisance. Such judgements will inevitably have a subjective quality and officers will need to bring

their experience to bear in making them. However, it is important to note that the “noise” in question must be emitted from the licensed premises. Noise nuisance arising solely from people in the street outside licensed premises would not be sufficient to justify the use of these powers. In addition, the power should only be used where the senior police officer reasonably believes that a nuisance is being caused to the public. Accordingly, the senior police officer should normally have cause to believe that particular individuals in the vicinity are being annoyed by the noise from the licensed premises. Liaison with local government enforcement officers with existing powers for controlling noise nuisance would therefore be beneficial. It will ultimately be for senior police officers to decide, in the circumstances of any case, whether it is appropriate for them to deploy these powers, which are likely ultimately to lead to the review of the premises licence for the premises affected with the possibility of a licensing authority determining that it is necessary for the promotion of the licensing objectives to take steps in relation to that licence, which may include its revocation.

Enforcing a closure order

- 11.29 The 2003 Act does not require the licence holder or the police to clear the premises of customers following the service of a closure order. It is assumed that normally premises would empty, there being no purpose to the presence of customers if items, licensable activities or facilities normally sold, supplied or provided on the premises may no longer be sold, supplied or provided. However, a customer commits no offence if he is not asked to leave and remains on the premises. The closure relates to the carrying on of the licensable activities. The licence holder, premises user, designated premises supervisor or manager of the premises similarly commit no offence arising from the mere presence of such an individual. However, if an individual who is drunk or disorderly is asked to leave by a constable, a licence holder, premises user, designated premises supervisor or manager and then refuses to leave, he or she does become liable to prosecution. Where a police officer is asked for assistance to remove such a customer, the officer is under a statutory duty to afford that assistance.
- 11.30 The lack of any duty on customers to leave the premises automatically following the service of a closure order is important. The police have existing powers to clear an area if disorder is taking place, and need no additional powers under the 2003 Act to do so. However, it would be equally open to the police to propose a phased emptying of larger premises for the purpose of dispersing, for example, disorderly gangs separately or because it is in the interests of public safety to keep law-abiding customers inside for a temporary period while troublemakers outside are dispersed by the police.
- 11.31 It should also be noted that “premises” for the purposes of the Act includes any place. Some premises licences and temporary event notices relate to places wholly or mainly in the open air, like a park or recreation ground. If the police consider it necessary to clear such an area, they will need to consider carefully the resource implications of enforcement, particularly where there are a large number of ways of accessing the area.
- 11.32 The police officers involved should also recognise that closing premises will sometimes involve putting a potentially volatile and disgruntled group of

customers onto the streets. In this context, where possible, it is good practice to ensure that other licensed premises nearby are warned of the action being taken and of licence holders' and others' obligations not to allow disorderly conduct on their premises. As stated above, under the 2003 Act, police officers are under a duty, when requested by a licence holder or other person as referred to above, to assist in ensuring that drunken or disorderly persons are expelled from licensed premises, and police officers should therefore offer assistance when necessary in preventing the entry of troublemakers to other licensed premises who might be seeking to cause new problems elsewhere.

- 11.33 Police officers are also reminded that, particularly where large capacity venues are involved, they may need additional police assistance to clear the resulting crowd and the availability of that assistance should be considered before any decision is made to make a closure order.

Length of police closure order

- 11.34 Subject to very limited exceptions, the duration of the order under section 161 of the 2003 Act cannot exceed 24 hours. However, it is important to note that this does not mean that the length of the closure should automatically be set for 24 hours on every occasion. The criteria for making a closure order, places an obligation on the senior police officer to close the premises for the period he/she estimates it would take to end the threat to public safety, or as the case may be, the nuisance to the public. In practice, therefore, closure orders could last between 30 minutes and 24 hours depending on the circumstances of each case. An extension to that closure period can be made only if the senior police officer reasonably believes that the court would not have determined its consideration by the end of that period and certain conditions are met. Those conditions are the same as the circumstances which gave rise to the closure order. The extension may be for a further period of up to 24 hours from the end of the closure period.
- 11.35 If, for example, a closure is made at 9pm on a Monday evening because of disorder caused by gangs fighting in a public house, closure might only be appropriate for up to the time when the premises licence requires the premises to close, perhaps midnight. This could be because the senior police officer reasonably believes that there is a threat of gang members (those not arrested) returning to the premises before closing time but after the police have left. However, if the threat is not expected to have subsided by closing time, it may be appropriate to impose a closure for a period extending into the following day.

The “manager” of the premises

- 11.36 The 2003 Act refers to the “manager of the premises” who is defined as any person who works in the relevant premises in a capacity, whether paid or unpaid, which gives him authority to close the premises. This is particularly relevant to the arrangements for serving a closure order. It is not therefore relevant whether or not the individual has the expression “manager” in his or her job title or description. If the holder of a premises licence or the designated premises supervisor or premises user has left any member of staff in charge of the premises, with responsibility at that time for compliance with the licensing laws, that person will normally have been given the authority to close the premises in

compliance with that law. Accordingly, the individual would have the delegated authority to close the premises and could therefore be served with notice of a closure order in respect of the premises.

Service of closure orders when a decision has been made remotely

- 11.37 Where a senior police officer makes a decision to close licensed premises in accordance with the 2003 Act, notice of the closure order, providing the required written details, may be served by any constable on the holder of the premises licence, the designated premises supervisor, premises user or the manager of the relevant premises. In this context, it should be noted that the senior police officer does not have to be present at the premises to authorise service of an order. He may make his decision on the basis on information supplied to him by other police officers. The decision remains his and he remains accountable for that decision. This is particularly important in rural areas where an inspector might otherwise need to make a seventy mile round trip to consider making an order allowing an unreasonable period to pass during which public safety might be at risk. A specimen of a closure order is attached to this guidance at Annex L.
- 11.38 Senior police officers should, as a matter of good practice, attempt to attend wherever possible in order to make a full and personal assessment. Parliament considered that only officers of these ranks and experience should make these decisions because of the serious potential consequences of the decision made. As explained above, it is of course recognised that it will be difficult for officers, particularly in rural force areas, to attend on every occasion. Where the relevant senior officer cannot attend, it will be important that the information passed to the relevant senior officer is comprehensive and contemporaneously recorded, so that he or she can be clear about the reasons upon which his or her decision under the terms of the 2003 Act was based when required to present them to the relevant magistrates' court.

Service of closure orders generally

- 11.39 Notice of a closure order must always be given in writing. "Given", in this context, is the delivery of the notice to the individual. This should normally involve personal service and means therefore that the notice should normally be handed by a police constable to the holder of the premises licence, designated premises supervisor, premises user or the manager of the premises. If a licensee, premises user, designated premises supervisor or manager of the premises refuses to accept the written notice of a closure order, the fact should be noted so that it might be made known to the relevant magistrates' court at the hearing that will follow. The written notice should then be left in plain sight of the relevant person on whom it is being served. He or she should also be advised orally that the notice contains details of his rights and duties under the 2003 Act.

Relationship with local licensees and managers

- 11.40 It is important that the closure powers should not in any way be allowed to drive a wedge between the police and local licence holders, designated premises supervisors and managers. It would be damaging to the police's capacity to control public order and drunkenness, if licence holders, designated premises

supervisors or managers, when appropriate, were reluctant to call the police to attend when incidents are taking place because they feared that the police would close their premises. Licence holders, designated premises supervisors and managers should be encouraged to give the police early warning of developing problems, where appropriate allowing police intervention before an incident is allowed to get out of hand. The Government fully supports local initiatives like Pubwatch (see Chapter 2 of this Guidance), and wishes to see them develop and thrive.

- 11.41 It is recognised that the role of the police in enforcing licensing law will vary between force areas. For all police forces, resources will be a key issue and senior officers will have to make difficult decisions about prioritisation according to the prevailing circumstances in any area. However, as a minimum, it is good practice to provide a support and advisory role for licence holders, designated premises supervisors and managers. Licensees and others should know what is expected of them by local police officers in terms of clear standards with regard to the prevention of crime and disorder, particularly with regard to alcohol-related crime and disorder and anti-social behaviour. Police officers should therefore always be willing to offer advice to licensees and others on problems associated with these matters.

Nearby licensed premises

- 11.42 Where disorder is taking place or is expected to take place imminently in the vicinity of several adjacent or closely situated premises, there are likely to be occasions when the responsible senior police officer reasonably concludes that the closure of all the closely situated licensed premises is necessary in the interests of public safety. However, the same course of action in the case of each of the premises should not necessarily be automatic. For example, if one of the designated premises supervisors is prepared to close his premises voluntarily or has been more proactive than another in seeking to prevent disorder, the senior police officer may reasonably decide not to make a closure order in respect of those premises, while deciding to impose the closure of others. Where several closures are pursued simultaneously, a separate closure order must be made in respect of each of the licensed premises, and each would be the subject of the court processes which automatically flow from such action.

Noise nuisance and liaison with the local authority

- 11.43 The powers include the capacity to close licensed premises to prevent nuisance to the public which is the result of noise coming from the premises. The 2003 Act does not define what constitutes nuisance and it will bear its common law meaning. Ultimately, nuisance will be a matter of fact to be decided by the courts in any case. However, senior police officers will need to use their own experience and common sense to decide when noise levels reaching outside the premises have become unacceptable.
- 11.44 The enforcement of the law relating to statutory noise nuisance legislation is primarily a matter for local authority officers, sometimes working in tandem with police officers. Their powers to take quick action to resolve noise nuisance are however limited, particularly where the noise from commercial premises is

caused by people rather than amplified electronic equipment. The powers in the 2003 Act offer a means of resolving noise nuisance problems from licensed premises quickly.

- 11.45 The 2003 Act anticipates that any noise coming from the premises should be disturbing members of public, for example, in the street or residing locally – otherwise it could not constitute a nuisance. In practice therefore, it is likely to be that the police will usually take action under their powers following complaints made by the general public. Such complaints may, in certain circumstances, be channelled to the police by local authority officers who may initially be the natural point of contact for a complainant. However, the decision as to whether the noise constitutes a nuisance for the purposes of the exercise of the powers in the 2003 Act is a matter for the senior police officer him- or herself to decide, and no formal complaint from any individual is necessary before the powers may be exercised. Given their experience of noise problems, the officer may find it helpful to consult local authority enforcement officers, if available, before making a decision about the level of noise involved. In addition, under the Environmental Protection Act 1990, local authority enforcement officers have powers to confiscate, for example, noisy equipment which may be causing the problem and avoid the need to close the premises. On occasions, such consultation in respect of an incident which is ongoing may prove impossible without an unacceptable delay.
- 11.46 There is therefore some advantage in police forces discussing these matters generally with the local authority to draw on their experience and establish guidelines for officers about noise issues. Chief officers of police may find it valuable and helpful to agree a protocol with the local authority for the handling of noise nuisance issues associated with premises licensed under the 2003 Act or in respect of premises operating under temporary event notices. This would enable a consistent approach to be taken by the police and other local authority enforcement officers.
- 11.47 Where problems are noise related, there should often be scope for resolving the problem without the need to impose a closure order. In this context, police officers should consider those parts of this Guidance dealing with voluntary co-operation. For example, noise problems can arise during summer months because of doors or windows left open or customers drinking or enjoying entertainment in the garden area of the premises. It would be open to the police to request the licensee, designated premises supervisor, premises user or manager of the premises to close the doors and windows, or to require customers to remain inside. If they comply and the officer is then satisfied that these actions would prevent further nuisance to the public, there may be no need to make a closure order.

Stating the effects of sections 162 to 168 of the 2003 Act

- 11.48 A closure order must contain details of the premises which are to be closed; the period for which the order is requiring them to be closed up to 24 hours; the grounds or reasons for the decision; and the effect of sections 162 to 168 of the 2003 Act. Annex L to this Guidance provides a specimen of what a closure order should look like, and provides a statement of the effect of sections 162 to 168 of

the 2003 Act. It is open to the police forces to take their own legal advice as to what the statement should include. However, it is important that it covers the crucial areas shown in Annex L and in particular, that licence holders, designated premises supervisors, premises users and other managers of licensed premises or premises being used under the authority of a temporary event notice fully understand the consequences of committing the offences associated with failure to comply with a closure order made by the police and extended by the police or the courts.

Anti-Social Behaviour Act 2003

- 11.49 Police, licensing authorities and licensees need to be aware that following its commencement on the 20th January 2004, a new power is available under the Anti-Social Behaviour Act 2003 to close premises whether there is the production, supply or use of class A drugs and serious nuisance or disorder. This power provides an extra tool to the police to enable rapid action against a premises where there is a Class A drug problem, enabling its closure in as little as 48 hours should this be necessary. Police authorities are advised to consult the Notes of Guidance on the use of this power (Home Office, 2004) available on the Home Office website. These powers will also be covered in brief in the update to Safer Clubbing available in 2004.

12 Sale and Supply of Alcohol to Children

General

- 12.1 Section 186 of the 2003 Act provides that proceedings for any offences in the Act may be instituted by a licensing authority or by the Director of Public Prosecutions, and, in the case of an offence under section 146 or 147 (sale of alcohol to children) of the Act, by a local weights and measures authority (trading standards officers).
- 12.2 The introduction of sections 169A to 169H of the Licensing Act 1964 by the Licensing (Young Persons) Act 2000 made it an offence, for the first time, for any person (and not just licensees and their “servants”) to sell alcohol to an under 18 on licensed premises, or knowingly to allow another person to do so. It also created the offence of buying, or attempting to buy, alcohol on licensed premises on behalf of a person under 18. The amendments to the Licensing Act 1964 introduced by the Criminal Justice and Police Act 2001 strengthened this positive duty on licensees and their staff not to sell alcohol to under 18's and for the first time, placed the “test purchasing” of alcohol, whereby the police and trading standards officers through making purchases test the compliance of retailers with the prohibition on underage sales, on a statutory footing. The Government's intention behind the test purchasing measure was to increase the risk of detection of non-compliance and therefore increase the deterrent effect of the law on retailers.
- 12.3 The 2003 Act builds on these developments by providing, in section 146, that a person commits an offence if he sells alcohol to an individual aged under 18 anywhere. It also makes it an offence to supply alcohol to a minor on premises where supplies of alcohol are authorised by a club premises certificate. These provisions remove a range of exemptions that previously existed. However, licensing authorities, when considering instituting proceedings for offences under the 2003 Act, are expected to be concerned primarily with offences involving the sale and consumption of alcohol on premises licensed under a premises licence or where it is authorised by the giving of a temporary event notice or where the supply of alcohol is authorised by a club premises certificate. It should be noted that a body corporate, partnership or unincorporated association (see section 187 of the 2003 Act) may be the subject of proceedings for an offence under section 146.
- 12.4 Licensing authorities are expected to maintain close contact with the police, young offenders' teams and trading standards officers 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. For example, 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.
- 12.5 The Government primarily sees the development of these offences as having a deterrent effect on sales of alcohol to children by raising the risk of detection and

by making the consequences of non-compliance significant. The Government is not proposing that a regime of constant test purchasing exercises is pursued in all areas for all licensed premises. The need for and extent of test purchasing operations in any area is a matter for the police and trading standards officers to judge on the basis of their local knowledge and available resources, which will establish how far such operations are necessary in each licensing authority area.

- 12.6 Section 145 of the 2003 Act also makes it an offence to permit children under the age of 16 unaccompanied by an adult (that is a person aged 18 or over) to be present on premises open for the supply of alcohol for consumption there and being used exclusively or primarily for the supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or temporary event notice. In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult (that is a person aged 18 or over) between midnight and 5am to be on premises supplying alcohol for consumption on the premises under the authorisation of any premises licence, club premises certificate or temporary event notice. The offence may be committed by a premises licence holder, designated premises supervisor or any person who works at licensed premises, whether paid or unpaid, in a capacity which authorises him or her to request an unaccompanied child under 16 to leave the premises. It may also be committed by any member or officer of a club, which holds a club premises certificate, who is present on the premises in a capacity which enables him to make such a request or a premises user in relation to premises being used under the authorisation of a temporary event notice. A defence of due diligence also applies to this offence (see the paragraph below).

Defences

- 12.7 The 2003 Act provides a defence to the offence of the sale of alcohol to children if the retailer of alcohol believed that the purchaser was 18 or over and either he took all reasonable steps to establish the purchaser's age or nobody could reasonably have suspected from a purchaser's appearance that he was under 18. The second limb of that defence would cover a case where the purchaser who was under 18 looked exceptionally old for his age. A similar defence is provided in relation to the offence concerning unaccompanied children under 16 being prohibited from certain premises in respect of the belief that an individual is aged 16 or over or 18 or over, as the case may be. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age and that evidence would have convinced a reasonable person. This reflects the Government's strong support for the existing voluntary proof of age card schemes. However, if it is proved by the prosecution that the evidence of age was such that no reasonable person would have been convinced by it (for example if the proof of age was either an obvious forgery or clearly belonged to another person), the defence will fail.
- 12.8 The Government also strongly supports the PASS accreditation system which aims to approve and accredit various proof of age schemes that are in existence. PASS is the Proof of Age Standards Scheme launched in January 2003 by the British Retail Consortium and is supported by major retail associations, including those representing the licensed trade. It is an umbrella system, audited by the

Trading Standards Institute, under which reliable proof of age card schemes will carry the same hologram logo in order that retailers can readily distinguish such cards from forgeries or cards issued under unreliable schemes. This ensures that such schemes maintain high standards, particularly in the area of integrity and security. The Government recommends that licensing authorities should promote the PASS arrangements.

- 12.9 A further defence is provided in circumstances where the sale or supply was made by someone other than the person charged with the offence (for example, where a barman makes a sale having been told by his manager that he knows the purchaser is 18 or over) if the person charged exercised all due diligence to avoid committing the offence.

Allowing sale of alcohol to children

- 12.10 Under section 147 of the 2003 Act, it is an offence knowingly to allow the sale (or in, the case of clubs, the supply) of alcohol to an individual aged under 18, on relevant premises, which are defined in section 159. The offence may be committed by those who work at the premises, whether paid or unpaid, in a capacity that gives them the authority to prevent the sale (or supply); and, in the case of a supply by or on behalf of a club, by an officer or member of the club who is present at the time of the supply in a capacity that gives him authority to prevent that supply. It should be noted that a body corporate, partnership or unincorporated association (see section 187 of the 2003 Act) may be the subject of proceedings for an offence under section 147.

Sale of liqueur confectionery to children under 16

- 12.11 The definition of liqueur confectionery is given in section 191(2) of the 2003 Act. It is an offence to sell liqueur confectionery to a child under 16, or for a club or person on behalf of a club to supply it to or to the order of such a child. A defence is provided if the seller believed that the purchaser was 16 or over and if either he took all reasonable steps to establish the purchaser's age or if nobody could reasonably have suspected from the purchaser's appearance that he was under 16. The defendant will be deemed to have taken 'all reasonable steps' if he asked the individual for evidence of his age, and that evidence was such that it would have convinced a reasonable person. Section 148(5) provides a further defence in circumstances where the sale or supply was made by the accused by reason of the act or default of another, if the accused exercised all due diligence to avoid committing the offence.

- 12.12 It is important to note that although children aged 16 and 17 can buy alcohol in the form of liqueur chocolates they cannot buy or be sold any other foodstuffs which contain alcohol of a strength exceeding 0.5 per cent ABV.

Purchase of alcohol by or on behalf of children

- 12.13 The 2003 Act also makes it an offence for a child to buy or attempt to buy alcohol whether or not on licensed premises, or, if he is a member of a club, for him to have alcohol supplied to him or to his order by or on behalf of the club (in circumstances where he actively caused the supply) or attempts to do so. The

offence will not be committed if the child was asked by a police constable or trading standards officer, acting in the course of their duty, to buy or attempt to buy alcohol in order to conduct test purchasing operations, designed to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales. It is expected that enforcement officers will have regard to the LACORS/TSI Code of Best Practice on test purchasing operations which includes advice on the protection of children engaged in such operations.

- 12.14 The 2003 Act also makes it an offence for a person to act as an agent for a child in purchasing or attempting to purchase alcohol, for example, if a child gives money to an adult to buy alcohol in an off-licence for consumption by the child. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.
- 12.15 A further offence occurs if a person buys or attempts to buy alcohol for consumption by a child on licensed premises, for example, where a father buys a drink for his son under eighteen in a pub. The offence also applies where a member or officer of a club has alcohol supplied to a child (in circumstances where by act or default he caused the supply) or attempted to do so. There is an exemption provided in respect of these offences so that they would not be committed if a person aged 18 or over buys beer, wine or cider for a person aged 16 or 17 to consume with a table meal on relevant premises, in circumstances where the 16 or 17 year old is accompanied by a person aged 18 or over. Licensing authorities will want to note that the exemption only applies while a table meal is being consumed. It would not be sufficient for a person to claim that bar snacks amounted to a table meal.

Consumption of alcohol by children

- 12.16 Under the 2003 Act it is an offence for a child knowingly to consume alcohol on relevant premises. Relevant premises are places licensed by a premises licence, or providing licensable activities under the authority of a temporary event notice or qualifying club activities under a club premises certificate. The offence is not committed if the child inadvertently consumes the alcohol, for example, if his drink is spiked. It is also an offence knowingly to allow the consumption of alcohol by a child on relevant premises. Those who can commit this offence are any person who works – whether paid or unpaid - at the premises in a capacity that gives him the authority to prevent the consumption and, in the case of a supply by a club, any officer or member of a club who is present at the time of the consumption in a capacity which authorises him to prevent it. An exemption is provided by which these offences are not committed where a 16 or 17 year-old consumes beer, wine or cider with a table meal in circumstances where he is accompanied by a person aged 18 or over. As mentioned above, the exemption only applies while a table meal is being consumed. It would not be sufficient for a person to claim that bar snacks amounted to a table meal.

Delivering alcohol to children

- 12.17 It is an offence for someone working, whether paid or unpaid, on relevant premises knowingly to deliver to an individual under 18, alcohol which is sold on the premises or supplied on premises by or on behalf of a club or to the order of

a member of the club. Relevant premises are places for which a premises licence is in force, or where licensable activities are carried on under the authority of a temporary event notice or where qualifying club activities are carried on under a club premises certificate. The offence would cover, for example, circumstances where a child takes delivery of a consignment of alcohol ordered by an adult by telephone (in a case where the exceptions mentioned below do not apply). It is also an offence for a person working, whether paid or unpaid, on relevant premises, and in a position which gives him authority to prevent it, knowingly to allow another person to deliver alcohol supplied on relevant premises to individuals under 18. This offence would cover, for example, a person who authorises a delivery of the sort mentioned above in the knowledge that the recipient will be a child. The offence also applies in the case of a delivery by or on behalf of a club or to or to the order of a member or officer of the club, where the delivery is allowed by a person working on the premises in a capacity which gives him authority to prevent it. The offences are not committed if the alcohol is delivered to the home or place of work of the purchaser or person who is to be supplied with the alcohol (for example, where a child answers the door and signs for the delivery of his father's order at his house), nor where the job, whether paid or unpaid, of the child who took delivery of the alcohol involves delivery of alcohol (for example, where a 16 year old office worker is sent to collect a delivery for his employer), nor where the alcohol is sold or supplied for consumption on the relevant premises.

Sending a child to obtain alcohol

- 12.18 Under the 2003 Act, it is an offence knowingly to send a child to obtain alcohol which is sold or to be sold for consumption off the premises, or which is supplied or to be supplied by or on behalf of a club to or to the order of a member of the club for such consumption. This offence would cover, for example, circumstances where a parent sends their child to an off-licence to collect some alcohol which had been bought over the telephone. The offence is committed regardless of whether the child is sent to the actual premises from where the alcohol is sold or supplied, or whether he is sent to other premises to which the alcohol has been sent. The offence will not be committed where the child works, whether paid or unpaid, at the premises in question and his job involves taking deliveries of alcohol. The offence is also not committed if the child is sent by a police or trading standards officer, in the course of his duty, to obtain alcohol as a test purchaser to test the compliance of the retailer or club with the prohibition on underage sales. Enforcement officers will want to have regard to the LACORS/TSI Code of Best Practice on test purchasing operations which includes advice on the protection of children engaged in such operations.

Prohibition of unsupervised sales by children

- 12.19 It is an offence under the 2003 Act knowingly to allow an individual under the age of 18 to sell or, in the case of a club, to supply alcohol, unless each such sale or supply has been specifically approved. The offence may be committed by:
- a premises licence holder, designated premises supervisor or someone aged 18 or over authorised by them, or

- in the case of a club, any member or officer of the club who is present on the premises in a capacity that enables him to prevent the supply, or
- in a case where the premises are used for a permitted temporary activity, the premises user or a person aged 18 or over authorised by him.

12.20 The 2003 Act provides that the offence is not committed where the alcohol is sold or supplied for consumption with a table meal in a part of the premises used only for this purpose. The effect of this exception is that, for example, a minor working as a waiter or waitress in a restaurant is able to serve alcohol lawfully in a restaurant.

Confiscation of sealed containers of alcohol

12.21 The 2003 Act also amended the Criminal Justice and Police Act 2001 and the Confiscation of Alcohol (Young Persons) Act 1997 so that the police have the power under these Acts to confiscate alcohol in sealed containers from anyone in an area which has been designated by the local authority for the purposes of curbing anti-social behaviour and from people under 18 in any public place. Prior to the 2003 Act coming into force, police powers in relation to confiscation of alcohol applied only in relation to opened containers.

13 Transitional Matters

- 13.1 This Chapter of the Guidance deals with applications which will be made for personal licences, premises licences and club premises certificates (and any variation of converted premises licences and club premises certificates applied for at the same time) to a licensing authority after the Secretary of State has declared the first appointed day by terms of an order, and before the second appointed day on which all licences and certificates issued during the period of transition will be given full effect simultaneously. The details of the relevant statutory instruments made may be viewed on the DCMS website.

General

- 13.2 In this Chapter the term “transitional period” is taken to be the period between the first appointed day and the second appointed day. A period of at least six months is necessary between the publication of this Guidance and the first appointed day. This is to allow licensing authorities to prepare their draft of the first statements of licensing policy, to consult with the groups specified in section 5(3) of the 2003 Act as modified for such first statement by paragraph 29 of Schedule 8 to the Act, to analyse the results of the consultation, and to publish their statements. In carrying out any licensing function (which, other than the statement of licensing policy, will begin to be carried out from the first appointed day), a licensing authority must have regard to both this Guidance and its own statement of licensing policy.
- 13.3 The licensing authority’s aim should be to ensure as smooth, efficient and rapid a transition as possible. During the first six months of the transitional period, it will receive an income from licensing fees with at least 155,000 individuals likely to seek personal licences on the basis of their existing justices’ licences and approximately 180,000 businesses and clubs seeking to convert their existing licences and certificates into premises licences and club premises certificates. However, during the period of transition, the licensing authority will have no enforcement costs associated with their licensing functions under the 2003 Act as the premises licences and club premises certificates granted in the transitional period will have no authorising effect until the second appointed day when the existing licensing regimes will have been repealed.
- 13.4 The transitional period will be a difficult and demanding period for licensing authorities, responsible authorities and for applicants. It is therefore important that, so far as possible, licensing authorities, responsible authorities and representatives of the holders of existing licences and registration certificates should work together to ensure a smooth transition both before and from the first appointed day at the start of the transitional period. This might include, for example, agreeing arrangements with many of the businesses affected for staggering applications throughout the first six months of the transitional period to avoid gluts of applications made on the same day. This would be in the interests of all. While applicants are entitled to make applications under the provisions of the 2003 Act and any regulations made by the Secretary of State in accordance with it when they see fit, the Secretary of State recommends that licensing authorities, responsible authorities and representatives of existing

licence holders and registration certificates should seek, so far as possible, to work in partnership to minimise the burden on all those involved and to ensure that the arrangements work satisfactorily and successfully.

- 13.5 Generally, during the transitional period, all current holders of justices' licences are entitled to apply for a personal licence without the need to provide evidence of a criminal record check or of a licensing qualification. This is because the licensing justices have already judged such people to be "fit and proper" to sell alcohol by retail under the provisions in the Licensing Act 1964. These preserved rights are subject to the possibility of police intervention in certain circumstances, which are explained in more detail below.
- 13.6 In addition, following the first appointed day, applications may be made in respect of all existing alcohol, public entertainment, theatre, cinema, late night refreshment house and night café licences to convert these licences subject to the conditions and restrictions to which they are currently subject into premises licences. The same applies to "registered members clubs" (now "qualifying clubs" in the 2003 Act) who may apply to convert their registration certificates (granted under the Licensing Act 1964) and other licences (for example, a cinema licence) into club premises certificates and premises licences. This will allow the authorisations of the current licences and certificates to continue under the new licensing regimes. For example, all justices' licences are currently subject to permitted hours under the terms of Part 3 of the Licensing Act 1964 and conversion would mean that sales of alcohol would continue to be permitted only during those hours or any extension of them which has been granted by the licensing justices. Where extensions of hours have been granted to premises, the conversion would also be subject to any restrictions contained in the Licensing Act 1964 (and any other restrictions in other legislation which is specifically referred to in an order made by the Secretary of State. The details of any relevant order may be viewed on the DCMS website). For example, certain special hours certificates may only have effect if the premises provides music and dancing and substantial refreshment. Applications for conversion may be accompanied – on the same form – by an application to vary the hours, terms, conditions and restrictions of the existing licences and permissions.
- 13.7 In the case of a pub, for example, the form would detail the existing permission to sell alcohol for consumption off and on the premises, any extension of normal permitted hours of a permanent nature held (eg. special hours certificate, general order of exemption, or extended hours order etc), any public entertainment licence authorising the provision of public entertainment, and any children's certificate held. Mandatory conditions dictated by the Licensing Act 1964 would still apply. For example, an automatic restriction would apply to on-licensed premises (but not to theatres, cinemas, Part IV restaurants or registered clubs) to any premises not holding a children's certificate whereby children aged under 14 years would not be permitted into bar areas. In this context, "bar area" means any place (but not a restaurant previously holding a licence issued under Part IV of the Licensing Act 1964) which is exclusively or mainly used for the supply and consumption of alcohol. However, it should be noted that from the second appointed day, section 145 of the 2003 Act (which provides a new offence in respect of unaccompanied children under 16 prohibited from certain places) will

also apply to premises in respect of which newly converted premises licences have been issued.

- 13.8 If the application is for the conversion of the existing authorisations and not for a variation (in accordance with Part 2 of the form), these notified details will be converted by the licensing authority into a new premises licence, which would have effect from the second appointed day when all new premises licences and club premises certificates would come into effect. The principle underlying this approach is that the authorisations covered by all of these licences, certificates or permissions have already been approved by either the licensing justices, the magistrates' courts or a local authority licensing committee in respect of the six licensing regimes to be replaced by this regime.
- 13.9 There would be exceptions to this process concerning only the intervention of the police in connection with the prevention of crime and disorder. Further details are provided below.
- 13.10 However, Part 2 of the form is essentially an application to vary any of the existing terms, conditions and restrictions, including hours of trading, which would otherwise take effect through the conversion of existing licences and certificates to new premises licences or certificates and would follow the procedures for variation which are laid down in the 2003 Act. This is where, for example, the applicant would set out in an operating schedule or club operating schedule his or her proposed new hours, expand any entertainment arrangements (including, in the case of a club holding a certificate under Part 2 of the Licensing Act 1964, the addition of regulated entertainment to the new club premises certificate), and express its intention to admit children. The application to vary (Part 2 of the form) would have to be advertised and notified to the responsible authorities. Accordingly, responsible authorities and interested parties would only be able to address the variations applied for and not the new licence or certificate derived from the conversion of the existing authorisation; i.e. the converted hours, terms and conditions which are not subject to variation.
- 13.11 Prior to the second appointed day, all premises licences and certificates with any associated variations granted during the transitional period would be licences and certificates without effect, lying dormant until brought into force on the second appointed day. Existing licences and permissions would therefore continue to be in full force and effect throughout the transitional period under the control of the existing licensing authorities, including the licensing justices. Responsibility for any variation, extension of hours or the renewal of any of these existing licences would therefore continue to be that of the existing licensing authority (magistrates' courts for registered clubs, licensing justices for alcohol licences, and the local authority for all the others) pending the coming into force of the new premises licences and certificates simultaneously on the second appointed day. The new and old systems would therefore to some extent run in parallel until the transitional period is completed.
- 13.12 For the sake of national and local economies, these provisions are intended to provide the retail, hospitality, leisure and entertainment industries with greater certainty of continued trading without any disincentive to apply for longer hours or wider permissions.

- 13.13 Until the second appointed day, the existing licensing regimes will continue to govern existing licences and related offences will apply. Where existing licences fall for renewal during this period, they will need to be renewed in accordance with that existing law and any appeals concerning decisions under existing law will be dealt with in accordance with that law.

Undertakings

- 13.14 It has been established practice since 1968 for the effect and scope of a justices' licence to be limited in some cases by an undertaking given by the holder when it was granted. Such undertakings are usually associated with an off-licence, because any restriction which the licensing justices might wish to place on the grant of an on-licence can be achieved by the imposition of a condition. Licensing committees of licensing justices do not sit as a court and such undertakings are without legal force and lack any statutory support. There are in effect non-binding personal assurances. As such, it would be wholly inappropriate for the effect of transition to be to give legal force to such an assurance or undertaking where no such force existed before, and where the licensing justices had either no power to impose the content of such an undertaking as a condition or had chosen not to impose it as a legally binding condition.
- 13.15 Accordingly, undertakings and assurances will not be transferred to converted premises licences as new conditions. Where such undertakings existed, they generally and often indirectly concerned three of the four licensing objectives: the prevention of crime and disorder, public safety and the prevention of public nuisance. Following the second appointed day, if any such premises was to be used for any licensable activity which gives rise to concerns about the promotion of any of the licensing objectives, any responsible authority or any interested party can apply to the licensing authority for a review of the licence. As a result, it would be open to the licensing authority to consider appropriate, necessary remedial action. The transfer of such undertakings as a condition of the newly converted licence would be without purpose.

Conversions to new premises licences

- 13.16 A person who is either the holder of an existing licence or who has the consent of the holder of an existing licence may, within 6 months of the first appointed day, apply to the relevant licensing authority for the conversion of an existing licence, or existing licences, to a new premises licence. For example, this means that the business owning a supermarket may apply for the conversion of the licence that might have been held under the old regime by one of its employees with the consent of that employee.
- 13.17 The application for conversion of the licence or licences must be accompanied by the existing licences or certified copies, a plan of the premises, any relevant certificates (eg extensions of permitted hours or children's certificate), where the application is not by the holder of the existing licence a form of consent given by that person, and where the licence will concern the sale of alcohol the applicant must provide details of the individual to be specified in the new licence as the designated premises supervisor and a form given of that person's consent.

Where a particular permission (for example, a special hours certificate) is subject to certain requirements of existing law (for example, the provision of substantial refreshment and music and dancing), these restrictions will need to be reflected in the newly converted licence. The Secretary of State may also specify other information and documents that would need to be supplied. The details of any relevant order may be viewed on the DCMS website.

- 13.18 A copy of the application and accompanying documents must also be given by the applicant within 48 hours to the chief officer of police. In circumstances where an appeal is pending against a decision to revoke or reject an application for the renewal of an existing licence and the chief officer of police is satisfied that the conversion of the existing licence would undermine the crime prevention objective or where he is satisfied that there has been a material change in circumstances since the grant of the existing licence or its last renewal such that the conversion of the existing licence would undermine the crime prevention objective, he must give a notice within 28 days to that effect to both the applicant and the licensing authority.
- 13.19 To avoid unnecessary hearings, it is important that the police only give such notices in the circumstances dictated by the 2003 Act. If a licensing authority believes that the police are failing to adhere to these limitations, it should raise the matter with the chief officer of police for the area without delay.
- 13.20 The giving of such a notice by the police would automatically trigger a hearing before a licensing committee at which (unless all parties consider a hearing is unnecessary) the licensing authority will consider it. In considering the police notice, the jurisdiction of the licensing authority is restricted to considerations relating to the crime prevention objective and it has no discretion outside of that issue. The licensing authority must, having regard to the notice, reject the application if necessary for the promotion of the crime prevention objective to do so. For example, the police objection may have provided evidence relating to the development of a drugs problem at the premises in question since the existing licence was last renewed. The licensing authority may only refuse to convert the licence if it is necessary to do so for the promotion of the prevention of crime and disorder.
- 13.21 A licensing authority must grant the application for conversion of an existing licence unless a notice has been given by the chief officer of police which has not been withdrawn.
- 13.22 An application must not be granted in circumstances where the existing licence has ceased to be held by the applicant before the application is granted. For example, the licensing justices may have revoked the licence or it may have been declared forfeit by a criminal court.
- 13.23 If the licensing authority fails to determine the application for conversion of the existing licence within 2 months of the receipt of the application, the application will be treated as granted, so long as the existing licence has not ceased to be held by the applicant.

- 13.24 The applicant may appeal against a decision by the licensing authority to reject the application for conversion of an existing licence and the chief officer of police may appeal against a decision to grant the application after consideration of his notice. A separate appeal may be taken in respect of any decision to grant or refuse to vary the licence: the application to convert may be granted, while an application to vary may be refused.

Variations of new premises licences

- 13.25 A person, which includes a business, that makes an application for the conversion of an existing licence may at the same time apply for a variation of the newly converted premises licence under sections 34 and 37 of the 2003 Act as if that converted licence is in force. Section 37 concerns applications to vary a licence to specify an individual as premises supervisor and section 34 concerns applications to otherwise vary premises licences. When such applications are made the relevant licensing authority may discharge its functions in relation to them once the application to convert the existing licence has been granted and the relevant provisions in Part 3 of the Act will apply. The guidance in Chapters 5 to 7 would therefore be relevant.
- 13.26 Where this part of the application concerns a major variation, (for example, in connection with hours of trading) the application will need to include an operating schedule, to be copied to responsible authorities and advertised for the benefit of interested parties. As is normal, if there is no relevant representation by either a responsible authority or an interested party, the application must be granted and there should be no hearing. If a relevant representation is made, there must be a hearing (unless all parties have agreed this is not necessary) when the licensing authority will consider the representations. Following the hearing, the licensing authority would determine the application to vary and grant the application with or without additional conditions or refuse the variation as it considers necessary for the promotion of the licensing objectives. The licensing authority may not however do anything to reduce the effect of the rights guaranteed under the first part of the application to convert the existing licence(s) authorisations to a new premises licence. So, for example, it could not reduce the hours of trading to less than the permitted hours under the Licensing Act 1964.
- 13.27 Where no decision has been made by the licensing authority in respect of an application to vary a premises licence that has been converted from existing licences(s) under the “grandfather right” arrangements within 2 months from the receipt by the licensing authority of the application, the application will be deemed to have been refused. A right of appeal is provided for the “applicant” against a decision by the licensing authority not to vary the new licence and such a deemed refusal.
- 13.28 When considering an application for the variation of a premises licence held by a casino or a bingo club, consideration should be given to the points raised in paragraphs 53 and 54 of Chapter 5 of this Guidance and to the fact that the hours during which gaming may take place on such premises is prescribed by the Gaming Act 1968 and regulations made under it. The hours during which alcohol may be sold should normally be restricted to lesser hours only where that is necessary for the promotion of the licensing objectives.

- 13.29 In addition, many premises where a justices' on-licence granted under the Licensing Act 1964 is in force have previously enjoyed disapplication from the requirement for a public entertainment licence under legislation relating to public entertainment for two performers providing live musical entertainment (the "two in a bar" rule). This disapplication will not be carried forward when existing licences are converted. Premises which do not hold existing public entertainment licences will need to apply to vary their newly converted premises licences if they wish to continue providing such performances.

Revocation of a new premises licence prior to the second appointed day

- 13.30 If an existing justices', public entertainment, theatre, cinema, late night refreshment or night cafe licence is revoked or declared forfeit before the second appointed day (and any appeals in relation to such decisions will continue to be dealt with under the appeal mechanisms appropriate to the former regimes), the new licence granted in respect of the licensable activities affected will lapse. Where the new licence relates to more than one existing licence, the licensing authority is obliged to amend the new premises licence to remove such activity or activities as one covered by the affected licence or licences from it.

Licensing hours

- 13.31 As has been made clear above, in respect of a new premises licence authorising the sale of alcohol by retail, a licensing authority is prohibited from attaching conditions to the premises licence which would have the effect of restricting the opening hours to more limited hours than the current "permitted hours" under Part 3 of the Licensing Act 1964. This includes any attempt to reduce the hours of premises that have been granted for example by a special hours certificate, a general order of exemption or an extended hours order.

Qualifying clubs

- 13.32 The 2003 Act makes similar transitional provisions to those for conversion to new premises licences both in respect of the conversion of existing registration certificates and for the variation of the existing permissions in relation to applications by clubs registered for the purposes of Part 2 of the Licensing Act 1964 and other licences, for example, cinema licences in respect of club premises. A registered club for the purposes of the 1964 Act, if it holds other licences, will be able to convert those other licences to a new premises licence or to apply to vary the new club premises certificate to include within its scope of authorisation, authority for the provision of regulated entertainment on club premises.

Personal licences

- 13.33 Personal licences concern only the sale of or supply of alcohol on premises under the authorisation of a premises licence. The 2003 Act makes transitional provisions in respect of personal licences for those holding current justices' licences. During an initial period of not less than six months specified by order by the Secretary of State, the holder of an existing justices' licence (granted under the Licensing Act 1964) is entitled to apply for the grant to him or her of a

personal licence without having to possess the licensing qualification ordinarily required under Part 6 of the 2003 Act, provided that certain requirements are met. These are that he produces his current justices' licence (or a certified copy of it), his photograph (in a form prescribed statutory instrument that may be viewed on the DCMS website) and a statement (if relevant) relating to his convictions for relevant offences or foreign offences since his justices' licence was granted, last renewed or, if transferred and not subsequently renewed, transferred. Such applicants are not required to produce Criminal Record Bureau (CRB) certificates. All such applicants have appeared before licensing justices and been judged "fit and proper" individuals to retail alcohol and no CRB check is necessary.

- 13.34 Where a statement is made to the effect that a relevant or foreign offence has been committed, this may give rise to the possibility in exceptional circumstances of a police objection on the grounds that granting the application would, in the chief officer of police's opinion, undermine the crime prevention objection. The applicant must give a copy of the application for a personal licence to the chief officer of police within 48 hours of making the application. The chief officer of police may give an objection notice if he is satisfied that, having regard to the applicant's conviction for any relevant offence or foreign offence which he considers to be comparable to a relevant offence, the exceptional circumstances of the case are such that the grant of the licence would undermine the crime prevention objective. If no notice has been given by the police (or any notice given has been withdrawn) and the licensing authority is satisfied that the applicant holds a justices' licence, the application must be granted. If the authority is not satisfied that the applicant holds a licence it must reject the application.
- 13.35 Licensing authorities should note that some justices' licences have been issued in joint or multiple names. All those named as holders of the licence are entitled to benefit from these provisions of the 2003 Act as all named will have been considered "fit and proper" to retail alcohol by the licensing justices.
- 13.36 If the police have objected to the grant, the licensing authority must hold a hearing to consider the objection. As a result of the consideration of the objection notice the licensing authority must reject the application if it considers it necessary for the promotion of the crime prevention objective to do so or grant the application in any other case.
- 13.37 Provisions in Part 6 of the 2003 Act relating to the notification of determinations by the licensing authority apply in relation to the authority's decision. The applicant or the chief officer of police may appeal if aggrieved by the licensing authority's decision. Licensing authorities should therefore give clear and comprehensive reasons for their determination of the application.
- 13.38 If a licensing authority fails to determine an application for a personal licence under these transitional arrangements within 3 months of its receipt, the application will be treated as granted.
- 13.39 It should be noted that a person who is not currently a justices' licence holder may apply for a personal licence during the period of transition in accordance

with Part 6 of the 2003 Act and regulations made under it, which may be viewed on the DCMS website. Chapter 4 of this Guidance would apply to such an application.

- 13.40 Any personal licences issued take immediate effect. However, the authorisation given by the licence has no practical effect until the second appointed day when premises licences will have effect and the provisions of the 2003 Act will be fully implemented.

Provisional Licences

- 13.41 Applications may be made during the transitional period for the grant of a premises licence in respect of premises for which the licensing justices had granted a provisional licence under section 6 of the Licensing Act 1964. Where such a provisional licence has not been made final and the premises to which the provisional licence relates have been completed in a manner which substantially complies with the plans deposited under the 1964 Act (or, as the case may be, with those plans with modifications to which the licensing justices had consented), the licensing authority must have regard to the provisional grant of the justices' licence when determining the application for the grant of the premises licence.

“Denatured alcohol”

- 13.42 Section 191 of the 2003 Act, which defines the meaning of “alcohol” for the purposes of the Act, excludes “denatured alcohol”. This is the term which, from the commencement of section 5 of the Finance Act 1995 is to be used to refer to what is currently referred to as “methylated spirits”. Pending the commencement of that provision, section 191 has effect by virtue of paragraph 30 of Schedule 8 as if it referred to “methylated spirits”.

14 Other Offences

- 14.1 This Chapter provides guidance about a number of offences contained in the 2003 Act. It does not deal with those offences relating to children which are contained in Chapter 12 of the Guidance or with offences relating to rights of entry and inspection or non-compliance with administrative requirements with which licensing authorities will be more familiar.

General

- 14.2 Section 186 provides that proceedings for any offences under the 2003 Act may be instituted by a licensing authority as well as the DPP, and by the local weights and measures authority in certain circumstances (the sale of alcohol to children). It is important that licensing authorities liaise closely with the police and should so far as possible agree protocols for instituting proceedings in connection with these proceedings and for exchanging information and intelligence about them. Section 185 of the Act provides for such exchanges of information.
- 14.3 Licensing authorities should consult their own legal advisers about such matters, who may at any time consult the DCMS for further information.

Unauthorised licensable activities

- 14.4 It is an offence to carry on or attempt to carry on a licensable activity on or from any premises otherwise than under or in accordance with the authorisation provided by a premises licence, a club premises certificate or a temporary event notice meeting the conditions of section 98(2) – (4) of the 2003 Act.
- 14.5 It is also an offence knowingly to allow such an activity to be carried on.
- 14.6 These offences therefore cover premises that are entirely unlicensed, for example, an unlicensed drinking den or unlicensed film exhibitions; and premises that are licensed for one activity, for example, premises licensed for the sale of alcohol but not for another, for example the provision of regulated entertainment. In addition, the offence refers to an activity carried on otherwise than in accordance with a premises licence, club premises certificate or temporary event notice meeting the conditions of section 98(2) – (4) of the 2003 Act. Accordingly, these offences relate to breaches of the terms and conditions included in such licences, certificates or notices including any relating to hours during which the licensable activities may take place.
- 14.7 Where the licensable activity in question is the provision of regulated entertainment, a person does not commit an offence if his only involvement in the provision of the entertainment was that he performed in a play, participated as a sportsman in an indoor sporting event, boxed or wrestled in such an entertainment, performed live music, played recorded music, performed a dance, or did something similar to music and dancing. But it should be noted that if the individual also organised or helped to organise the event, and subject to the defence of due diligence explained below, an offence may be committed notwithstanding the fact that the individual was also a performer.

- 14.8 The maximum sentence available to a convicting court is high because at its worst these offences could involve circumstances in which the public have been placed in serious danger through the unauthorised sale or supply of alcohol or unregulated entertainment or breach of a licensing condition. However, the offence covers a very wide spectrum of acts or omissions some of which will be considerably less serious than the example cited above. It will be for the convicting court to decide what is an appropriate and proportionate sentence within the maximum provided in the 2003 Act in any individual circumstances.
- 14.9 Licensing authority enforcement officers should also note section 139 of the 2003 Act which provides a due diligence defence in proceedings against a person for carrying on unauthorised licensable activities. For example, in the case of a manager of premises assured inaccurately by the premises licence holder (his employer) that the premises were licensed for the provision of regulated entertainment such as live music, he may have a defence that he had relied on false information given to him and had taken all reasonable precautions and exercised all due diligence to avoid committing the offence.

Exposing alcohol for unauthorised sale

- 14.10 It would be an offence to expose alcohol for sale by retail in circumstances where the sale would be a licensable activity requiring the authority of a premises licence, a club premises certificate or temporary event notice without such an authorisation. The effect of this provision is that an offence can be committed in a case where no sale or attempted sale is in fact made. This means that the licensing authority would not have to prove that a sale had been completed. The 2003 Act provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.
- 14.11 A due diligence defence is also provided in connection with this offence.

Keeping alcohol for unauthorised sale

- 14.12 It is also an offence to keep alcohol with the intention of selling it by retail or supplying it by or on behalf of a club or to the order of a member of the club where that sale or supply would be an unauthorised licensable activity. The 2003 Act also provides that a court which convicts a person of this offence may order the confiscation of the alcohol in question and its containers, which may then be either destroyed or dealt with as the court orders.
- 14.13 A due diligence defence is also provided in connection with this offence.

Defence of due diligence

- 14.14 The 2003 Act provides that a person who is charged with the offence of carrying or attempting to carry on an unauthorised licensable activity, exposing alcohol for unauthorised sale or keeping alcohol for unauthorised sale or supply has a defence if his act or omission was due to a mistake, or to reliance on information given to him, or to an act or omission by another person or was due to some

other cause beyond his control, and he had taken all reasonable precautions and had exercised all due diligence to avoid committing the offence. It is therefore important that both elements of the defence must be in place before the defence would be effective. The burden of satisfying the court that this defence has been met falls on the individual raising it.

Allowing disorderly conduct on licensed premises etc

- 14.15 This is an extremely important offence and is central to the management of premises where alcohol is sold for consumption on those premises, though it applies equally to premises where other licensable activities are taking place. Its existence is central to the safety of law-abiding customers on the premises. It is an offence knowingly to allow disorderly conduct on relevant premises. The offence may be committed by any person who works at the premises, whether paid or unpaid, in a capacity that gives him the authority to prevent the conduct, a premises licence holder or designated premises supervisor, an officer or member of a club (with a club premises certificate) who is present at the time of the disorder and who has authority to prevent it, and a premises user who has given a temporary event notice in respect of those premises. The licensing authority should draw the attention of any person, business or club granted a licence, club premises certificate or giving a temporary event notice to this offence and of the licensing authority's readiness to prosecute any person who fails in his duty in this respect. It is important to note the words "knowingly to allow" disorderly conduct on relevant premises. The outbreak of disorder may not of itself give rise to this offence. It is the failure to address the problem either through direct action or calling the police that is likely to give rise to an offence.

Sale of alcohol to a person who is drunk

- 14.16 It is an offence to sell or attempt to sell alcohol to a person who is drunk, or to allow alcohol to be sold to such a person, on relevant premises. The offence may be committed by any person who works at the premises, whether paid or unpaid, in a capacity that gives him the authority to sell the alcohol, a premises licence holder or designated premises supervisor, an officer or member of a club (with a club premises certificate) who is present at the time of the sale and who has authority to prevent it, and a premises user who has given a temporary event notice in respect of those premises which meets the conditions laid down in the 2003 Act. The offence also covers supplies of alcohol by or on behalf of a club to or to the order of a member of the club.
- 14.17 Licensing authorities and the police should note that anti-social behaviour once customers are beyond the direct control of licensees and managers of licensed premises will sometimes (some drunkenness will arise through consumption at private parties) be a result of sales made earlier on licensed premises when an individual was drunk. It is therefore important that these offences are prosecuted effectively to ensure that there is a strong deterrent in respect of such sales. The control of excessive consumption and drunkenness on relevant premises should reduce the risk of anti-social behaviour occurring elsewhere after customers have left the premises.

Obtaining alcohol for a person who is drunk

14.18 It is also an offence knowingly to obtain or attempt to obtain on relevant premises alcohol for consumption on those premises by a person who is drunk.

Failure to leave licensed premises

14.19 The 2003 Act provides that a person who is drunk or disorderly commits an offence if he fails to leave relevant premises at the request of:

- a police constable;
- any person who works at the premises, whether paid or unpaid, in a capacity which authorises him to make such a request;
- the premises licence holder;
- the designated premises supervisor;
- in the case of a club, any member or officer of the club who is there in a capacity which gives him authority to make such a request; or
- in the case of premises used for permitted temporary activities, the premises user.

14.20 It is also an offence for a person to enter or attempt to enter such premises when asked not to do so by one of the people listed above.

14.21 A police constable must help to expel drunk or disorderly individuals from relevant premises, or help to prevent them entering as the case may be, if requested to do so by anyone listed above in paragraph 14.19.

Keeping of smuggled goods

14.22 The sale of contraband cigarettes and alcohol is a matter of considerable concern to the Government. In addition, some of the goods sold have not been manufactured by responsible manufacturers but are fake products smuggled from other countries, for example Eastern European countries and China on behalf of organised criminal gangs, and could therefore contain dangerous ingredients. The 2003 Act provides that it is an offence knowingly to keep or allow to be kept, on relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported. The 2003 Act sets out the categories of person who may commit the offence. These are:

- any person who works at the premises, whether paid or unpaid, in a capacity that gives him the authority to prevent those goods from being kept on the premises,
- a premises licence holder or designated premises supervisor,
- an officer or member of a club who is present at the time when the goods are kept on the premises where there is a club premises certificate and who has authority to prevent them being so kept,
- a premises user who has given a temporary event notice in respect of those premises which meets the conditions in section 98 of the Act.

14.23 The 2003 Act also provides that a court which convicts a person of this offence may order the confiscation of the goods in question and their containers, which

may then be either destroyed or dealt with as the court orders. Licensing authorities should liaise closely with Customs and Excise in respect of the investigation and prosecution of such offences.

Prohibition on the sale of alcohol on moving vehicles

- 14.24 An offence is committed if a person sells by retail alcohol on or from a vehicle at a time when the vehicle is not permanently or temporarily parked. A due diligence defence is provided in connection with this offence. It should be noted that this does not amount to a ban on the consumption of alcohol on coach trips: only the sale by retail of alcohol is prohibited on moving vehicles.

Breach of orders prohibiting sales on trains

- 14.25 On the application of a police officer of the rank of inspector or above, the 2003 Act empowers a magistrates' court to make an order (that is necessary to prevent disorder) prohibiting the sale of alcohol on any railway vehicle at such railway stations as may be specified or travelling between such stations as may be specified. Selling or attempting to sell alcohol in breach of such an order or allowing such sales to take place are offences under the Act.

Annex A

Extract from the Licensing Act 2003: Regulated Entertainment

SCHEDULE 1

Section 1

PROVISION OF REGULATED ENTERTAINMENT

PART 1

GENERAL DEFINITIONS

The provision of regulated entertainment

- 1 (1) For the purposes of this Act the "provision of regulated entertainment" means the provision of-
 - (a) entertainment of a description falling within paragraph 2, or
 - (b) entertainment facilities falling within paragraph 3,where the conditions in sub-paragraphs (2) and (3) are satisfied.
- (2) The first condition is that the entertainment is, or entertainment facilities are, provided-
 - (a) to any extent for members of the public or a section of the public,
 - (b) exclusively for members of a club which is a qualifying club in relation to the provision of regulated entertainment, or for members of such a club and their guests, or
 - (c) in any case not falling within paragraph (a) or (b), for consideration and with a view to profit.
- (3) The second condition is that the premises on which the entertainment is, or entertainment facilities are, provided are made available for the purpose, or for purposes which include the purpose, of enabling the entertainment concerned (whether of a description falling within paragraph 2(1) or paragraph 3(2)) to take place.

To the extent that the provision of entertainment facilities consists of making premises available, the premises are to be regarded for the purposes of this sub-paragraph as premises "on which" entertainment facilities are provided.
- (4) For the purposes of sub-paragraph (2)(c), entertainment is, or entertainment facilities are, to be regarded as provided for consideration only if any charge-

- (a) is made by or on behalf of-
 - (i) any person concerned in the organisation or management of that entertainment, or
 - (ii) any person concerned in the organisation or management of those facilities who is also concerned in the organisation or management of the entertainment within paragraph 3(2) in which those facilities enable persons to take part, and
- (b) is paid by or on behalf of some or all of the persons for whom that entertainment is, or those facilities are, provided.
- (5) In sub-paragraph (4), "charge" includes any charge for the provision of goods or services.
- (6) For the purposes of sub-paragraph (4)(a), where the entertainment consists of the performance of live music or the playing of recorded music, a person performing or playing the music is not concerned in the organisation or management of the entertainment by reason only that he does one or more of the following-
 - (a) chooses the music to be performed or played,
 - (b) determines the manner in which he performs or plays it,
 - (c) provides any facilities for the purposes of his performance or playing of the music.
- (7) This paragraph is subject to Part 2 of this Schedule (exemptions).

Entertainment

- 2 (1) The descriptions of entertainment are-
 - (a) a performance of a play,
 - (b) an exhibition of a film,
 - (c) an indoor sporting event,
 - (d) a boxing or wrestling entertainment,
 - (e) a performance of live music,
 - (f) any playing of recorded music,
 - (g) a performance of dance,
 - (h) entertainment of a similar description to that falling within paragraph (e), (f) or (g),where the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose, of entertaining that audience.
- (2) Any reference in sub-paragraph (1) to an audience includes a reference to spectators.
- (3) This paragraph is subject to Part 3 of this Schedule (interpretation).

Entertainment facilities

- 3 (1) In this Schedule, "entertainment facilities" means facilities for enabling persons to take part in entertainment of a description falling within sub-paragraph (2) for the purpose, or for purposes which include the purpose, of being entertained.
- (2) The descriptions of entertainment are-
- (a) making music,
 - (b) dancing,
 - (c) entertainment of a similar description to that falling within paragraph (a) or (b).
- (3) This paragraph is subject to Part 3 of this Schedule (interpretation).

Power to amend Schedule

- 4 The Secretary of State may by order amend this Schedule for the purpose of modifying-
- (a) the descriptions of entertainment specified in paragraph 2, or
 - (b) the descriptions of entertainment specified in paragraph 3,
- and for this purpose "modify" includes adding, varying or removing any description.

PART 2

EXEMPTIONS

Film exhibitions for the purposes of advertisement, information, education, etc.

- 5 The provision of entertainment consisting of the exhibition of a film is not to be regarded as the provision of regulated entertainment for the purposes of this Act if its sole or main purpose is to-
- (a) demonstrate any product,
 - (b) advertise any goods or services, or
 - (c) provide information, education or instruction.

Film exhibitions: museums and art galleries

- 6 The provision of entertainment consisting of the exhibition of a film is not to be regarded as the provision of regulated entertainment for the purposes of this Act if it consists of or forms part of an exhibit put on show for any purposes of a museum or art gallery.

Music incidental to certain other activities

- 7 The provision of entertainment consisting of the performance of live music or the playing of recorded music is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it is incidental to some other activity which is not itself-
- (a) a description of entertainment falling within paragraph 2, or
 - (b) the provision of entertainment facilities.

Use of television or radio receivers

- 8 The provision of any entertainment or entertainment facilities is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it consists of the simultaneous reception and playing of a programme included in a programme service within the meaning of the Broadcasting Act 1990 (c. 42).

Religious services, places of worship etc.

- 9 The provision of any entertainment or entertainment facilities-
- (a) for the purposes of, or for purposes incidental to, a religious meeting or service, or
 - (b) at a place of public religious worship,
- is not to be regarded as the provision of regulated entertainment for the purposes of this Act.

Garden fêtes, etc.

- 10 (1) The provision of any entertainment or entertainment facilities at a garden fête, or at a function or event of a similar character, is not to be regarded as the provision of regulated entertainment for the purposes of this Act.
- (2) But sub-paragraph (1) does not apply if the fête, function or event is promoted with a view to applying the whole or part of its proceeds for purposes of private gain.
- (3) In sub-paragraph (2) "private gain", in relation to the proceeds of a fête, function or event, is to be construed in accordance with section 22 of the Lotteries and Amusements Act 1976 (c. 32).

Morris dancing etc.

- 11 The provision of any entertainment or entertainment facilities is not to be regarded as the provision of regulated entertainment for the purposes of this Act to the extent that it consists of the provision of-
- (a) a performance of morris dancing or any dancing of a similar nature or a performance of unamplified, live music as an integral part of such a performance, or

- (b) facilities for enabling persons to take part in entertainment of a description falling within paragraph (a).

Vehicles in motion

- 12 The provision of any entertainment or entertainment facilities-
- (a) on premises consisting of or forming part of a vehicle, and
 - (b) at a time when the vehicle is not permanently or temporarily parked,
- is not to be regarded as the provision of regulated entertainment for the purposes of this Act.

PART 3

INTERPRETATION

General

- 13 This Part has effect for the purposes of this Schedule.

Plays

- 14 (1) A "performance of a play" means a performance of any dramatic piece, whether involving improvisation or not,-
- (a) which is given wholly or in part by one or more persons actually present and performing, and
 - (b) in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or action, involves the playing of a role.
- (2) In this paragraph, "performance" includes rehearsal (and "performing" is to be construed accordingly).

Film exhibitions

- 15 An "exhibition of a film" means any exhibition of moving pictures.

Indoor sporting events

- 16 (1) An "indoor sporting event" is a sporting event-
- (a) which takes place wholly inside a building, and
 - (b) at which the spectators present at the event are accommodated wholly inside that building.
- (2) In this paragraph-

"building" means any roofed structure (other than a structure with a roof which may be opened or closed) and includes a vehicle, vessel or moveable structure,

"sporting event" means any contest, exhibition or display of any sport, and

"sport" includes-

(a) any game in which physical skill is the predominant factor, and

(b) any form of physical recreation which is also engaged in for purposes of competition or display.

Boxing or wrestling entertainments

- 17 A "boxing or wrestling entertainment" is any contest, exhibition or display of boxing or wrestling.

Music

- 18 "Music" includes vocal or instrumental music or any combination of the two.

Annex B

Extract from the Licensing Act 2003: Late Night Refreshment

SCHEDULE 2

Section 1

PROVISION OF LATE NIGHT REFRESHMENT

The provision of late night refreshment

- 1 (1) For the purposes of this Act, a person "provides late night refreshment" if-
 - (a) at any time between the hours of 11.00 p.m. and 5.00 a.m., he supplies hot food or hot drink to members of the public, or a section of the public, on or from any premises, whether for consumption on or off the premises, or
 - (b) at any time between those hours when members of the public, or a section of the public, are admitted to any premises, he supplies, or holds himself out as willing to supply, hot food or hot drink to any persons, or to persons of a particular description, on or from those premises, whether for consumption on or off the premises,unless the supply is an exempt supply by virtue of paragraph 3, 4 or 5.
- (2) References in this Act to the "provision of late night refreshment" are to be construed in accordance with sub-paragraph (1).
- (3) This paragraph is subject to the following provisions of this Schedule.

Hot food or hot drink

- 2 Food or drink supplied on or from any premises is "hot" for the purposes of this Schedule if the food or drink, or any part of it,-
 - (a) before it is supplied, is heated on the premises or elsewhere for the purpose of enabling it to be consumed at a temperature above the ambient air temperature and, at the time of supply, is above that temperature, or
 - (b) after it is supplied, may be heated on the premises for the purpose of enabling it to be consumed at a temperature above the ambient air temperature.

Exempt supplies: clubs, hotels etc. and employees

- 3 (1) The supply of hot food or hot drink on or from any premises at any time is an exempt supply for the purposes of paragraph 1(1) if, at that time, a person will neither-
- (a) be admitted to the premises, nor
 - (b) be supplied with hot food or hot drink on or from the premises,
- except by virtue of being a person of a description falling within sub-paragraph (2).
- (2) The descriptions are that-
- (a) he is a member of a recognised club,
 - (b) he is a person staying at a particular hotel, or at particular comparable premises, for the night in question,
 - (c) he is an employee of a particular employer,
 - (d) he is engaged in a particular trade, he is a member of a particular profession or he follows a particular vocation,
 - (e) he is a guest of a person falling within any of paragraphs (a) to (d).
- (3) The premises which, for the purposes of sub-paragraph (2)(b), are comparable to a hotel are-
- (a) a guest house, lodging house or hostel,
 - (b) a caravan site or camping site, or
 - (c) any other premises the main purpose of maintaining which is the provision of facilities for overnight accommodation.

Exempt supplies: premises licensed under certain other Acts

- 4 The supply of hot food or hot drink on or from any premises is an exempt supply for the purposes of paragraph 1(1) if it takes place during a period for which-
- (a) the premises may be used for a public exhibition of a kind described in section 21(1) of the Greater London Council (General Powers) Act 1966 (c. xxviii) by virtue of a licence under that section, or
 - (b) the premises may be used as near beer premises within the meaning of section 14 of the London Local Authorities Act 1995 (c. x) by virtue of a licence under section 16 of that Act.

Miscellaneous exempt supplies

- 5 (1) The following supplies of hot food or hot drink are exempt supplies for the purposes of paragraph 1(1)-
- (a) the supply of hot drink which consists of or contains alcohol,

- (b) the supply of hot drink by means of a vending machine,
 - (c) the supply of hot food or hot drink free of charge,
 - (d) the supply of hot food or hot drink by a registered charity or a person authorised by a registered charity,
 - (e) the supply of hot food or hot drink on a vehicle at a time when the vehicle is not permanently or temporarily parked.
- (2) Hot drink is supplied by means of a vending machine for the purposes of sub-paragraph (1)(b) only if-
- (a) the payment for the hot drink is inserted into the machine by a member of the public, and
 - (b) the hot drink is supplied directly by the machine to a member of the public.
- (3) Hot food or hot drink is not to be regarded as supplied free of charge for the purposes of sub-paragraph (1)(c) if, in order to obtain the hot food or hot drink, a charge must be paid-
- (a) for admission to any premises, or
 - (b) for some other item.
- (4) In sub-paragraph (1)(d) "registered charity" means-
- (a) a charity which is registered under section 3 of the Charities Act 1993 (c. 10), or
 - (b) a charity which by virtue of subsection (5) of that section is not required to be so registered.

Clubs which are not recognised clubs: members and guests

- 6 For the purposes of this Schedule-
- (a) the supply of hot food or hot drink to a person as being a member, or the guest of a member, of a club which is not a recognised club is to be taken to be a supply to a member of the public, and
 - (b) the admission of any person to any premises as being such a member or guest is to be taken to be the admission of a member of the public.

Annex C

Extract from the Licensing Act 2003: Relevant Offences

SCHEDULE 4

Section 113

PERSONAL LICENCE: RELEVANT OFFENCES

- 1 An offence under this Act.
- 2 An offence under any of the following enactments-
 - (a) Schedule 12 to the London Government Act 1963 (c. 33) (public entertainment licensing);
 - (b) the Licensing Act 1964 (c. 26);
 - (c) the Private Places of Entertainment (Licensing) Act 1967 (c. 19);
 - (d) section 13 of the Theatres Act 1968 (c. 54);
 - (e) the Late Night Refreshment Houses Act 1969 (c. 53);
 - (f) section 6 of, or Schedule 1 to, the Local Government (Miscellaneous Provisions) Act 1982 (c. 30);
 - (g) the Licensing (Occasional Permissions) Act 1983 (c. 24);
 - (h) the Cinemas Act 1985 (c. 13);
 - (i) the London Local Authorities Act 1990 (c. vii).
- 3 An offence under the Firearms Act 1968 (c. 27).
- 4 An offence under section 1 of the Trade Descriptions Act 1968 (c. 29) (false trade description of goods) in circumstances where the goods in question are or include alcohol.
- 5 An offence under any of the following provisions of the Theft Act 1968 (c. 60)-
 - (a) section 1 (theft);
 - (b) section 8 (robbery);
 - (c) section 9 (burglary);
 - (d) section 10 (aggravated burglary);
 - (e) section 11 (removal of articles from places open to the public);

- (f) section 12A (aggravated vehicle-taking), in circumstances where subsection (2)(b) of that section applies and the accident caused the death of any person;
 - (g) section 13 (abstracting of electricity);
 - (h) section 15 (obtaining property by deception);
 - (i) section 15A (obtaining a money transfer by deception);
 - (j) section 16 (obtaining pecuniary advantage by deception);
 - (k) section 17 (false accounting);
 - (l) section 19 (false statements by company directors etc.);
 - (m) section 20 (suppression, etc. of documents);
 - (n) section 21 (blackmail);
 - (o) section 22 (handling stolen goods);
 - (p) section 24A (dishonestly retaining a wrongful credit);
 - (q) section 25 (going equipped for stealing etc.).
- 6 An offence under section 7(2) of the Gaming Act 1968 (c. 65) (allowing child to take part in gaming on premises licensed for the sale of alcohol).
- 7 An offence under any of the following provisions of the Misuse of Drugs Act 1971 (c. 38)-
 - (a) section 4(2) (production of a controlled drug);
 - (b) section 4(3) (supply of a controlled drug);
 - (c) section 5(3) (possession of a controlled drug with intent to supply);
 - (d) section 8 (permitting activities to take place on premises).
- 8 An offence under either of the following provisions of the Theft Act 1978 (c. 31)-
 - (a) section 1 (obtaining services by deception);
 - (b) section 2 (evasion of liability by deception).
- 9 An offence under either of the following provisions of the Customs and Excise Management Act 1979 (c. 2)-
 - (a) section 170 (disregarding subsection (1)(a)) (fraudulent evasion of duty etc.);
 - (b) section 170B (taking preparatory steps for evasion of duty).
- 10 An offence under either of the following provisions of the Tobacco Products Duty Act 1979 (c. 7)-
 - (a) section 8G (possession and sale of unmarked tobacco);

- (b) section 8H (use of premises for sale of unmarked tobacco).
- 11 An offence under the Forgery and Counterfeiting Act 1981 (c. 45) (other than an offence under section 18 or 19 of that Act).
- 12 An offence under the Firearms (Amendment) Act 1988 (c. 45).
- 13 An offence under any of the following provisions of the Copyright, Designs and Patents Act 1988 (c. 48)-
 - (a) section 107(1)(d)(iii) (public exhibition in the course of a business of article infringing copyright);
 - (b) section 107(3) (infringement of copyright by public performance of work etc.);
 - (c) section 198(2) (broadcast etc. of recording of performance made without sufficient consent);
 - (d) section 297(1) (fraudulent reception of transmission);
 - (e) section 297A(1) (supply etc. of unauthorised decoder).
- 14 An offence under any of the following provisions of the Road Traffic Act 1988 (c. 52)-
 - (a) section 3A (causing death by careless driving while under the influence of drink or drugs);
 - (b) section 4 (driving etc. a vehicle when under the influence of drink or drugs);
 - (c) section 5 (driving etc. a vehicle with alcohol concentration above prescribed limit).
- 15 An offence under either of the following provisions of the Food Safety Act 1990 (c. 16) in circumstances where the food in question is or includes alcohol-
 - (a) section 14 (selling food or drink not of the nature, substance or quality demanded);
 - (b) section 15 (falsely describing or presenting food or drink).
- 16 An offence under section 92(1) or (2) of the Trade Marks Act 1994 (c. 26) (unauthorised use of trade mark, etc. in relation to goods) in circumstances where the goods in question are or include alcohol.
- 17 An offence under the Firearms (Amendment) Act 1997 (c. 5).
- 18 A sexual offence, within the meaning of section 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 (c. 6).
- 19 A violent offence. within the meaning of section 161(3) of that Act.

- 20 An offence under section 3 of the Private Security Industry Act 2001 (c. 12) (engaging in certain activities relating to security without a licence).

Annex D

Conditions relating to the prevention of crime and disorder

It should be noted in particular that it is unlawful under the 2003 Act:

- *knowingly to sell or supply or attempt to sell or supply alcohol to a person who is drunk*
- *knowingly to allow disorderly conduct on licensed premises*
- *for the holder of a premises licence or a designated premises supervisor knowingly to keep or to allow to be kept on licensed premises any goods that have been imported without payment of duty or which have otherwise been unlawfully imported*
- *to allow the presence of children under 16 who are not accompanied by an adult between midnight and 5am at any premises licensed for the sale of alcohol for consumption on the premises, and at any time in premises used exclusively or primarily for the sale and consumption of alcohol*

Conditions enforcing these arrangements are therefore unnecessary.

General

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, when responsible authorities are considering such applications and when licensing authorities are considering applications following the receipt of any relevant representations from a responsible authority or interested party, the following options should be considered as measures which, if necessary, would promote the prevention of crime and disorder.

Whether or not any risk assessment shows these options to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved. It should also be borne in mind that club premises operate under codes of discipline to ensure the good order and behaviour of members.

Necessary conditions for the licence or certificate will also depend on local knowledge of the premises.

Under no circumstances should the following measures be regarded as standard conditions to be automatically imposed in all cases. They are designed to provide a range of possible conditions drawn from experience relating to differing situations and to offer guidance.

Any individual preparing an operating schedule is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition, they become enforceable under the law and a breach of such a condition could give rise to prosecution.

Text/Radio pagers

Text and radio pagers connecting premises licence holders, designated premises supervisors, managers of premises and clubs to the local police can provide for rapid response by the police to situations of disorder which may be endangering the customers and staff on the premises.

Such pagers provide two-way communication, both enabling licence holders, managers, designated premises supervisors and clubs to report incidents to the police, and enabling the police to warn those operating a large number of other premises of potential trouble-makers or individuals suspected of criminal behaviour who are about in a particular area. Pager systems can also be used by licence holders, door supervisors, managers, designated premises supervisors and clubs to warn each other of the presence in an area of such people.

The Secretary of State recommends that text or radio pagers should be considered appropriate necessary conditions for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. Following individual consideration of the particular circumstances of the venue, such conditions may also be appropriate and necessary in other areas for the prevention of crime and disorder.

It is recommended that a condition requiring the text/radio pager links to the police should include the following elements:

- a requirement that the text/pager equipment is kept in working order at all times;
- a requirement that the pager link be activated, made available to and monitored by the designated premises supervisor or a responsible member of staff at all times that the premises are open to the public;
- a requirement that any police instructions/directions are complied with whenever given; and
- a requirement that all instances of crime or disorder are reported via the text/radio pager link by the designated premises supervisor or a responsible member of staff to an agreed police contact point.

Door supervisors

Conditions relating to the provision of door supervisors and security teams may be valuable in:

- preventing the admission and ensuring the departure from the premises of the drunk and disorderly, without causing further disorder;
- keeping out excluded individuals (subject to court bans or imposed by the licence holder);
- searching and excluding those suspected of carrying illegal drugs, or carrying offensive weapons; and
- maintaining orderly queuing outside of venues prone to such queuing.

Where door supervisors conducting security activities are to be a condition of a licence, which means that they would have to be registered with the Security Industry Authority,

conditions may also need to deal with the number of such supervisors, the displaying of name badges, the carrying of proof of registration, where and at what times they should be stationed on the premises, and whether at least one female supervisor should be available (for example, if female customers are to be the subject of body searches). Door supervisors also have a role to play in ensuring public safety (see Annex E).

Bottle bans

Glass bottles may be used as weapons inflicting more serious harm during incidents of disorder. A condition can prevent sales of drinks in glass bottles for consumption on the premises.

It is recommended that a condition requiring that no sales of beverages in glass bottles for consumption on the premises should be expressed in clear terms and include the following elements:

- no bottles containing beverages of any kind, whether open or sealed, shall be given to customers on the premises whether at the bar or by staff service away from the bar;
- no customers carrying open or sealed bottles shall be admitted to the premises at any time that the premises are open to the public (**note:** this needs to be carefully worded where off-sales also take place);

In appropriate circumstances, the condition could include exceptions, for example, as follows:

- but bottles containing wine may be sold for consumption with a table meal by customers who are seated in an area set aside from the main bar area for the consumption of food.

Plastic containers and toughened glass

Glasses containing drinks may be used as weapons during incidents of disorder and in untoughened form, can cause very serious injuries. Consideration could therefore be given to conditions requiring either the use of plastic containers or toughened glass which inflicts less severe injuries where considered necessary. Location and style of the venue and the activities carried on there would be particularly important in assessing whether a condition is necessary. For example, the use of glass containers on the terraces of some outdoor sports grounds may obviously be of concern, and similar concerns may also apply to indoor sports events such as boxing matches. Similarly, the use of such plastic containers or toughened glass during the televising of live sporting events, such as international football matches, when high states of excitement and emotion fuelled by alcohol might arise, may be a necessary condition.

It should be noted that the use of plastic or paper drinks containers and toughened glass may also be relevant as measures necessary to promote public safety (see Annex E).

CCTV

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises. Conditions should not just consider

a requirement to have CCTV on the premises, but also the precise siting of each camera, the requirement to maintain cameras in working order, and to retain recordings for an appropriate period of time.

The police should provide individuals conducting risk assessments when preparing operating schedules with advice on the use of CCTV to prevent crime.

Open containers not to be taken from the premises

Drinks purchased in licensed premises or clubs may be taken from those premises for consumption elsewhere. Where premises are licensed for the sale of alcohol for consumption off the premises that would be entirely lawful. However, consideration should be given to a condition preventing the taking of alcoholic and other drinks from the premises in open containers (eg glasses and opened bottles). This may again be necessary to prevent the use of these containers as offensive weapons in surrounding streets after individuals have left the premises.

Restrictions on drinking areas

It may be necessary to restrict the areas where alcoholic drinks may be consumed in premises after they have been purchased from the bar. An example would be at a sports ground where the police consider it necessary to prevent the consumption of alcohol on the terracing of sports grounds during particular sports events. Such conditions should not only specify these areas, but indicate the circumstances in which the ban would apply and times at which it should be enforced.

Capacity limits

Although most commonly made a condition of a licence on public safety grounds, consideration should also be given to conditions which set capacity limits for licensed premises or clubs where it may be necessary to prevent overcrowding which can lead to disorder and violence. Where such a condition is considered necessary, consideration should also be given to whether door supervisors would be needed to ensure that the numbers are appropriately controlled.

Proof of age cards

It is unlawful for children under 18 to attempt to buy alcohol just as it is unlawful to sell or supply alcohol to them. To prevent such crimes, it may be necessary to require a policy to be applied at certain licensed premises requiring the production of “proof of age” before such sales are made. This should not be limited to recognised “proof of age” cards, but allow for the production of other proof, such as photo-driving licences, student cards and passports. The Secretary of State strongly supports the PASS accreditation system (see paragraph 12.8 of the Guidance) which aims to approve and accredit various proof of age schemes that are in existence. This ensures that such schemes maintain high standards, particularly in the area of integrity and security, and where appropriate and necessary, conditions may refer directly to PASS accredited proof of age cards, photo-driving licences and passports.

It should be noted that many adults in England and Wales do not currently carry any proof of age. This means that the wording of any condition will require careful thought.

For example, the requirement might be to ensure sight of evidence of age from any person appearing to those selling or supplying alcohol to be under the age of 18 and who is attempting to buy alcohol. This would ensure that most minors – even those looking older – would need to produce proof of age appropriately before making such a purchase. Under such an arrangement only a minority of adults might be affected, but for the majority there would be no disruption to their normal activity, for example, when shopping in a supermarket.

Crime prevention notices

It may be necessary at some premises for notices to be displayed which warn customers of the prevalence of crime which may target them. Some premises may be reluctant to volunteer the display of such notices for commercial reasons. For example, in certain areas, a condition attached to a premises licence or club premises certificate might require the displaying of notices at the premises which warn customers about the need to be aware of pickpockets or bag snatchers, and to guard their property. Similarly, it may be necessary for notices to be displayed which advise customers not to leave bags unattended because of concerns about terrorism. Consideration could be given to a condition requiring a notice to display the name of a contact for customers if they wish to report concerns.

Drinks promotions

Standardised conditions should not be attached to premises licences or club premises certificates which promote fixed prices for alcoholic drinks. It is also likely to be unlawful for licensing authorities or police officers to promote voluntary arrangements of this kind. This can risk creating cartels. Using conditions to control the prices of alcoholic drinks in an area may also breach competition law. Conditions tailored to the individual circumstances of particular premises which address **irresponsible** drinks promotions may be permissible provided they are necessary for the promotion of the licensing objectives, but licensing authorities should take their own legal advice before a licence or certificate is granted in that form. Judgements may be subjective, and on occasions, there will be a very fine line between responsible and irresponsible promotions but an even greater distinction to whether the promotion in question can be subject to the imposition of a condition. It is therefore vital that such matters are considered objectively in the context of the licensing objectives and with the benefit of appropriate legal advice.

In addition, when considering any relevant representations which demonstrate a clear causal link between sales promotions or discounting and levels of crime and disorder on or in the vicinity of the premises, it would be appropriate for the licensing authority to consider whether the imposition of a new condition prohibiting irresponsible sales promotions or discounting of prices of alcoholic beverages is necessary at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice.

Signage

It may be necessary for the normal hours under the terms of the premises licence or club premises certificate at which licensable activities are permitted to take place to be

displayed on or immediately outside the premises so that it is clear if breaches of the terms of the licence or certificate are taking place.

Similarly, it may be necessary for any restrictions on the admission of children to be displayed on or immediately outside the premises so that the consequences of breaches of these conditions would also be clear and to deter those who might seek admission in breach of those conditions.

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

Large capacity “vertical drinking” premises, sometimes called High Volume Vertical Drinking establishments (HVVDs), are premises with exceptionally high capacities, used primarily or exclusively for the sale and consumption of alcohol, and have little or no seating for patrons.

Where necessary and appropriate, conditions can be attached to premises licences for the promotion of the prevention of crime and disorder at such premises (if not volunteered by the venue operator and following representations on such grounds) which require adherence to:

- a prescribed capacity;
- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of SIA registered security teams to control entry for the purpose of compliance with the capacity limit.

Annex E

Conditions relating to public safety (including fire safety)

It should be noted that conditions relating to public safety should be those which are necessary, in the particular circumstances of any individual premises or club premises, and should not duplicate other requirements of the law. Equally, the attachment of conditions to a premises licence or club premises certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work etc Act 1974, associated regulations and especially the requirements under the Management of Health and Safety at Work Regulations 1999 and the Fire Precautions (Workplace) Regulations 1997 to undertake risk assessments. Employers should assess the risks, including risks from fire, and take measures necessary to avoid and control these risks. Conditions enforcing those requirements would therefore be unnecessary.

General

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, responsible authorities are considering such applications and licensing authorities are considering applications following the receipt of relevant representations from a responsible authority or interested party, the following options should be considered as measures that, if necessary, would promote public safety. Additional matters relating to cinemas and theatres are considered in Annex F. It should also be recognised that special issues may arise in connection with outdoor and large scale events.

Whether or not any risk assessment shows any of the measures to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved.

Necessary conditions for the licence or certificate will also depend on local knowledge of the premises.

In addition, to considering the points made in this Annex, those preparing operating schedules or club operating schedules, licensing authorities and responsible authorities should consider:

- Model National and Standard Conditions for Places of Public Entertainment and Associated Guidance ISBN 1 904031 11 0 (Entertainment Technology Press – ABTT Publications)
- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of

which may be obtained through:

www.streetartsnetwork.org/pages/publications

- The London District Surveyors Association's "Technical Standards for Places of Public Entertainment" ISBN 0 9531229 2 1

The following British Standards should also be considered:

- BS 5588 Part 6 (regarding places of assembly)
- BS 5588 Part 9 (regarding ventilation and air conditioning systems)
- BS 5588 Part 9 (regarding means of escape for disabled people)
- BS 5839 (fire detection, fire alarm systems and buildings)
- BS 5266 (emergency lighting systems)

However, in consulting these texts, which were prepared prior to the coming into force of the Licensing Act 2003, those creating operating schedules or club operating schedules, licensing authorities and responsible authorities should again note that under no circumstances should any conditions be regarded as standard for all premises.

Any individual preparing an operating schedule or club operating schedule is at liberty to volunteer any measure, such as those described below, as a step he or she intends to take to promote the licensing objectives. When incorporated into the licence or certificate as a condition, they become enforceable under the law and a breach of such a condition could give rise to prosecution.

Disabled people

In certain premises where existing legislation does not provide adequately for the safety of the public, consideration might also be given to conditions that ensure that:

- when disabled people are present, adequate arrangements exist to enable their safe evacuation in the event of an emergency; and
- disabled people on the premises are made aware of those arrangements.

Escape routes

It may be necessary to include conditions relating to the maintenance of all escape routes and exits including external exits. These might be expressed in terms of the need to ensure that such exits are kept unobstructed, in good order with non-slippery and even surfaces, free of trip hazards and clearly identified. In restaurants and other premises where chairs and tables are provided this might also include ensuring that internal gangways are kept unobstructed.

In certain premises where existing legislation does not provide adequately for the safety of the public, consideration might also be given to conditions that ensure that:

- all exits doors are easily openable without the use of a key, card, code or similar means;
- doors at such exits are regularly checked to ensure that they function satisfactorily and a record of the check kept;

- any removable security fastenings are removed whenever the premises are open to the public or occupied by staff;
- all fire doors are maintained effectively self-closing and shall not be held open other than by approved devices (for example, electromagnetic releases operated by smoke detectors);
- fire resisting doors to ducts, service shafts, and cupboards shall be kept locked shut; and
- the edges of the treads of steps and stairways are maintained so as to be conspicuous.

Safety checks

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- safety checks are carried out before the admission of the public; and
- details of such checks are kept in a Log-book.

Curtains, hangings, decorations and upholstery

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- hangings, curtains and temporary decorations are maintained in a flame-retardant condition;
- any upholstered seating meets on a continuous basis the pass criteria for smouldering ignition source 0, flaming ignition source 1 and crib ignition source 5 when tested in accordance with section 5 of BS 5852:1990;
- curtains, hangings and temporary decorations are arranged so as not to obstruct exits, fire safety signs or fire-fighting equipment; and
- temporary decorations are not used without prior notification to the licensing authority/fire authority.

Accommodation limits

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- arrangements are made to ensure that any capacity limit imposed under the premises licence or club premises certificate are not exceeded; and
- the licence holder, a club official, manager or designated premises supervisor should be aware of the number of people on the premises and required to inform any authorised person on request.

Fire action notices

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- notices detailing the actions to be taken in the event of fire or other emergencies, including how the fire brigade should be summoned, are prominently displayed and protected from damage and deterioration.

Outbreaks of fire

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- the fire brigade must be called at once to any outbreak of fire, however slight, and the details recorded in a Fire Log-book.

Loss of water

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- the local Fire Control Centre are notified as soon as possible if the water supply to any hydrant, hose reel, sprinkler, drencher or other fire extinguishing installation is cut off or restricted.

Access for emergency vehicles

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- access for emergency vehicles is kept clear and free from obstruction.

First aid

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- adequate and appropriate supply of first aid equipment and materials is available on the premises;
- if necessary, at least one suitably trained first-aider shall be on duty when the public are present; and if more than one suitably trained first-aider that their respective duties are clearly defined.

Lighting

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- in the absence of adequate daylight, the lighting in any area accessible to the public, members or guests shall be fully in operation when they are present;
- fire safety signs are adequately illuminated;
- emergency lighting is not altered;
- emergency lighting batteries are fully charged before the admission of the public, members or guests; and
- in the event of the failure of normal lighting, where the emergency lighting battery has a capacity of one hour, arrangements are in place to ensure that the public, members or guests leave the premises within 20 minutes unless within that time normal lighting has been restored and the battery is being re-charged; and, if the emergency lighting battery has a capacity of three hours, the appropriate period by the end of which the public should have left the premises is one hour.

Temporary electrical installations

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- temporary electrical wiring and distribution systems are not provided without [notification to the licensing authority at least ten days before commencement of the work] [prior inspection by a suitable qualified electrician];
- temporary electrical wiring and distribution systems shall comply with the recommendations of BS 7671 or where applicable BS 7909; and
- where they have not been installed by a competent person, temporary electrical wiring and distribution systems are inspected and certified by a competent person before they are put to use.

With regard to the first bullet above, it should be recognised that ten days notice may not be possible where performances are supported by outside technical teams. For example, where temporary electrical installations are made in theatres for television show performances. In such circumstances, the key requirement is that conditions where necessary should ensure that temporary electrical installations are only undertaken by competent qualified persons, for example, employed by the television company.

Indoor sports entertainments

In certain premises where existing legislation does not provide adequately for the safety of the public or club members and guests, consideration might also be given to conditions that ensure that:

- if necessary, an appropriately qualified medical practitioner is present throughout a sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature;
- where a ring is involved, it is constructed and supported by a competent person and inspected by a competent authority and any material used to form the skirt around the ring is flame-retardant;
- at any wrestling or other entertainments of a similar nature members of the public do not occupy any seat within 2.5 metres of the ring; and
- at water sports entertainments, staff adequately trained in rescue and life safety procedures are stationed and remain within the vicinity of the water at all material times (see also Managing Health and Safety in Swimming Pools issued jointly by the Health and Safety Commission and Sport England).

Alterations to the premises

Premises should not be altered in such a way as to make it impossible to comply with an existing licence condition without first seeking a variation of the premises licence proposing the deletion of the condition relating to public safety in question. The applicant will need to propose in a new operating schedule reflecting the proposed alteration to the premises how he or she intends to take alternative steps to promote the public safety objective. The application for variation will enable the responsible authorities with expertise in safety matters to consider whether the proposal is acceptable.

Special effects

The use of special effects in venues of all kinds being used for regulated entertainment is increasingly common and can present significant risks. Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

Special effects which should be considered include:

- dry ice machines and cryogenic fog;
- smoke machines and fog generators;
- pyrotechnics, including fireworks;
- real flame;
- firearms;
- motor vehicles;
- strobe lighting;
- lasers (see HSE Guide The Radiation Safety of lasers used for display purposes [HS(G)95] and BS EN 60825: Safety of laser products);
- explosives and highly flammable substances.

In certain circumstances, it may be necessary to require that certain special effects are only used with the prior notification of the licensing authority or [inspection by] the fire authority.

ANNEX F

Theatres, cinemas, concert halls and similar places (promotion of public safety)

In addition to the points made in Annex E, there are particular matters in the context of public safety and fire safety which should be considered in connection with theatres and cinemas. The principle remains that conditions must be necessary and should be established through risk assessment and standardised conditions should be avoided. The points which follow are for consideration and do not represent a mandatory list.

Premises used for closely seated audiences

Attendants

(a) The number of attendants on each floor in a closely seated auditorium should be as set out on the table below:

Number of members of the audience present on a floor	Minimum number of attendants required to be present on that floor
1 - 100	One
101 - 250	Two
251 - 500	Three
501 - 750	Four
751 -1000	Five
And one additional attendant for each additional 250 persons (or part thereof)	

(b) Attendants shall not be engaged in any duties that would hinder the prompt discharge of their duties in the event of an emergency or entail their absence from that floor or auditorium where they are on duty.

(c) Any attendant shall be readily identifiable to the audience (but this need not entail the wearing of a uniform).

(d) The premises shall not be used for a closely seated audience except in accordance with seating plan(s), a copy of which is available at the premises and shall be shown to any authorised person on request.

(e) No article shall be attached to the back of any seat which would reduce the clear width of seatways or cause a tripping hazard or obstruction.

(f) A copy of any certificate relating to the design, construction and loading of any temporary seating shall be kept available at the premises and shall be shown to any authorised person on request.

Standing and sitting in gangways etc

(a) Sitting on floors shall not be permitted except where authorised in the premises licence or club premises certificate.

(b) Waiting or standing shall not be permitted except in areas designated in the premises licence or club premises certificate.

- (c) In no circumstances shall anyone be permitted to-
- (i) sit in any gangway;
 - (ii) stand or sit in front of any exit; or
 - (iii) stand or sit on any staircase including any landings.

Drinks

Except as authorised by the premises licence or club premises certificate, no drinks shall be sold to or be consumed by a closely seated audience except in plastic and paper containers.

Balcony Fronts

Clothing or other objects shall not be placed over balcony rails or upon balcony fronts.

Special effects

Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff.

Special effects include:

- dry ice machines and cryogenic fog;
- smoke machines and fog generators;
- pyrotechnics, including fireworks;
- real flame;
- firearms;
- motor vehicles;
- strobe lighting;
- lasers (see HSE Guide The Radiation Safety of lasers used for display purposes [HS(G)95] and BS EN 60825: Safety of laser products);
- explosives and highly flammable substances.

In certain circumstances, it may be necessary to require that certain special effects are only used with the prior notification of the licensing authority or [inspection by] fire authority.

Scenery

Any scenery should be maintained flame-retardant.

Safety curtain

Where a safety curtain is provided, it should be arranged so as to protect the audience from the effects of a fire or smoke on stage for sufficient time to enable the safe evacuation of the auditorium.

Where a stage with a proscenium arch is not equipped with a safety curtain, any curtains provided between the stage and the auditorium should be heavyweight and be made of non-combustible material or inherently or durably treated flame-retarded fabric.

Ceilings

All ceilings in those parts of the premises to which the audience are admitted should be inspected by a suitably qualified person who will decide when a further inspection would be necessary and a certificate concerning the condition of the ceilings forwarded to the licensing authority.

Seating

Where the potential audience exceeds 250 all seats in the auditorium should, except in boxes accommodating not more than 8 persons, be either securely fixed to the floor or battened together in lengths of not fewer than four or more than twelve.

Premises used for film exhibitions

Attendants - premises without a staff alerting system

Where the premises are not equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty
1 - 250	Two
And one additional attendant for each additional 250 members of the audience present (or part thereof)	
Where there are more than 150 members of an audience in any auditorium or on any floor	At least one attendant shall be present in any auditorium or on any floor

Attendants – premises with a staff alerting system

(a) Where premises are equipped with a staff alerting system the number of attendants present should be as set out in the table below:

Number of members of the audience present on the premises	Minimum number of attendants required to be on duty	Minimum number of other staff on the premises who are available to assist in the event of an emergency
1 - 500	Two	One
501 - 1000	Three	Two
1001 - 1500	Four	Four
1501 or more	Five plus one for every 500 (or part thereof) persons over 2000 on the premises	Five plus one for every 500 (or part thereof) persons over 2000 on the premises

- (b) Staff shall not be considered as being available to assist in the event of an emergency if they are:
- (i) the holder of the premises licence or the manager on duty at the premises; or
 - (ii) a member of staff whose normal duties or responsibilities are likely to significantly affect or delay his response in an emergency situation; or
 - (iii) a member of staff whose usual location when on duty is more than 60 metres from the location to which he is required to go on being alerted to an emergency situation.
- (c) Attendants shall as far as reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access and keep under observation all parts of the premises to which the audience have access.
- (d) The staff alerting system shall be maintained in working order.

Minimum lighting

The level of lighting in the auditorium should be as great as possible consistent with the effective presentation of the film; and the level of illumination maintained in the auditorium during the showing of films would normally be regarded as satisfactory if it complies with the standards specified in BS CP 1007 (Maintained Lighting for Cinemas).

Flammable films

No flammable films should be allowed on the premises without the prior notification of the licensing authority/fire authority.

Annex G

Conditions relating to the prevention of public nuisance

It should be noted that provisions of the Environmental Protection Act 1990 and the Noise Act 1996 provide some protection to the general public from the effects of noise nuisance. In addition, the provisions in Part 8 of the Licensing Act 2003 enable a senior police officer to close down instantly for up to 24 hours licensed premises and premises carrying on temporary permitted activities that are causing nuisance resulting from noise emanating from the premises. These matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

General

When applicants for premises licences or club premises certificates are preparing their operating schedules or club operating schedules, responsible authorities are considering such applications and licensing authorities are considering applications following the receipt of relevant representations from a responsible authority or interested party, the following options should be considered as measures that, if necessary, would promote the prevention of public nuisance.

Whether or not any risk assessment shows them to be necessary in the individual circumstances of any premises will depend on a range of factors including the nature and style of the venue, the activities being conducted there, the location of the premises and the anticipated clientele of the business involved.

Necessary conditions for licences and certificates will also depend on local knowledge of the premises.

Hours

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted (other than where they are protected by the transitional provisions of the Licensing Act 2003) by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance. But this must be balanced by the potential impact on disorder which results from artificially early fixed closing times.

Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue.

Restrictions might be necessary on the parts of premises that might be used for certain licensable activities at certain times. For example, while the provision of regulated entertainment might be permitted while the premises is open to the public or members and their guests, regulated entertainment might not be permitted in garden areas of the premises after a certain time.

Noise and vibration

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by a simple requirement to keep doors and windows at the premises closed, or to use noise limiters on amplification equipment used at the premises;
- prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly;
- the use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted; and
- the placing of refuse – such as bottles - into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

Noxious smells

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- noxious smells from licensed premises are not permitted so as to cause a nuisance to nearby properties and the premises are properly vented.

Light pollution

In certain premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to conditions that ensure that:

- flashing or particularly bright lights on or outside licensed premises do not cause a nuisance to nearby properties. Any such condition needs to be balanced against the benefits to the prevention of crime and disorder of bright lighting in certain places.

Annex H

Conditions relating to the protection of children from harm

It should be noted that it is unlawful under the 2003 Act to permit unaccompanied children under the age of 16 to be present on premises exclusively or primarily used for supply of alcohol for consumption on those premises under the authorisation of a premises licence, club premises certificate or a temporary event notice when open for the purposes of being used for the supply of alcohol for consumption there. In addition, it is an offence to permit the presence of children under 16 who are not accompanied by an adult between midnight and 5am at all premises supplying alcohol for consumption on those premises under the authorisation of any premises licence, club premises certificate or temporary event notice. Conditions duplicating these provisions are, therefore, unnecessary.

Access for children to licensed premises - in general

Restrictions on the access of children under 18 to premises where licensable activities are being carried on should be made where it is necessary to protect children from harm. Precise policy and details will be a matter for individual licensing authorities. Conditions attached to premises licences and club premises certificates may reflect the concerns of responsible authorities and interested parties who have made representations but only where the licensing authority considers it necessary to protect children from harm. Whilst applications in relation to premises licences and club premises certificates must be judged by licensing authorities on their individual merits and characteristics, the Secretary of State recommends (unless there are circumstances justifying the contrary) that:

- for any premises with known associations (having been presented with evidence) with or likely to give rise to heavy or binge or underage drinking, drugs, significant gambling, or any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature, there should be a strong presumption against permitting any access at all for children under 18 years. Applicants wishing to allow access for children to premises where these associations may be relevant, when preparing operating schedules or club operating schedules or variations of those schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
 - explain their reasons; and
 - outline in detail the steps that they intend to take to protect children from harm on such premises.
- for any premises, not serving alcohol for consumption on the premises, but where the public are allowed on the premises after 11.00pm in the evening, there should be a presumption against the presence of children under the age of 12 unaccompanied by adults after that time. Applicants wishing to allow access when preparing operating schedules or variations of those schedules or club operating schedules for the purposes of obtaining or varying a premises licence or club premises certificate should:
 - explain their reasons; and

- outline in detail the steps that they intend to take to protect children from harm on such premises.
- in any other case, subject to the premises licence holder's or club's discretion, the expectation would be for unrestricted access for children subject to the terms of the 2003 Act. An operating schedule or club operating schedule should indicate any decision for the premises to exclude children completely, which would mean there would be no need to detail in the operating schedule steps that the applicant proposes to take to promote the protection of children from harm. Otherwise, where entry is to be permitted, the operating schedule should outline the steps to be taken to promote the protection of children from harm while on the premises.

Age Restrictions - specific

Under the 2003 Act a wide variety of licensable activities could take place at various types of premises and at different times of the day and night. Whilst it may be appropriate to allow children unrestricted access at particular times and when certain activities are not taking place, licensing authorities following relevant representations made by responsible authorities and interested parties will need to consider a range of conditions that are to be tailored to the particular premises and their activities where these are necessary. Licensing authorities are expected to consider:

- the hours of day during which age restrictions should and should not apply. For example, the fact that adult entertainment may be presented at premises after 8.00pm does not mean that it would be necessary to impose age restrictions for earlier parts of the day;
- types of event or activity in respect of which no age restrictions may be needed, for example;
 - family entertainment; or
 - non-alcohol events for young age groups, such as under 18s dances,
- Similarly, types of event or activity which give rise to a more acute need for age restrictions than normal, for example;
 - during "Happy Hours" or on drinks promotion nights;
 - during activities outlined in paragraph 1 above.

Age restrictions – cinemas

The Secretary of State considers that, in addition to the mandatory condition imposed by virtue of section 20, 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 or by the licensing authority itself, conditions restricting the admission of children to film exhibitions should include:

- a condition that where the licensing authority itself is to make recommendations on the admission of children to films, the cinema or venue operator must submit any film to the authority that it intends to exhibit 28 days before it is proposed to

show it. This is to allow the authority time to classify it so that the premises licence holder is able to adhere to any age restrictions then imposed;

- a condition that when films are classified, by either the film classification body as specified in the licence or the licensing authority, they should be classified in the following way:
 - U Universal – suitable for audiences aged four years and over
 - PG – Parental Guidance. Some scenes may be unsuitable for young children.
 - 12A – Passed only for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.
 - 15 – Passed only for viewing by persons aged 15 years and over.
 - 18 – Passed only for viewing by persons aged 18 years and over.
- that conditions specify that immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the classification of the film;
- a condition that when a licensing authority has made a recommendation on the restriction of admission of children to a film, notices are required to be displayed both inside and outside the premises so that persons entering can readily be made aware of the classification attached to any film or trailer. Such a condition might be expressed in the following terms:

“Where a programme includes a film recommended by the licensing authority as falling into the 12A, 15 or 18 category no person appearing to be under the age of 12 and unaccompanied, or under 15 or 18 as appropriate, shall be admitted to any part of the programme; and the licence holder shall display in a conspicuous position a notice in the following terms –

**PERSONS UNDER THE AGE OF [INSERT APPROPRIATE AGE]
CANNOT BE ADMITTED TO ANY PART OF THE PROGRAMME**

Where films of different categories form part of the same programme, the notice shall refer to the oldest age restriction.

This condition does not apply to members of staff under the relevant age while on-duty provided that the prior written consent of the person’s parent or legal guardian has first been obtained.”

Theatres

The admission of children to theatres, as with other licensed premises, is not expected to normally be restricted unless it is necessary to promote the licensing objective of the protection of children from harm. However, theatres may be the venue for a wide range

of activities. The admission of children to the performance of a play is expected to normally be left to the discretion of the licence holder and no condition restricting the access of children to plays should be attached. However, theatres may also present entertainment including, for example, variety shows, incorporating adult entertainment. A condition restricting the admission of children in such circumstances may be necessary. Entertainment may also be presented at theatres specifically for children (see below).

Licensing authorities are also expected to consider whether a condition should be attached to a premises licences which requires the presence of a sufficient number of adult staff on the premises to ensure the well being of children present on the premises during any emergency (See Annex F).

Performances especially for children

Where performances are presented especially for unaccompanied children in theatres and cinemas conditions are anticipated to be needed which require:

- an attendant to be stationed in the area(s) occupied by the children, in the vicinity of each exit, provided that on each level occupied by children the minimum number of attendants on duty should be one attendant per 50 children or part thereof.

Licensing authorities are expected, having regard to any representations made by responsible authorities on the issue, to also consider whether or not standing should be allowed. For example, there may be reduced risk for children in the stalls than at other levels or areas in the building.

Children in performances

There are many productions each year that are one-off shows where the cast is made up almost entirely of children. They may be taking part as individuals or as part of a drama club, stage school or school group. The age of those involved may range from 5 to 18. The Children (Performances) Regulations 1968 as amended set out requirements for children performing in a show. Licensing authorities should familiarise themselves with the requirements of these Regulations and not duplicate any of these requirements. However, if it is necessary to consider imposing conditions, in addition to these requirements, for the promotion of the protection of children from harm then the licensing authority should consider the matters outlined below.

- **Venue** – the backstage facilities should be large enough to accommodate safely the number of children taking part in any performance.
- **Fire safety** – all chaperones and production crew on the show should receive instruction on the fire procedures applicable to the venue prior to the arrival of the children.
- **Special effects** – it may be inappropriate to use certain special effects, including smoke, dry ice, rapid pulsating or flashing lights, which may trigger adverse reactions especially with regard to children.
- **Care of children** – theatres, concert halls and similar places are places of work and may contain a lot of potentially dangerous equipment. It is therefore important that children performing at such premises are kept under adult

supervision at all times including transfer from stage to dressing room and anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks

The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. The Code seeks to ensure that drinks are packaged and promoted in a socially responsible manner and only to those who are 18 years old or older. Complaints about products under the Code are considered by an Independent Complaints Panel and the Panel's decisions are published on the Portman Group's website, in the trade press and in an annual report. If a product's packaging or point-of-sale advertising is found to be in breach of the Code, the Portman Group may issue a Retailer Alert Bulletin to notify retailers of the decision and ask them not to replenish stocks of any such product or to display such point-of-sale material, until the decision has been complied with. The Code is an important mechanism in protecting children from harm because it addresses the naming, marketing and promotion of alcohol products sold in licensed premises in a manner which may appeal to or attract minors.

Where appropriate and necessary, consideration can be given to attaching conditions to premises licences and club premises certificates that require compliance with the Portman Group's Retailer Alert Bulletins.

Proof of Age cards

Proof of age cards are discussed under Annex D in connection with the prevention of crime and disorder. However, where necessary and appropriate, a requirement for the production of proof of age cards before any sale of alcohol is made could be attached to any premises licence or club premises certificate for the protection of children from harm. Any such requirement should not be limited to recognised "proof of age" cards, but allow for the production of other proof, such as photo-driving licences and passports. The Secretary of State strongly supports the PASS accreditation system (see paragraph 12.8 of the Guidance) which aims to approve and accredit various proof of age schemes that are in existence. This ensures that such schemes maintain high standards, particularly in the area of integrity and security, and where appropriate and necessary, conditions may refer directly to PASS accredited proof of age cards, photo-driving licences, student cards and passports. As for conditions relating to crime and disorder, it should be noted that many adults in England and Wales do not currently carry any proof of age. This means that the wording of any condition will require careful thought. For example, the requirement might be to ensure sight of evidence of age from any person appearing to those engaged in selling or supplying alcohol to be under the age of 18 and who is attempting to buy alcohol. This would ensure that most minors – even those looking older – would need to produce proof of age appropriately before making such a purchase. Under such an arrangement only a minority of adults might be affected, but for the majority there would be no disruption to their normal activity, for example, when shopping in a supermarket.

Proof of age cards can also ensure that appropriate checks are made where the presence of children is restricted by age at certain times, such as 16.

ANNEX I

Statutory qualifying conditions for clubs

The following qualifying conditions for clubs are extracted from the Licensing Act 2003.

62 *The general conditions*

(1) The general conditions which a club must satisfy if it is to be a qualifying club in relation to a qualifying club activity are the following.

(2) Condition 1 is that under the rules of the club persons may not-

(a) be admitted to membership, or

(b) be admitted, as candidates for membership, to any of the privileges of membership,

without an interval of at least two days between their nomination or application for membership and their admission.

(3) Condition 2 is that under the rules of the club persons becoming members without prior nomination or application may not be admitted to the privileges of membership without an interval of at least two days between their becoming members and their admission.

(4) Condition 3 is that the club is established and conducted in good faith as a club (see section 63).

(5) Condition 4 is that the club has at least 25 members.

(6) Condition 5 is that alcohol is not supplied, or intended to be supplied, to members on the premises otherwise than by or on behalf of the club.

63 *Determining whether a club is established and conducted in good faith*

(1) In determining for the purposes of condition 3 in subsection (4) of section 62 whether a club is established and conducted in good faith as a club, the matters to be taken into account are those specified in subsection (2).

(2) Those matters are-

- (a) any arrangements restricting the club's freedom of purchase of alcohol;
- (b) any provision in the rules, or arrangements, under which-
 - (i) money or property of the club, or
 - (ii) any gain arising from the carrying on of the club,is or may be applied otherwise than for the benefit of the club as a whole or for charitable, benevolent or political purposes;
- (c) the arrangements for giving members information about the finances of the club;
- (d) the books of account and other records kept to ensure the accuracy of that information;
- (e) the nature of the premises occupied by the club.

(3) If a licensing authority decides for any purpose of this Act that a club does not satisfy condition 3 in subsection (4) of section 62, the authority must give the club notice of the decision and of the reasons for it.

64 *The additional conditions for the supply of alcohol*

(1) The additional conditions which a club must satisfy if it is to be a qualifying club in relation to the supply of alcohol to members or guests are the following.

(2) Additional condition 1 is that (so far as not managed by the club in general meeting or otherwise by the general body of members) the purchase of alcohol for the club, and the supply of alcohol by the club, are managed by a committee whose members-

- (a) are members of the club;
- (b) have attained the age of 18 years; and
- (c) are elected by the members of the club.

This subsection is subject to section 65 (which makes special provision for industrial and provident societies, friendly societies etc.).

(3) Additional condition 2 is that no arrangements are, or are intended to be, made for any person to receive at the expense of the club any commission, percentage or similar payment on, or with reference to, purchases of alcohol by the club.

(4) Additional condition 3 is that no arrangements are, or are intended to be, made for any person directly or indirectly to derive any pecuniary benefit from the supply of alcohol by or on behalf of the club to members or guests, apart from-

- (a) any benefit accruing to the club as a whole, or

(b) any benefit which a person derives indirectly by reason of the supply giving rise or contributing to a general gain from the carrying on of the club.

65 *Industrial and provident societies, friendly societies etc.*

(1) Subsection (2) applies in relation to any club which is-

(a) a registered society, within the meaning of the Industrial and Provident Societies Act 1965 (c.12)(see section 74(1) of that Act),

(b) a registered society, within the meaning of the Friendly Societies Act 1974 (c.46) (see section 111(1) of that Act), or

(c) a registered friendly society, within the meaning of the Friendly Societies Act 1992 (c.40) (see section 116 of that Act).

(2) Any such club is to be taken for the purposes of this Act to satisfy additional condition 1 in subsection (2) of section 64 if and to the extent that-

(a) the purchase of alcohol for the club, and

(b) the supply of alcohol by the club,

are under the control of the members or of a committee appointed by the members.

(3) References in this Act, other than this section, to-

(a) subsection (2) of section 64, or

(b) additional condition 1 in that subsection,

are references to it as read with subsection (1) of this section.

(4) Subject to subsection (5), this Act applies in relation to an incorporated friendly society as it applies in relation to a club, and accordingly-

(a) the premises of the society are to be treated as the premises of a club,

(b) the members of the society are to be treated as the members of the club, and

(c) anything done by or on behalf of the society is to be treated as done by or on behalf of the club.

(5) In determining for the purposes of section 61 whether an incorporated friendly society is a qualifying club in relation to a qualifying club activity, the society is to be taken to satisfy the following conditions-

(a) condition 3 in subsection (4) of section 62,

- (b) condition 5 in subsection (6) of that section,
- (c) the additional conditions in section 64.

(6) In this section "incorporated friendly society" has the same meaning as in the Friendly Societies Act 1992 (see section 116 of that Act).

66 *Miners' welfare institutes*

(1) Subject to subsection (2), this Act applies to a relevant miners' welfare institute as it applies to a club, and accordingly-

- (a) the premises of the institute are to be treated as the premises of a club,
- (b) the persons enrolled as members of the institute are to be treated as the members of the club, and
- (c) anything done by or on behalf of the trustees or managers in carrying on the institute is to be treated as done by or on behalf of the club.

(2) In determining for the purposes of section 61 whether a relevant miners' welfare institute is a qualifying club in relation to a qualifying club activity, the institute is to be taken to satisfy the following conditions-

- (a) condition 3 in subsection (4) of section 62,
- (b) condition 4 in subsection (5) of that section,
- (c) condition 5 in subsection (6) of that section,
- (d) the additional conditions in section 64.

(3) For the purposes of this section-

- (a) "miners' welfare institute" means an association organised for the social well-being and recreation of persons employed in or about coal mines (or of such persons in particular), and
- (b) a miners' welfare institute is "relevant" if it satisfies one of the following conditions.

(4) The first condition is that-

- (a) the institute is managed by a committee or board, and
- (b) at least two thirds of the committee or board consists-
 - (i) partly of persons appointed or nominated, or appointed or elected from among persons nominated, by one or more licensed operators within the meaning of the Coal Industry Act 1994 (c.21), and
 - (ii) partly of persons appointed or nominated, or appointed or elected from among persons nominated, by one or more organisations representing persons employed in or about

coal mines.

(5) The second condition is that-

(a) the institute is managed by a committee or board, but

(b) the making of-

(i) an appointment or nomination falling within subsection (4)(b)(i), or

(ii) an appointment or nomination falling within subsection (4)(b)(ii),

is not practicable or would not be appropriate, and

(c) at least two thirds of the committee or board consists-

(i) partly of persons employed, or formerly employed, in or about coal mines, and

(ii) partly of persons appointed by the Coal Industry Social Welfare Organisation or a body or person to which the functions of that Organisation have been transferred under section 12(3) of the Miners' Welfare Act 1952 (c.23).

(6) The third condition is that the premises of the institute are held on trusts to which section 2 of the Recreational Charities Act 1958 (c.17) applies.

Annex J

The Safer Clubbing Checklist for club owners, managers and event promoters

The role of club owners, managers and event promoters is to ensure that all aspects of their venue are designed and run in ways which maximise the safety of customers, performers and staff.

Key activities of club owners, managers and event promoters include:

- Communicating all safety requirements clearly to performers ensuring that they are familiar with and understand the safety requirements for the venue
- Developing a constructive working relationship with licensing authority officers and police officers with licensing responsibilities
- Developing a venue drug policy in consultation with licensing and police officers
- Ensuring that all staff are aware of their responsibilities within the drug policy and that they receive training and support to discharge these fully
- Employing door supervisors from a reputable company and with SIA accreditation
- Employing experienced and fully trained first aiders
- Providing free and easily accessible supplies of cold water and ensuring the provision of water is supervised to prevent contamination of water by others
- Liaising with appropriate drug service personnel to provide training to staff, and information, advice and support to clubbers
- Considering inviting and supporting drug outreach work, including integrating outreach workers into the staff team
- Sharing intelligence on drug use and drug dealing with police officers and other local venues
- Informing clubbers of their rights and responsibilities, and encouraging feedback on safety issues
- Considering the provision of safe transport home
- Ensuring that all staff are aware of the law and the responsibilities of the club to work within it

Annex K

Key actions for licensing authorities in connection with safer clubbing

In connection with safer clubbing, the role of the licensing authority officers is to take the lead in ensuring that dance venues are designed and run in a way which maximises the safety of customers, performers and staff. With the police, they are responsible for monitoring and enforcing compliance with regulations.

Key activities of licensing authority officers include:

- Providing clear information on how to apply for a premises licence
- Providing induction training to councillors serving on licensing committees
- Advising venue owners on how to establish and maintain a safe environment
- Advising venue owners, in partnership with police officers and police licensing officers, on developing a venue drug policy
- Ensuring that sufficient first aiders are always present and are trained to a high standard
- Informing clubbers of their rights
- Liaising with police licensing and other officers to ensure good communication about potentially dangerous venues
- Encouraging venues to use outreach services
- Encouraging venues to provide safe transport home
- Surveying clubbers on their views of the safety aspects of different local venues
- Monitoring the operation of clubs at times of peak occupancy
- Ensuring that door supervisors are from a reputable company and with SIA accreditation
- Ensuring that door supervisors are properly trained

ANNEX L

[SPECIMEN]

CLOSURE ORDER MADE UNDER SECTION 161 OF THE LICENSING ACT 2003

Date and Time: _____

Police Force: _____

Name and rank of Senior Police Officer making the order:

Premises to be closed:

Period of closure (until – time and date):

Reason (grounds) for Closure:

Attention is drawn to the attached Notes which form part of this order.

**Name of person to whom notice of the order has been given and his or her
capacity in relation to the premises:**

**Signature of Person to whom notice of the order has been
given:** _____

Notes for specimen closure order:

A senior police officer has decided to make this closure order under the terms of section 161 of the Licensing Act 2003, requiring the relevant premises specified in the order to be closed for the period of time specified in the order.

Your attention is drawn to section 161(6) of the 2003 Act. This makes it an offence for a person, without reasonable excuse, to permit relevant premises to be open in contravention of this closure order or any extension of it, and any person found guilty of such an offence shall be liable to a fine not exceeding £20,000 or to imprisonment for a term not exceeding three months or to both.

By virtue of section 171(2) and (3) of the 2003 Act, relevant premises are to be regarded as open, for the purposes of this order, if any person other than the holder of the premises licence for the premises, any designated premises supervisor, the premises user in connection with a temporary event notice, a manager of the premises, any person who usually lives at the premises or any member of the family of any of the former, enters the premises and buys, or is otherwise supplied with food or drink or any item usually sold on the premises or while he is on the premises, they are used for the provision of regulated entertainment.

Sections 162 – 168 of the Licensing Act 2003

This part of the closure order now explains the effects of sections 162 – 168 of the 2003 Act as required by section 161(4)(d) of that Act.

Initial hearing

- The senior police officer who made the closure order is under a statutory duty to apply to the magistrates' court for it to consider the order, or any extension of it, as soon as reasonably practicable after it comes into force.
- The magistrate's court must consider the closure order made by a senior police officer as soon as practicable after receiving the application, by holding a hearing and determining whether to exercise its powers under section 165 of the 2003 Act.
- Under law on human rights, you are entitled to attend the hearing, to be legally represented, and to make representations to the court before any decision is taken. The chief executive to the magistrates' court will be able to advise you about the details of the procedures which apply in your area.
- A discretion is provided for the magistrates to revoke the order and any extension of it, if it is still in force; or to order that the premises remain closed or be closed until the a review of the licence has taken place; or to order that the premises remain closed until a review of the licence has taken place but subject to such exceptions or conditions that they may specify. The last of these powers would enable the court to allow premises to re-open but subject to certain new terms and conditions which they may decide to impose.

- When deciding whether the premises should be allowed to re-open or remain closed, the court must consider whether closure of the premises is necessary in the interests of public safety to prevent disorder or likely disorder (where the closure order was made for this reason) or to prevent further public nuisance caused by noise (where the closure order was made for this reason).
- It is an offence for any person who permits the premises to open in contravention of an order made by the magistrates for the closure of the premises, and the 2003 Act provides for an offender on conviction to be liable to a fine not exceeding £20,000 or to three months imprisonment or to both.
- It is an offence for any person who fails to comply with or does an act in contravention of any order made by the magistrates in relation to the premises in these proceedings, and provides for an offender on conviction to be liable to a fine not exceeding £20,000 or to three months imprisonment or to both.
- Where, for whatever reason, the courts are unable to consider a closure order before it expires, the senior police officer concerned may extend the order for up to another period of 24 hours if certain circumstances obtain. These are that the officer reasonably believes that the closure of the premises continues to be necessary in the interests of public safety to prevent disorder, or likely disorder or to prevent further public nuisance caused by noise. Such extensions can be made on an indefinite number of occasions.
- The senior police officer is required to give notice to the holder of the premises licence for the premises, or any designated premises supervisor, or the premises user in connection with a temporary event notice, or a manager of the premises of such extensions of the closure order.
- The senior police officer may cancel his closure order or any extension of it at any time after he has issued it, but before it has been considered by the court. If he does so, the court must still consider the closure order originally served, and the licensing authority will still be obliged to review the premises licence.
- The senior police officer is required to cancel the order if he reasonably believes that closure of the premises is no longer necessary in the interests of public safety to prevent disorder or to prevent further public nuisance; and is required to give notice to the holder of the premises licence for the premises, or any designated premises supervisor, or the premises user in connection with a temporary event notice, or a manager of the premises when he decides to cancel it.

Review hearing

- The licensing authority must review the premises licence in respect of the premises no later than 28 days after it is notified of the magistrates' courts' determination. The authority is empowered, if necessary to promote the licensing objectives, to modify the conditions of the premises licence, exclude a licensable activity from the scope of the licence, remove the designated premises supervisor from the licence, suspend the licence for a period not exceeding three months or revoke the licence. Their consideration is not confined solely to the

incident which gave rise to the service of the closure order. They may examine any issues which would be relevant to the promotion of the licensing objectives.

- Where a decision has been made to revoke the premises licence, the decision has no effect until the expiry of the time permitted for appealing against the decision; and if an appeal is made until the appeal is disposed of.

Enquiries

Any enquires about the content of this Guidance should be made to:

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Department for Culture, Media and Sport
Tourism Division
3rd Floor
2- 4 Cockspur Street
London SW1Y 5DH**

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