Alcohol & Entertainment Licensing Law

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Includes full text of the Licensing Act & Regulations
ALCOHOL &
ENTERTAINMENT
LICENSING LAW
ALCOHOL & ENTERTAINMENT LICENSING LAW

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The Licensing Act 2003 represents the first major attempt to reform the law relating to the sale of alcohol since the introduction of the Licensing Act 1964 (which itself was a consolidating measure) and the law relating to the provision of entertainments since the Local Government (Miscellaneous Provisions) Act 1982. The last legislative reforms of any significance relating to the provision of late night refreshment services, outside of London, took place in the 1960s with the Refreshment Houses Acts 1964–67, which were consolidated in the Late Night Refreshment Houses Act 1969. Inevitably, the leisure industry landscape onto which these earlier legislative provisions were mapped has changed considerably in the intervening years. Indeed, it would probably be accurate to say that there was no concept of a ‘leisure industry’ at the time the previous reforms were implemented. The changing nature of the public house, often no longer devoted solely to the provision of alcohol, but featuring a wide variety of food and a range of entertainment, and the spread of nightclubs, multiplex cinemas and fast food outlets serving into the early hours of the morning, as well as the emergence of the ‘24 hour city’, have all transformed the social scene that the previous legislative provisions were seeking to regulate. The 2003 Act represents a long overdue attempt to implement a modern system of licensing suitable for the 21st century.

Our objective in writing this book has been to try to provide a detailed exposition and analysis of the legislative provisions in the 2003 Act, although it is not intended to be simply a ‘Guide to the Licensing Act 2003’, and we have deliberately not chosen this as a title for the book. Whilst the greater part of the book inevitably focuses on the provisions of the new Act, the book professes to be more than an annotated version of the statute. It seeks to examine and address other issues raised by the legislation, notably changes to the framework within which licensing decisions are made and the human rights implications of the 2003 Act’s provisions. We hope that it is a better book for doing so. We have included in appendices the full text of the Act and the regulations and other secondary legislation introduced under it (without Schedules where these contain application forms), but not the Guidance issued by the Secretary of State for Culture, Media and Sport under s 182 of the Act. This was due to a combination of factors – the length of the Guidance (over 170 pages), the repetition of parts of the Act are in the Guidance, the fact that significant sections of the Guidance are incorporated into the text of the book and, ultimately, the pressure on space. As the Guidance is likely to be subject to amendment from time to time, it is best accessed on the Department of Culture, Media and Sport’s website (www.culture.gov.uk), where the full text is available.

We hope also that the book will be benefit from a measure of both academic and practitioner evaluation and input. Colin Manchester’s book Entertainment Licensing Law and Practice (ELLP), although covering matters of licensing practice, was written essentially from an academic perspective with no direct experience of legal practice. (This may have been all too apparent to those with a deep knowledge and understanding of legal practice in this area.) The present work on the new Act should remedy any deficiencies of the earlier work in this respect, since both Jeremy Allen and Susanna Poppleston have a wide knowledge of and expertise in legal practice in all of the areas covered in the new legislation. Those familiar with ELLP may recognise a few passages replicated in the present work. Rewriting a passage is neither an easy task nor, indeed, a productive one and, although copyright in the ELLP material remains with Colin Manchester, we are grateful to Butterworths for their agreement that verbatim inclusion of these sections did not contravene their exclusive right to publish.
It was always our intention that the writing of the book would be done by Colin Manchester, since, after all, writing is supposed to be one of the things that he is employed to do. Colin Manchester has duly obliged by writing first drafts of all of the chapters and incorporating all subsequent amendments as the chapters have progressed from first draft to final format. This has made the book more cohesive and has ensured a consistency of expression and style (or lack of it). We have, over the course of our work on the chapters, revised our views on a number of matters and the book as published reflects our current thinking. In due course it may be that in some instances our views will change from those expressed in the text and, where this is the case, each of us will have to fall back on the comforting words of Bramwell B in Andrews v Styrap (1872) 26 LT 704, 706: ‘The matter does not appear to me now as it appears to have appeared to me then.’

When writing the first drafts of the chapters, we made extensive use of cross-referencing to help readers navigate their way round the book and to make it more user-friendly. At that time the secondary legislation had not been published and when we incorporated it some of the paragraphs (for example, para 2.4.13 and para 6.3.1) grew considerably in length. Given the extensive cross-referencing, any attempt to change paragraph numbering would assume nightmare proportions and we have had no choice but to retain the original paragraph numbering. We hope that the benefits of cross-referencing will outweigh the fact that a number of single paragraphs run to several or more pages.

We have done our best to ensure, first, that there are no numerical errors in sections of the Act or in Articles, paragraphs or regulations in secondary legislation and, secondly, that text does not appear from earlier versions of the Bill or drafts of the secondary legislation or the Guidance and which does not correspond with the final text version. However, as is perhaps inevitable when writing a work based on legislation, as it is being passed and where it undergoes numerous changes during the course of its enactment, some errors will invariably have crept in. We can only hope that we have managed to keep errors to a minimum and will be grateful if any errors can be drawn to the attention of Colin Manchester by email (C.D.Manchester@bham.ac.uk) so that they can be rectified in subsequent editions of the book.

We are grateful to everyone who has given us assistance in the writing of this book. We are particularly indebted to Graeme Cushion, David Lucas, Lisa Sharkey, Jonathan Smith and Paddy Whur of Poppleston Allen for their helpful comments and valuable insights into various aspects of the legislation; to Adrian Hunt and Jeremy McBride of the University of Birmingham for their help with the chapter on licensing and human rights; and to a number of people with wide experience in and knowledge of the licensing field, including Yvonne Bacon, James Button, Pat Crowley, David Daycock and Peter Keown. Our thanks are also due to Cavendish Publishing, and in particular to Ruth Massey and Ruth Phillips, Sanjeevi Perera and Kara Milne, with whom we have worked closely on the project. Long delays in publication of the final version of both the Secretary of State’s Guidance and the secondary legislation has meant that the book has had a long gestation period and during this time the publishers, anxious to get the book published, have shown a remarkable degree of tolerance and patience. We were unanimous in our view that the book should not be published until the legislative process was virtually complete (for there are one or two areas on which secondary legislation is still to be published, for example, temporary event notices)
and we hope that in this respect we have made the right decision. Last, but by no means least, our thanks go to our families for putting up with our preoccupation with work on the book and for enduring frequent absences, both physical and mental, and it is to them that the book is dedicated.

It is hoped that the work will be of primary interest to legal practitioners, particularly those with some degree of specialisation in the field of licensing law, and to local authorities that have responsibility for administering the new licensing scheme. It may also be of interest to other individuals and bodies who, to a greater or lesser extent, are involved in these areas of licensing, such as magistrates, justices’ chief executives, prosecuting authorities and the various bodies (for example, police, fire authorities and environmental health departments) designated as ‘responsible authorities’ under the 2003 Act.

We have attempted to state the law, or at least the law as we understand it, as at 1 April 2005.

Colin Manchester
Susanna Poppleston
Jeremy Allen
April 2005
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**White Paper**


**Acts**

- **1964 Act** Licensing Act 1964
- **2003 Act** Licensing Act 2003
CHAPTER 1
INTRODUCTION AND BACKGROUND TO THE LICENSING ACT 2003

1.1 INTRODUCTION

The licensing objectives of the Licensing Act 2003 for the areas covered by the legislation – alcohol, entertainment and late night refreshment services – are clearly set out in s 4(2) of the Act. The Act provides that the objectives are: (a) the prevention of crime and disorder; (b) public safety; (c) the prevention of public nuisance; and (d) the protection of children from harm. Prior to the Act, the licensing objectives for these areas were not explicitly set out in the relevant legislation. Historically, as will be seen, the primary rationale for the introduction of licensing control in all three areas was the prevention of disorder, but public safety and prevention of public nuisance subsequently came to be seen as increasingly important objectives complementing (and, in some cases, superseding in importance) the original primary rationale. The protection of harm to children was also an important consideration under the previous law, notably in respect of licence conditions prohibiting or restricting the access of children to premises selling alcohol and/or providing certain forms of entertainment, such as lap dancing, striptease performances and exhibitions of films of a violent or sexual nature.

Licensing controls over the areas in question, particularly over the sale of alcohol and over the provision of at least some forms of entertainment, have a long history and some understanding of the controls that have operated historically is required in order to understand fully the present law. In particular, since case law decided under previous legislative provisions may afford some guidance and/or have application under the 2003 Act, some familiarity with these provisions is desirable. This chapter thus seeks to provide an historical outline of the relevant legislative provisions that have operated in this field prior to the introduction of the 2003 Act.

1.2 ALCOHOL LICENSING

1.2.1 Introduction of licensing control

Laws regulating the sale of alcohol have been with us for over 500 years. The first legislative provision seems to have been a statute of 1495 (c 2), which empowered justices of the peace ‘to restrict the common selling of ale’. This restriction was part of a policy of discouraging indoor games in alehouses, the playing of which apparently tended to divert people from archery, a pursuit considered to be more important as a necessary adjunct for the purpose of the defence of the realm. At the same time, the opportunity was taken to exercise some control over alehouse keepers by giving two justices the power to require sureties (sums of money) from them for their good behaviour. In 1552, licensing control over alehouses was first introduced. The main reason for this was to prevent disorders that were arising in alehouses, although the Act was also concerned (again) with preventing unlawful games taking place on the premises. The preservation of public order was thus the primary justification for the introduction of liquor licensing control and it continued thereafter to be the primary
justification for its existence. History shows undesirable social consequences may occur following the consumption of alcohol, for example, fights, aggression, nuisance and criminal damage, and it was because of the threat posed to public order that licensing was entrusted to justices rather than to any other body.

The 1552 Act gave the justices the power to grant or refuse a licence to alehouse keepers and conditions were imposed on licences, which required that the laws against drunkenness should be observed. No term was specified for the licence’s duration, but justices soon started to require an annual renewal and they assumed the power to review and refuse renewal. This requirement to obtain a justices’ licence was subsequently extended by other legislative provisions to cover sales of other types of liquor, that is, spirits (in 1700) and wine (in 1792). The law was eventually consolidated and reduced to one statute in the Alehouses Act 1828, which provided that a licence was needed from justices for the retail sale of all types of liquor.

### 1.2.2 Deregulation of the sale of beer

There was a significant departure from the system of licensing control by justices during the middle years of the 19th century. This was when the sale of beer was deregulated by the Beerhouses Act 1830. No justices’ licence was needed for sales and there was a similar deregulation of off-sales of wines and spirits by the Refreshment Houses Act 1860 and the Revenue (No 1) Act 1861 respectively. Deregulation, however, resulted in a large increase in the number of premises selling alcohol, with some attendant disorder and a not inconsiderable increase in drunkenness, and this led eventually to the reintroduction of licensing control by justices under the Wine and Beerhouse Act 1869. The clear aim of the 1869 Act was to curtail the increase in the number of premises selling alcohol and, with a view to enabling this to be achieved, it conferred on justices a very broad discretion in respect of the grant of new on-licences.

### 1.2.3 Justices’ discretion and restrictive exercise

1.2.4 The discretion conferred on justices was, however, accompanied by a complete lack of statutory guidance as to how this should be exercised, which may perhaps explain why justices did not exercise their discretion under the Act in too restrictive a way. Nevertheless, it was open to justices to exercise their discretion in a restrictive way and take into account ‘need’ (or ‘demand’), that is, whether there was a need for another licensed outlet, having regard to what justices saw as necessary for the legitimate needs of the population. Although ‘need’ was not specifically mentioned in the legislation, it was subsequently confirmed by the House of Lords, in Sharpe v Wakefield [1891] AC 173, that the justices’ discretion could be exercised in this way and

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1 As the Monopolies Commission observed in A Report on the Supply of Beer (1969) HC 1216, p 157, ‘Not knowing precisely the grounds on which they ought to refuse, the justices seem generally not to have done so and the marked decline in the number of premises licensed, which might have followed the 1869 Act, did not happen’.  

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Chapter 1: Introduction and Background to the Licensing Act 2003

that it was legitimate to have regard to ‘need’. The broad discretion given to justices in respect of the grant and refusal of new on-licences by the Wine and Beerhouse Act 1869 was subsequently extended to the grant and refusal of new off-licences by the Licensing Act 1902. It continued to apply thereafter under subsequent legislative provisions, including the Licensing Act 1964, the principal provision for the licensing of alcohol (or ‘intoxicating liquor’, to use the terminology employed in that legislation) prior to the passage of the 2003 Act. When justices were exercising this discretion, the objectives that they were seeking to achieve included not just the prevention of disorder, the original rationale for the introduction of licensing control, but also public safety and prevention of public nuisance.

1.2.5 The reintroduction of licensing control in the 1869 Act was followed by further restrictions in the form of reduced opening hours for licensed premises. Historically, there had been relatively few restrictions apart from those on Sundays, Good Friday and Christmas Day. The Licensing Acts of 1872 and 1874, however, imposed closure at midnight and for a period of the following five or six hours on weekdays and for most of Sundays except for two hours at lunchtime and four or five hours in the evening. (It became even more restrictive in Wales on Sundays, following the Sunday Closing (Wales) Act 1881 when closure on Sunday became absolute.) These opening hours, which were not particularly restrictive, persisted until the First World War, when many more restrictions were introduced.

The Government was very concerned that drink was hampering the war effort and it was blamed for industrial inefficiency, absenteeism and a large number of industrial accidents. Accordingly, the Government set up a Central Control Board with wide powers to regulate the sale of alcohol. Opening hours, in particular, were considerably restricted, to about two and a half hours at lunchtime and three hours in the evening. Perhaps not surprisingly, this drastically reduced the incidence of

2 The concept of ‘need’ proved to be a controversial one. Arguments against need might include: that it is contrary to policy for justices to be making semi-commercial judgments about the level of demand; that it provides an unnecessary protection for existing retail outlets; and that it erects a barrier to entry to the market. Arguments in favour of need might include: that it helps to avoid undue risk of nuisance and disorder; that it can be used to avoid a concentration or cluster of premises leading to problems; and that it can guard against trade competition leading to increased consumption (‘binge drinking’) and public health problems.

3 The 1902 Act was also concerned with raising standards in licensed premises. It gave justices control over structural alterations to on-licensed premises and, under the Licensing Act 1904, justices were given the power to attach conditions to the grant of on-licences. The 1902 Act also made provision for members’ clubs to supply alcohol to their members without the need for a licence, provided they registered with the clerk to the justices and observed certain conditions.

4 See s 3 of the Licensing Act 1964, which provided: ‘Licensing justices may grant a justices’ licence to any such person, not disqualified under this or any other Act, as they think fit and proper.’ The concept of ‘need’ no longer applies under the 2003 Act – see 2.2.7 below.

5 See, eg, statements by the Chancellor of the Exchequer, Lloyd George, in 1915, that ‘drink is doing us more damage in the war than all the German submarines put together’ (Manchester Guardian, 1 March 1915) and ‘we are fighting Germany, Austria and drink, and, as far as I can see, the greatest of these three deadly foes is drink’ (Manchester Guardian, 30 March 1915).

6 In addition, to set a good example, the King (George V) was persuaded to take a pledge of total abstinence for the duration of the war. A similar pledge was taken by the War Secretary, Lord Kitchener, although not by others members of the Cabinet.
drunkenness,\textsuperscript{7} and consequently, in the Licensing Act 1921, the Government regularised the position of restricted opening hours for licensed premises that had been introduced by the Central Control Board. The pattern of lunchtime opening, an afternoon break, and evening opening was retained, although with rather less restrictive hours.\textsuperscript{8} These limits on hours were also extended to registered clubs, whose hours had not hitherto been subject to restriction, although clubs remained free to fix their own hours within the limits prescribed.

1.2.6 Post-Second World War liberalisation

1.2.7 Following the Second World War, there was a progressive relaxation of the licensing laws, particularly in respect of opening hours. Special hours certificates were introduced by the Licensing Act 1949 to enable late night drinking to take place in London up to 2.00 am in restaurants and clubs providing music and dancing, provided the sale of alcohol was ancillary. Later opening in London, until 3.00 am, was permitted by the Licensing Act 1961, which also extended these certificates to all parts of the country enabling drinking to take place to 2.00 am. Further, the Act also extended the general opening hours to nine hours in provincial areas, with the possibility of an extension to nine and a half hours if the justices were satisfied that the requirements of the district made it desirable.\textsuperscript{9} These changes were consolidated in the Licensing Act 1964, which became the principal legislative provision dealing with the licensing of premises selling alcohol. Amendments, however, continued to be made and in the latter years of the 20th century there was a further liberalisation in opening hours by the Licensing Act 1988, the most important of which was the abolition of the afternoon break on weekdays.\textsuperscript{10} The afternoon break for Sundays was retained, although reduced from five to four hours, but this was later abolished (except for Christmas Day) by the Licensing (Sunday Hours) Act 1995.

1.2.8 Coincident with this further liberalisation in opening hours was a move towards reduced regulation in areas that affected businesses, following the Conservative Government’s Deregulation Initiative in the early 1990s. The Government sought, through the Initiative, to reduce significantly the level of government regulation of business and, to give effect to this, the Deregulation and Contracting Out Act 1994 was introduced. Section 1 of the Act conferred on Ministers a

\textsuperscript{7} The total number of offences of drunkenness in 1914 had been 183,828 and in 1918 was 29,075 (Report of the Departmental Committee on Liquor Licensing, Cmd 5154, 1972, App H).

\textsuperscript{8} On weekdays, the permitted hours were 11.00 am to 3.00 pm and from 5.30 pm to 10.00 pm (or 11.00 pm in London). The limit was thus eight and a half hours in provincial areas and nine and a half hours in London, although the justices, provided the limit was not exceeded, could vary the starting and closing times (to begin as early as 9.00 am or to end half an hour later at 10.30 pm). Sundays were more restrictive, with a total of five hours and a break of at least three hours in the afternoon. On the other hand, the Act also introduced a ‘supper hour’ for establishments serving late meals, whereby such establishments, provided they supplied ‘substantial refreshment’ and met certain other conditions, could serve alcohol for an extra hour beyond the normal evening closing time.

\textsuperscript{9} The nine and a half hour limit remained unchanged in London. The extension to nine hours was achieved by ending permitted hours at 10.30 pm (or 11.00 pm if extended to nine and a half hours). In addition, the general opening hours for off-licences were further extended so that they could open at 8.30 am and did not have to close for an afternoon break.

\textsuperscript{10} There was also an additional half hour added to the end of general opening hours, so that opening was permitted until 11.00 pm, and half an hour to the beginning of general opening hours for off-licences, so that they could open at 8.00 am.
power to amend or repeal, by ministerial order, primary legislation that imposed unnecessary burdens on businesses or individuals so long as necessary protection was not reduced.\textsuperscript{11} A number of Deregulation Orders relating to the sale of alcohol were introduced under this provision and its successor, s 1 of the Regulatory Reform Act 2001 (which removed some of the barriers to wider application of the deregulation order-making power in the 1994 Act).\textsuperscript{12} However, it was apparent by the 1990s (if not before) that the principal legislation, the Licensing Act 1964, was substantially outdated, that amendments to it could not continue indefinitely, and that a fundamental review and overhaul were needed.

This process was set in motion towards the end of the 1990s with the establishment of the Better Regulation Task Force (BRTF). The BTRF, which was appointed in September 1997 by the Chancellor of the Duchy of Lancaster, who was a Cabinet Minister, was to advise the Government on improving the quality of government regulation\textsuperscript{13} and it chose Licensing Legislation for one of its first in-depth reviews.\textsuperscript{14} The Working Group on Licensing Legislation, chaired by Allan Charlesworth, Assistant Chief Constable of West Yorkshire and chairman of the Association of Chief Police Officers’ subcommittee on liquor licensing, produced a Review in July 1998, which contained a number of recommendations, perhaps the most far-reaching of which was the transfer of responsibility for liquor licensing from justices to local authorities. Shortly before publication of the Review, in May 1998, the Home Office Minister with responsibility for licensing,\textsuperscript{15} George Howarth, announced that ‘the time is right to blow away the cobwebs in British life by modernising the liquor licensing system’.\textsuperscript{16} These comments had two consequences. One was the publication of the Good Practice Guide by the Justices’ Clerks’ Society and Magistrates’ Association. This sought to make provision for a greater degree of consistency by justices in the administration of the system of liquor licensing and also recommended that ‘need’ should no longer be considered by the justices when looking at applications for new

\textsuperscript{11} Various safeguards were contained in the Act for the scrutiny of ministerial orders: a draft of the order, together with an explanatory document giving details of the proposal and the consultation undertaken, had to be laid before each House of Parliament and the proposal was subsequently examined by a specially constituted Deregulation Committee in the House of Commons and by a Select Committee on the Scrutiny of Delegated Powers in the House of Lords.

\textsuperscript{12} See, eg, the Deregulation (Special Hours Certificates) Order 1996, SI 1996/977, which made provision for the grant of a provisional special hours certificate; the Deregulation (Employment in Bars) Order 1997, SI 1997/957, which inserted s 170A into the Licensing Act 1964 that enabled licensees to employ 16- and 17-year-olds in bars provided that they were participating in a training scheme approved by the Secretary of State; and the Deregulation (Restaurant Licensing Hours) Order 2002, SI 2002/493, which removed the requirement in s 95 of the Licensing Act 1964 for the licensee of a restaurant that served alcohol with meals until midnight on weekdays and 11.30 pm on Sundays to obtain a supper hour certificate.

\textsuperscript{13} Its terms of reference were ‘to advise the Government on action which improves the effectiveness and credibility of government regulation by ensuring that it is necessary, fair and affordable, and simple to understand and administer, taking particular account of the needs of small businesses and ordinary people’: Principles of Good Regulation, Cabinet Office, 1998.

\textsuperscript{14} This was ‘because of what would appear to be the unnecessary complexity of the law and administrative procedures in this area’ (Foreword to the BRTF Review of Licensing Legislation, Cabinet Office, p 2).

\textsuperscript{15} Responsibility for licensing then rested with the Home Office, but was subsequently transferred to the Department of Culture, Media and Sport.

licences. The other was a joint leisure industry response, which culminated in the publication of a number of recommendations to the Home Office in August 1999. Most of the key recommendations contained in this document subsequently appeared in the Government White Paper, Time for Reform: Proposals for the Modernisation of our Licensing Laws (Cm 4696, 2000), published in April 2000, which proposed reform not only of alcohol licensing, but also the licensing of public entertainments and late night refreshment services:

The current alcohol licensing system is an amalgam of 19th century legislation, intended to suppress drunkenness and disorder, and later additions. The law is complex, and involves a great deal of unnecessary red tape for business. We owe magistrates and the police a large debt of gratitude for doing their best to make the system work; but ... [t]he time has come to develop a better system.

... There is a parallel and separate system of public entertainment licensing, under which local authorities issue licences for premises that may or may not also have a liquor licence. These laws too are complex and riddled with anomalies. The intersection of the two licensing systems imposes unnecessary costs and burdens on business.

To complete the picture we are proposing to reform the regulation of late night refreshment services (night cafés) which are subject to yet another separate licensing system, also complex and out of date. Licensing here is meant to prevent disorder and unreasonable disturbance to residents in the neighbourhood, and needs to be re-focused on these key issues. (Home Secretary’s Foreword, pp 5–6)

Some of the Government’s proposals (for example, closure orders for licensed premises) were included in the Criminal Justice and Police Act 2001, but it was not until November 2002 that the Government introduced a new Licensing Bill to give effect to the proposals in the White Paper to reform the licensing system.

1.3 ENTERTAINMENT LICENSING

1.3.1 Theatrical performances

1.3.2 It appears that no period has ever existed when public theatrical performances were not subject to some form of superintendence, with the power of control vested initially in the Lord Chamberlain, the head of the King’s household. This power was derived initially from the Royal Prerogative and no reference was made in any Act of Parliament to the Lord Chamberlain’s powers of licensing until the Playhouses Act 1736, when the powers were given statutory force. It appears that during the early

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20 It seems that, nevertheless, the Lord Chamberlain ‘was constantly exercising them’ before the Act was passed: Report of the Select Committee on Theatrical Licences and Regulations, Cmd 679, 1866, App 1.
part of the 18th century a considerable number of theatres were operating without a licence in the metropolitan area, frequently featuring performances of a profane and immoral character. Various attempts were made to suppress them, such as insertion of a provision in the Vagrancy Act 1713 whereby performers, who acted in places where there was no legal authority to perform, could be treated as vagabonds and punished as such. The Playhouses Act 1736 was the culmination of these attempts and, although ostensibly an Act to amend the Vagrancy Act 1713, it included licensing powers for the Lord Chamberlain; under those powers the presentation of any theatrical performance could be prevented and copies of all new or amended plays required the Lord Chamberlain’s approval before they could be staged. The primary objective in introducing licensing control, at least in its statutory form in the Playhouses Act 1736, was the need to preserve and uphold public morality. Whilst there may have been an element of nuisance and disorder from premises staging theatrical performances, this was very much a secondary consideration when control was introduced.

The Lord Chamberlain’s powers under the 1736 Act enabled him to restrict the number of playhouses at which stage plays took place, for s 5 provided that theatrical performances were to be acted only ‘within the city of Westminster; and within the liberties thereof, and in such places where his Majesty, his heirs or successors, shall in their royal persons reside, and during such residences only’. This in effect meant that plays could lawfully be staged only in the metropolitan area by the two patent theatres then in existence. As a consequence, other theatres that had staged theatrical performances (often without a licence) began to stage other forms of public entertainment, such as music and dancing. These entertainments proved popular and were soon brought under legislative control by the Disorderly Houses Act 1751, which required premises providing such entertainment within the city of London or Westminster, or within 20 miles thereof, to be licensed by justices (see 1.3.5 below). This power of licensing by justices was subsequently extended to theatrical performances staged outside Westminster by an Act of 1787, amending the Disorderly Houses Act 1751, ‘to permit and suffer, in towns of considerable report, theatrical representations for a limited time, and under regulations; in which nevertheless it

21 The late 17th and early 18th century was a period when there was considerable concern about immorality and the state of the nation’s manners. It seemed that manners and behaviour at that time did indeed leave something to be desired, even in high social and academic places (when the Oxford antiquarian, Anthony á Wood published his *Athenae Oxoniensis* in 1691, the Master of Balliol, Dr Roger Mander, proclaimed it a book ‘not fit to wipe one’s arse with’. (Powys, L, *The Life and Times of Anthony á Wood*, 1932, London: Wishart, p 289.) There was widespread support for some improvement amongst the middle classes and a Society for the Reformation of Manners, formed in 1692, soon began actively concerning itself with ‘the execrable Impieties of our most scandalous Play Houses, those Nurseries of Vice and Prophaneness’ (*An Account of the Progress of the Reformation of Manners*, 1705, London, p 23).

22 The preamble to the legislation stated: ‘A bill to explain and amend so much of an act, made in the twelfth year of the reign of queen Anne, entitled, an act for reducing the laws relating to rogues, vagabonds, sturdy beggars, and vagrants, and sending them whither they ought to be sent, as relates to the common players of interludes.’

23 These were the Theatre Royal, Drury Lane and the Covent Garden Theatre; in the 1660s Charles II had granted both theatres patents to stage theatrical performances in London and Westminster. The Haymarket Theatre was later granted a patent in 1778. Any expansion in the number of patent theatres was curtailed by the Theatres Act 1843, which made it unlawful for further patents to be granted. The existing patent theatres, however, continued to enjoy an exemption from licensing control (see s 17(2) of the Theatres Act 1968).
would be highly impolitic, inexpedient or unreasonable to permit the establishment of a constant and regular theatre’. This extended considerably the legitimate staging of theatrical performances, which was further extended by the Theatres Act 1843, which enabled any theatre in the cities of London and Westminster to obtain a licence from the Lord Chamberlain for the premises to stage plays.24

1.3.3 These powers to licence premises for theatrical performances and to licence stage plays, under which the Lord Chamberlain was able to exercise a power of censorship, were eventually removed by the Theatres Act 1968. A licence was no longer required for such performances, thus abolishing theatre censorship, and the licensing of premises for theatrical performances was taken over by local authorities. Under the 1968 Act, authorities were given a wide discretion to grant or refuse licences and to attach conditions to them. Paragraph 1(1) of Sched 1 provided:

The licensing authority may grant to any applicant and from time to time renew a licence under this Act for the use of any premises specified therein for the public performance of plays on such terms and conditions and subject to such restrictions as, subject to section 1(2)25 of this Act, may be so specified.

There was also a wide discretion in respect of the licence application procedure, with para 2(1) providing that applicants ‘furnish such particulars and such other notices as the licensing authority may by regulation prescribe’.26

The rationale of conferring on local authorities licensing control over theatrical entertainments in the 1968 Act was undoubtedly public safety and the need to ensure that premises where such entertainments were taking place were safe for the public to attend.

1.3.4 Music and dancing

1.3.5 The licensing of public music, dancing or other entertainments of like kind dates back to the middle of the 18th century when the Disorderly Houses Act 1751 was passed. That Act was a consequence of the restriction on the numbers of playhouses introduced by the Playhouses Act 1736 (see 1.3.2 above). It is clear from the title of the 1751 Act, that it was concerned with disorderly conduct and the potential threat to public order; s 2 provided:

any house, room, garden or other place kept for public dancing, music or other entertainment of the like kind, in the cities of London and Westminster, or within twenty miles thereof, without a licence had for that purpose from the last preceding Michaelmas quarter sessions of the peace ... shall be deemed a disorderly house or place.

24 This Act repealed the earlier legislative provisions. Under the 1843 Act licensing outside London and Westminster continued to be the responsibility of justices and not the Lord Chamberlain. However, since every play had to be licensed by the Lord Chamberlain, he was able to prevent any theatrical performance not only at premises within his jurisdiction (London and Westminster), but also at any other premises in the country.

25 Section 1(2) prohibited the imposition of conditions as to the nature of plays that may be performed. An equivalent provision is now contained in s 22 (premises licences) and s 76 (club premises certificates) of the 2003 Act – see 6.4.6 and 8.4.3 below.

26 Schedule 1, para 2(1). The ‘other notices’ were in addition to notice of intention to make an application, which had to be given to the licensing authority, and, in the case of applications for grant and transfer (but not for renewal or an occasional licence), to the police. The period of notice differed depending on the type of application.
Licences from quarter sessions were licences obtained from justices and the high penalty of £100 for failure to comply with s 2 reflected the importance attached to the need for such premises to be licensed.

The licensing of music and dancing was eventually extended to other areas of the country by s 51 of the Public Health Acts Amendment Act 1890. As under the 1751 Act (which continued to have application within 20 miles of the cities of London and Westminster), licensing control was vested in justices. However, the provisions were adoptive and required the local authority to pass a resolution before they came into effect. It thus depended on the action of the local authority whether control was to be exercised in its area, but the exercise of that control was entrusted to justices.

1.3.6 Although control was initially vested in justices under the above Acts, over the course of the 20th century there was a move away from this position and toward control being exercised by local authorities. This probably reflected a reduced emphasis on the need to prevent disorder, the original rationale for the introduction of licensing control, and a greater emphasis on the need for public safety. In the Home Counties, local district councils in those areas which lay within 20 miles of the City of London or the City of Westminster (these were councils in Kent, Essex, Hertfordshire and Buckinghamshire, as well as the county boroughs of Croydon, East Ham and West Ham) were empowered to grant licences by the Home Counties (Music and Dancing) Licensing Act 1926, which repealed s 2 of the Disorderly Houses Act 1751. Further, in a number of local authorities' areas powers to exercise licensing control were obtained through local Acts of Parliament, for example, Surrey County Council Act 1931, Berkshire County Council Act 1935, and Greater Manchester Act 1981. In addition, in the Greater London area, a comprehensive administrative procedure for the issuing of licences by the Greater London Council was introduced by the London Government Act 1963.

In consequence, there existed a variety of legislative controls over public dancing, music or other entertainments of like kind and there was no uniform application of licensing control throughout the country. A dual system of licensing operated, with justices exercising control in some areas and local authorities in others. Yet in other areas, where the provisions of s 51 of the Public Health Acts Amendment Act 1890 had not been adopted and where there was no operative local Act of Parliament, no control at all was exercised.

1.3.7 The administrative procedure adopted in Greater London, which applied not only to public dancing, music or other entertainments of the like kind, but also to public contests, exhibitions or displays of boxing or wrestling, was generally recognised to have worked well and in due course a similar procedure was adopted for the rest of England and Wales to replace the patchwork of controls operated by local authorities and justices. Under s 1 and Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982, local district councils became responsible for the licensing of ‘public entertainments’, which included music and dancing, and earlier legislative provisions conferring licensing powers over music and dancing were

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27 Schedule 1 to the Home Counties (Music and Dancing) Licensing Act 1926. The Act was subsequently extended to include the whole of Essex by the Essex County Council Act 1933 and the whole of Hertfordshire by the Hertfordshire County Council Act 1935.
repealed.28 The London Government Act 1963, however, continued to have application within the Greater London area, with licensing control exercised by the Greater London Council until its abolition in 1986 and thereafter by London borough councils.

Whilst the provisions of the 1982 Act were based on, and were similar to, those in the 1963 Act, they were not identical. A significant difference was that music and dancing held wholly or mainly in the open air fell within the scope of licensing control in Greater London, where such entertainments might commonly be held, but since these were less likely in provincial areas, an exemption was provided under the 1982 Act for such entertainments. However, it was recognised that there might be a need for councils to exercise control over open air events, such as pop or rock concerts or festivals held in their area, so adoptive licensing provisions, which councils could implement through the passing of a resolution, were included in the Act (see Sched 1, paras 3–4). These enabled councils to require a licence for any public musical entertainment held wholly or mainly in the open air on private land. Such entertainment comprised a second form of ‘public entertainment’, in addition to music and dancing, for which a licence was required under the 1982 Act. Certain types of sports entertainments constituted a third form of ‘public entertainment’ for which a licence was needed. The licensing controls under the London Government Act 1963 extended to public contests, exhibitions or displays of boxing or wrestling and these were included in the 1982 Act along with judo, karate and any other similar sport. Subsequently, both under the 1963 Act and the 1982 Act, a broader provision covering sports entertainments to which the public were invited as spectators was substituted for these provisions by the Fire Safety and Safety of Places of Sports Act 1987.29

As with theatrical entertainments, the licensing controls for public entertainment conferred on the licensing authority a wide measure of discretion not only to grant or refuse licences and to attach conditions to them,30 but also in respect of the application procedure.31 There were various piecemeal reforms of the system that took place during the 1990s. Some of these were the result of deregulation initiatives under the Deregulation and Contracting Out Act 1994, such as the removal of the prohibition on Sunday dancing where payment was involved.32 Others were the result of local

28 The legislative provisions repealed were s 51 of the Public Health Acts Amendment Act 1890 and the Home Counties (Music and Dancing) Licensing Act 1926, together with any relevant parts of local Acts.
29 See Sched 12, para 3A of the 1963 Act and Sched 1, para 2 of the 1982 Act. These broader provisions were introduced following the Popplewell Report (Committee of Inquiry into Crowd Safety and Control at Sports Grounds, Interim Report, Cm 9585, 1985, and Final Report, Cm 9710, 1986) into the fire at the Bradford City football ground in 1985.
30 The 1982 Act contained provisions, in respect of the various types of entertainments, that authorities may ‘grant to any applicant, and from time to time renew, a licence for the use of any premises specified in it … on such terms and conditions and subject to such restrictions as may be specified’ (see Sched 1, paras 1(4) and 2(4) for music and dancing and for sports entertainments respectively; and para 4(2)–(4) for open air musical entertainments on private land where the power to impose conditions was more restricted). Similar provisions to those in paras 1(4) and 2(4) were contained in the 1963 Act (see Sched 12, paras 1(2), 3A(4) and 4(3) for music and dancing, sports entertainments, and boxing and wrestling entertainment respectively).
31 Schedule 1, para 6(3) of the 1982 Act required an applicant to furnish such particulars and such other notices as the licensing authority may by regulation prescribe. Similar provisions (including a requirement for public advertisement) were contained in the 1963 Act (see Sched 12, paras 2(4), 3B(4) and 5(4)).
legislation, such as the London Local Authorities Act 1996, which sought to introduce a more uniform application procedure for the different types of public entertainments to which Sched 12 to the 1963 Act applied. Nevertheless, it became clear that there were limits as to how effectively the system of licensing control under the 1963 and 1982 Acts could be reformed by amendments and it became increasingly apparent that a more fundamental reform of the system was needed.

1.3.8 Film exhibitions

It was toward the end of the 19th century that film exhibitions began to appear as one of the turns in music halls, which were then flourishing. Such premises would be licensed under the Disorderly Houses Act 1751 and it was by means of these licensing provisions that film exhibitions first came to be regulated. Films very quickly escaped the music halls, however, and in the early years of the 20th century a number of purpose-built picture palaces appeared in which films alone were exhibited. No licence was required under the 1751 Act in these instances and, in view of the fire risks involved from the inflammable nature of the films used in these picture palaces, the Government introduced the Cinematograph Act 1909 under which local authorities were given the power to grant licences for premises used for the public exhibition of inflammable films. Licensing control was thus imposed initially in the interests of public safety, as is apparent from the long title of the Act: ‘An Act to make better provision for securing safety at Cinematograph and other Exhibitions.’

Local authorities soon began to interpret their power to grant licences subject to conditions as extending beyond public safety considerations arising from the inflammable nature of the films exhibited and this view was upheld by the courts. In due course, this led to control being extended to the exhibition of all films (whether inflammable or not), subject to various exemptions, by the Cinematograph Act 1952. The licensing system remained substantially unchanged over the years, although the provisions of the 1952 Act and subsequent amending legislation were consolidated in the Cinemas Act 1985. This Act, like legislation having application in other areas of entertainment, conferred on the licensing authority a wide measure of discretion not

33 The Act also applied this more uniform procedure to other areas such as theatrical entertainments (see 1.3.1–1.3.3 above) and private entertainments (see 1.3.9 below).

34 This was done through the imposition of conditions on licences. These often included precautions to avoid the risk of fire because of the inflammable nature of films produced at this time.

35 In practice, the scope of licensing control under the 1909 Act extended only to film exhibitions shown commercially in public cinemas, since only these exhibitors used inflammable (35mm) films. Non-commercial exhibitors used non-inflammable (16mm) films, which fell outside the provisions of the 1909 Act.

36 See London County Council v Bermondsey Bioscope Co Ltd [1911] 1 KB 445, where a condition prohibiting the showing of films on Sundays was upheld by the Divisional Court and where Lord Alverstone CJ stated (at 451) that the Act ‘intended to confer on the County Councils a discretion as to the conditions which they will impose, so long as those conditions are not unreasonable’. This ruling opened up the way to a widespread range of conditions, including ones relating to the character of the films exhibited. This led to different standards being adopted in different parts of the country as regards which films could be shown, which caused uncertainty and consternation in the film industry, and led to the setting up by the industry of the British Board of Film Censors in 1912. The Board, later to become the British Board of Film Classification (BBFC), issued classification certificates which local authorities were free to accept or reject, although it became a common condition attached to licences that films shown would have a BBFC certificate.
only to grant or refuse a licence and to attach conditions, but also in respect of the application procedure.  

1.3.9 Private entertainment – music and dancing promoted for private gain

The licensing of private entertainments was introduced by the Private Places of Entertainment (Licensing) Act 1967, under which local authorities had the power to grant a licence for dancing, music or any other entertainment of the like kind that, although not public, was promoted for private gain. Licensing control over such entertainments was initially introduced in a local Act of Parliament in Manchester, the Manchester Corporation Act 1965, to regulate ‘entertainment clubs’ that, although not open to the public, provided entertainment for their members. These clubs, which went by a variety of names, such as coffee and dance clubs, beat clubs and jazz clubs, had sprung up in major cities in the mid-1960s and, for reasons which are not entirely clear, Manchester seemed to be the place with the greatest concentration. The clubs were ones at which refreshments of the coffee, snack and soft drink variety were available and which offered evening, often all night, entertainment in the form of pop music and dancing, catering specifically for a teenage clientele. The clubs, it appeared, were often dirty and unkempt, with poor lighting, inadequate sanitary facilities and a lack of proper fire precautions, and were not infrequently used for drug-trafficking. The rationale for the introduction of licensing control thus seems to have been, in part, a need to ensure that the premises were safe and, in part, protection of the city’s youth from harm. Once the council obtained powers, through its local Act, requiring such clubs to be registered, the situation appeared to improve considerably.

The problem of ‘entertainment clubs’ was by no means confined to Manchester and the success of the registration scheme there led to the introduction of legislation on a national scale. A private member’s Bill requiring the licensing of premises used for private entertainment was introduced into the House of Lords by Lord Parker, the

37 Section 1(2) of the Cinemas Act 1985 provided: ‘A local authority may grant a licence under this section to such a person as they think fit to use any premises specified in the licence for the purpose of film exhibitions on such terms and conditions and subject to such restrictions as, subject to regulations under section 4 below [regulations made by the Home Secretary in relation to the health and welfare of children], they may determine.’ There was no provision requiring an applicant to furnish such particulars and such other notices as the licensing authority may by regulation prescribe, except in London where a provision to this effect had been inserted into the 1985 Act (as a s 3(1A)) by s 19 London Local Authorities Act 1991. Despite the absence of such a provision outside London the application procedure adopted by licensing authorities was similar to that adopted for public entertainment licences – see 1.3.7 above.

38 In the city there were a dozen or so clubs with a combined membership of some 20,000. Several of the clubs were housed in empty warehouses, seedy office blocks and cellars, and they attracted a clientele of young people from as far away as 40 miles – see ‘Teenage Trouble in Coffee Clubs’, The Times, 12 May 1965 and the evidence of the area’s Chief Constable to the Private Bill Committee of the Manchester Corporation Bill 1965 (referred to at HC Deb, vol 715, col 320, 29 June 1965).

39 See ‘End of Manchester Coffee Club Menace’, The Times, 24 December 1965. The powers, which were incorporated into s 18 of the Manchester Corporation Act 1965, required all ‘entertainment clubs’ to be registered, with registration depending on the good character of the proprietor and the way in which the establishment was conducted. A fine of £50 could be imposed for operating unregistered premises.
Lord Chief Justice, proceeding with government support and passing into law as the Private Places of Entertainment (Licensing) Act 1967. The provisions of the 1967 Act were adoptive and, in order to bring them into force in its area, a local authority was required to pass a resolution and publish in a local newspaper notice of the passing of the resolution and the general effect of the Act’s provisions coming into force on an appointed day. As with the other areas of entertainment licensing, licensing authorities under these provisions had a wide measure of discretion not only to grant or refuse a licence and to attach conditions, but also in respect of the application procedure.40

1.3.10 Need for reform

The ad hoc and piecemeal development of licensing control over entertainments, with separate licensing systems for the various forms of entertainment referred to above, meant that provision of more than one form of entertainment in the same premises (which was not uncommon) necessitated a separate licence application, grant and subsequent renewal.41 With a further licence required from justices where alcohol was sold on the premises, it is perhaps not surprising that the Government, when formulating proposals for reforming alcohol licensing law, sought also to include in its White Paper proposals for reforming entertainment licensing law (Cm 4696, 2000 – see 1.2.8 above).

1.4 LATE NIGHT REFRESHMENT SERVICES LICENSING

1.4.1 Introduction of licensing control

Licensing control over refreshment houses was first introduced by the Refreshment House and Wine Licences Act 1860. The Act, as its title suggests, was concerned not just with the licensing of refreshment houses, but also with licensing of the sales of wine. Persons keeping refreshment houses open between the hours of 9.00 pm and 5.00 am were required to obtain a licence, payment for which was deemed to be an excise duty and was made to the excise collection authorities operating under the management of the Commissioners of Inland Revenue. Persons obtaining a licence were allowed to take out an additional licence to sell wine to be drunk on the premises

40 Section 3(1) of the Private Places of Entertainment (Licensing) Act 1967 provided:

The licensing authority may grant to any applicant and from time to time renew a licence for the use of any premises specified therein for all or any of the purposes mentioned in section 2 of this Act [music, dancing or any other entertainment of the like kind] on such terms and conditions (including conditions for securing entry to and inspection of the premises) and subject to such restrictions as may be specified therein.

The Act was silent on all matters of licence application procedure, although amendments made to s 3 of the Act, by s 21B of the London Local Authorities Act 1996, provided for an application procedure in London that was consistent with applications for other forms of entertainment licensing.

41 There was also a fair measure of inconsistency between the different licensing systems in a number of areas (eg, application procedure), although greater harmonisation was achieved in London with various legislative amendments, notably those contained in the London Local Authorities Act 2000.
without the need for a justices’ licence. The rationale for requiring all refreshment houses to be licensed was expressed by the Chancellor of the Exchequer on the Bill’s Second Reading: ‘The ground on which that proposal is made is that many of these houses are both the receptacles of disorderly characters and the scene of very disorderly transactions.’ The prevention of disorder, as with alcohol and public entertainment, was thus the primary justification for the introduction of control.

1.4.2 Extension of control

1.4.3 The 1860 Act was subsequently amended by the Refreshment Houses Act 1964, which, according to its long title, was an ‘Act for the better regulation of refreshment houses within the meaning of the Refreshment Houses Act 1860’. Better regulation was needed, it appeared, in respect of ‘near-beer clubs’ or ‘clip joints’ in the Soho area of London, where keepers of premises were touting for trade and charging extortionate prices, particularly to tourists, for services such as entertainment and non-alcoholic drinks. There was no power to impose conditions under the 1860 Act, but the 1964 Act gave licensing authorities the power to impose conditions prohibiting the seeking of custom by means of personal solicitation in the vicinity of the premises and prohibiting the making of charges unless a tariff of charges was displayed. Where such a condition was imposed, failure to comply was unlawful and the penalties for non-compliance and for failing to obtain a licence were significantly increased. The power under the 1964 Act was restricted to the imposition of these two types of conditions, but a power to impose other conditions on grant or renewal of licences was subsequently conferred by the Refreshment Houses Act 1967. This was the power to prohibit the opening of a refreshment house at any time between 11.00 pm and 5.00 am if the licensing authority was satisfied that this was desirable to avoid unreasonable disturbance to residents in the neighbourhood. The provisions of the above Acts were subsequently consolidated in the Late Night Refreshment Houses Act 1969, which transferred responsibility for the granting of licences to local authorities.

42 The Act also enabled any shopkeeper to obtain a licence under the Act to sell wine for consumption off the premises. The legislation was a corollary to reduction in Customs duty on French and other foreign wines and it sought to provide new channels and greater facilities for the sale of wine. As The Times observed in a leading article on the legislation on 28 March 1860: ‘Having brought the cheaper wines of France over to England for the use of the general public Mr Gladstone next calls into existence a class of small retail wine merchants to distribute them among the consumers.’

43 Parl Deb, vol 157, col 1308, 26 March 1860. When the Bill was first introduced, the proposal was to require all refreshment houses to be licensed irrespective of the time of opening, but an amendment was introduced at the committee stage seeking to confine licensing to premises open between 10.00 pm and 4.00 am on the basis that no disorder occurred outside these hours: ‘There was no evidence against eating houses which were kept open during the day; but the police declared that they could not clear the streets at night because of refreshment houses which were open when other places were shut up’ (Mr G Hardy, HC Deb, vol 158, col 1048, 10 May 1860). The amendment was accepted, but with an extension of one hour either side to cover the period 9.00 pm to 5.00 am.

44 The penalties were increased from a fine not exceeding £20 for a first offence and £50 for subsequent offences to a fine not exceeding £200 or imprisonment for a term not exceeding three months or both: s 3.

45 See s 2. Some minor amendments were also made by the 1969 Act, eg, requiring a licence only for late night refreshment, which was now defined as between the hours of 10.00 pm (previously 9.00 pm under the 1860 Act) and 5.00 am.
Unlike the requirements under the legislation in respect of alcohol and entertainment licensing, licensing authorities were required to grant a licence on payment of the appropriate fee. Section 3(1) of the 1969 Act provided that ‘a licence shall be granted by the licensing authority on payment’, except where a person was disqualified (following convictions) from holding a late night refreshment licence under the 1969 Act or a justices’ licence under the Licensing Act 1964. Even with the amendments introduced to the 1860 Act, the powers of licensing authorities remained rather restricted; for example, the power to impose conditions was confined to the instances mentioned in the 1964 and 1967 Acts, and there were no requirements for publicising applications or for the making of objections. Further, licensing control was confined to premises ‘kept open’ for public refreshment, which confined control to cases where premises were operating as cafés or similar establishments with refreshment provided for consumption on the premises. It did not extended to take-away food outlets where food was supplied for consumption off the premises.46

1.4.4 With a view to enabling London borough councils to exercise greater control over premises kept open late for public refreshment (between the hours of 11.00 pm and 5.00 am), provisions were included in the Greater London Council (General Powers) Act 1968 conferring increased powers, which councils could adopt and under which they could require such premises to register as night cafés.47 Registration might be refused on a number of grounds; conditions relating to health and safety, fire and occupancy could be attached; and control under the Act was extended to premises providing public refreshment (between the hours of 12.00 am and 5.00 am) for consumption exclusively off the premises.48 These were later followed by more detailed legislative provisions, contained in the London Local Authorities Act 1990, that London borough councils could adopt for the licensing (rather than registration) of night cafés.49 Even these more extended powers in respect of night cafés proved inadequate for the proper regulation of ‘near beer clubs’ in some areas of London, principally Soho. Accordingly, additional powers (for example, seizure and forfeiture of apparatus and equipment) were contained in the London Local Authorities Act 1995, which again could be adopted by London borough councils in their area.

46 See Rogers v Dodd [1968] 1 WLR 548, where the Divisional Court held that a coffee bar that provided a ‘take-away’ service by opening in the early hours of the morning to serve customers with hot dogs through an open window was not ‘kept open’ under the Brighton Corporation Act 1966, which controlled the use of coffee bars. ‘Kept open’ meant keeping the premises open to allow the public to resort therein for the purpose of refreshment, for the mischief aimed at was the congregation of the public in premises. This decision was regarded as having application to the Late Night Refreshment Houses Act 1969 in Frank Bucknell and Son Ltd v London Borough of Croydon [1973] 1 WLR 534, where Kilner Brown J stated that ‘the reasoning is analogous’ and ‘a house or room connotes an area enclosed by walls’.

47 See ss 47–55 of Pt VIII of the Greater London Council (General Powers) Act 1968. A licence was still required under the Late Night Refreshment Houses Act 1969 to cover the period from 10.00 pm.

48 Whilst this enabled control to be exercised over take-away food outlets in London, in provincial areas control remained confined to premises providing ‘sit down’ refreshment, although it was possible for closing orders to be made against take-away premises under s 6 of the Local Government (Miscellaneous Provisions) Act 1982.

49 See ss 4–20 of Part II of the London Local Authorities Act 1990. The more detailed provisions included, eg ones for transfer and cancellation of a licence and for the grant of a provisional licence. If the provisions of the 1990 Act were adopted by a London borough council, the provisions in the 1968 and 1969 Acts ceased to have effect in the borough: s 20 of the London Local Authorities Act 1990.
1.4.5 Need for reform

Having decided that alcohol and entertainment licensing law was in need of reform, the Government’s view was that the regulation of late night refreshment services was in need of similar treatment. The White Paper (Cm 4696, 2000 – see 1.2.8 above) stated:

To complete the picture we are proposing to reform the regulation of late night refreshment services (night cafés) which are subject to yet another separate licensing system. Licensing here is meant to prevent disorder and unreasonable disturbance to residents in the neighbourhood, and needs to be re-focused on these key issues. (Home Secretary’s Foreword, p 6)

This the Government duly did by restricting the scope of regulation to premises supplying hot food and drink, whether for consumption on or off the premises, since it is likely to be night cafés and take-away food outlets that give rise to the possibility of disorder and disturbance (see 5.4.3 below).

1.4.6 Conclusion

It will be apparent from the foregoing sections that the previous law lacked any coherent structure. Licensing responsibilities were split between local authorities and justices and not only were there separate licensing schemes for the three areas in question (alcohol, entertainment and late night refreshment services), but also separate schemes within the area of entertainment itself. Theatres, cinemas, nightclubs providing public music and dancing, and music and dancing provided not for the public, but for private gain, were all licensable under different schemes. This was one of the problems with the entertainment licensing arrangements, which was identified in the White Paper (Cm 4696, 2000, para 10) as ‘producing unnecessary complexity when the main purposes of regulation are essentially the same’.

The 2003 Act represents a completely fresh start, with the previous controls replaced with a modernised and integrated scheme under which all licences are issued by local authorities in accordance with specified licensing objectives.50 As part of the modernised scheme, there is a greater emphasis on partnership working with the leisure industry and a range of other bodies having responsibilities in the field, for example planning authorities, the police, the fire authority, environmental health and safety authorities, town centre managers. Further, the new legislation is seen as simply one means of promoting and delivering the licensing objectives under the 2003 Act, along with various other initiatives that are directed towards this end, for example Crime and Disorder Reduction Partnerships (CDRPs) and the Government’s Alcohol Harm Reduction Strategy for England (AHRSE).51

The new scheme, described by the Home Secretary in his Foreword to the White Paper (Cm 4696, 2000, at p 5 – see 1.2.8 above) as a ‘radically new system which carefully balances rights and responsibilities’, is one that has the aim of enabling people to enjoy their leisure as they wish, whilst at the same time providing increased penalties and sanctions in the event that disturbance is caused to others. As such, it is

50 The licensing objectives (mentioned in 1.1 above) are considered in detail in Chapter 4.
51 An acronym used in the relevant document (and surely one of the best used by any Government!) – see Cabinet Office, Prime Minister’s Strategy Unit, March 2004. For these initiatives, see 4.3.4 and 4.3.14 below.
very firmly rooted in the liberal tradition espoused by the 19th century philosopher John Stuart Mill, under which legal restrictions are justified only if harm will be caused to individual interests:

The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community against his will is to prevent harm to others.\(^{52}\)

As originally conceived, the legislation was seen as a liberalising measure seeking to promote greater freedom and flexibility for the leisure industry to meet the needs of its customers, without putting any unnecessary obstacles in the way of the industry’s further development. At the same time, it sought to promote social responsibility ‘with tough and uncompromising powers for the police, the courts and licensing authorities to deal with any individuals and businesses failing to be socially responsible and abusing these freedoms’ (Cm 4696, 2000, p 5). These include powers for the police to control disorderly premises and for licensing authorities to protect residents from disturbance. These controls and safeguards have come to be seen as increasingly important in the period during and immediately after the legislation’s passage. Indeed, the focus has changed from what might be described as cultivating a continental-style café culture to keeping in check the social consequences caused by the increased number of premises selling alcohol (following the abandonment of ‘need’ and the regeneration of town and city centres) and the increased consumption occasioned by drinks promotions and the fostering of a ‘binge drinking’ culture. A number of developments have taken place that reflect this change of emphasis. In March 2004, the Government published its AHRSE and in November 2004 its Public Health White Paper, Choosing Health: Making Healthier Choices Easier (Cm 6374, 2004), both of which seek to make it clear that responsibility for tackling alcohol misuse does not rest with the Government alone and requires partnership working at both national and local level, between Government, the drinks industry, health and police services, individuals and communities. The 2003 Act has, as the Government has acknowledged, become ‘a key part of the Government’s strategy for combating alcohol-related crime and anti-social behaviour’,\(^{53}\) but the powers introduced by the Act for preventing crime and disorder are not seen as sufficient in themselves to control and reduce the level of alcohol-fuelled disorder that is occurring. Accordingly, other measures have been introduced, for example the extension of Penalty Notices for Disorder to various offences under the 2003 Act\(^{54}\) and further initiatives are proposed, for example, introduction of new ‘Alcohol Disorder Zones’ in which there may be recovery of costs from public houses and bars whose patrons cause the most disorder.\(^{55}\)


\(^{54}\) Penalty Notices for Disorder were introduced by the Criminal Justice and Police Act 2001 and the offences under the 2003 Act to which they are extended are those contained in ss 146, 149, 150 and 151 – see 11.7 below.

\(^{55}\) A Zone would cover premises in an area where there is a problem of anti-social drinking that is not being tackled. After an eight-week warning period, if there were no improvement, those premises would contribute towards policing and other local costs of dealing with alcohol-fuelled disorder. This proposal, and others such as 24-hour banning orders on selling alcohol where there is evidence that premises are persistently selling to underage drinkers, are contained in Drinking Sensibly: The Government’s Proposals, January 2005, a consultation document published by the Department of Culture, Media and Sport, the Home Office and the Office of the Deputy Prime Minister.
Striking the balance between greater freedom and prevention of harm is never an easy task – there are, as the Home Secretary acknowledged in his Foreword to the White Paper, ‘many difficult balances to be struck’ (p 6) – and it remains to be seen whether the Act, coupled with any subsequently introduced measures, strikes the right balance or whether this will need to be readjusted in due course.
CHAPTER 2

THE LEGISLATIVE FRAMEWORK

2.1 INTRODUCTION

The 2003 Act makes a number of fundamental and important changes to the way in which regulatory control through licensing is exercised in relation to the provision of alcohol, entertainment and late night refreshment services.\(^1\) It represents a completely fresh start, takes an innovative approach to licensing control and prescribes a new legislative framework for the legal control of these activities. The changes extend to the theoretical framework underpinning legal regulation, the administrative and legal framework under which regulation is carried out, and the procedural framework within which licensing decisions are made.

The theoretical framework has changed from a ‘discretion’ based model to a ‘rule’ based model in which discretion plays a much more restricted role and, when it does apply, operates at a lower level and subject to more constraints than under the previous law. These constraints comprise general duties imposed by the Act on licensing authorities, including a requirement under s 4 to carry out their functions under the Act with a view to promoting specified licensing objectives (the prevention of crime and disorder, the safety of the public, the prevention of public nuisance and the protection of children from harm) and to have regard both to a ‘Licensing Statement’, that is a Statement of Licensing Policy (SOP) drawn up by them and to the Guidance issued by the Secretary of State for Culture, Media and Sport (Guidance) under s 182 of the Act. These matters are considered below.

The administrative and legal framework has changed from a disparate, fragmented system of licensing control – separate schemes not only for, but within, the three areas of alcohol, entertainment and late night refreshment services, with administrative responsibility split between magistrates and local authorities – to a single, integrated scheme for licensing premises that provide alcohol, entertainment and late night refreshment services, which is administered by a single body, local authorities.\(^2\) The three areas are designated as ‘licensable activities’ under the Act and there are various forms of authorisation under which these activities can take place. These include premises licences, club premises certificates (CPCs), personal licences and temporary event notices (TENs).

The procedural framework for obtaining authorisation from local authorities has become much more prescriptive under the Act compared to the position under the previous law, where a highly individualised approach was permissible and there was little uniformity. Much greater consistency will be apparent under the Act on account of its provisions and by virtue of the power of the Secretary of State to make

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1 The Act’s provisions extend only to England and Wales (s 201(3)), except for s 155(1) which also extends to Northern Ireland (s 201(4)). For the provision in s 155(1), see 11.7.36 below. The Act also applies to the Crown, to Crown property and to land of the Duchies of Lancaster and Cornwall (except to the extent that they are occupied by the Queen or the Prince of Wales) – see s 195.

2 For the definition and meaning of ‘licensing authority’ under the Act, which includes some bodies other than local authorities, see 2.3.1 below.
regulations on procedural matters. Procedural regulation will impact on all stages of the licensing process, including the making of applications, hearing and determining them (including the extent of delegation and matters such as legal representation at hearings and the rights of parties appearing there), and the giving of notices under the Act.

### 2.2 THEORETICAL FRAMEWORK

#### 2.2.1 ‘Rule’ based model

2.2.2 The new legislation marks a fundamental shift away from the model of control that has traditionally been employed in respect of the licensing of alcohol, entertainment and late night refreshment services. Prior to the 2003 Act, a ‘discretion’ based model had for the most part been employed, with the licensing authorities having a broad measure of discretion in granting or refusing licences. The previous legislative provisions, with one or two exceptions, laid down only very broad criteria for grant or refusal, enabling for example justices to grant a licence for the sale of intoxicating liquor ‘as they think fit and proper’ (see Chapter 1). Whilst there were constraints on how discretion was exercised, for example applications needed to be considered on their merits, and relevant considerations had to be taken into account and irrelevant considerations ignored, licensing authorities had a largely unfettered discretion when considering and determining all licence applications and the discretion was not tightly circumscribed.

The 2003 Act has moved to a ‘rule’ based model where the criteria for licences and other authorisations are stipulated by law; these will be granted if the criteria are met and discretion has a more limited role to play. The wide discretion previously conferred on licensing authorities was one of the ‘problems with the current arrangements’ identified by the Government in its White Paper *Time for Reform: Proposals for the Modernisation of our Licensing Laws*, on which the 2003 Act was based. The Licensing Act 1964, the White Paper stated, ‘creates considerable inconsistency, despite valuable initiatives like the *Good Practice Guide*, in the application of the law by affording such wide discretion to licensing authorities’ and ‘[p]roblems with the public entertainment licensing arrangements include again, too much scope for inconsistencies in the approaches of different licensing authorities, which cannot be justified by real local differences’. The Government’s proposals accordingly were directed towards reducing this inconsistency. As far as the licensing authority was concerned, the new arrangements should be ‘set up in such a way as to ensure that … the factors to which it should have regard are well defined’ (Cm 4696, 2000, para 122). This, it was felt, would produce ‘greater clarity and transparency on what is legal’, which would be of benefit not only to the retail, hospitality and leisure industries, but also to residents and the local community (see Cm 4696, 2000, App 4, ‘Regulatory Impact Assessment’, pp 66–67).

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3 *Good Practice Guide* (Justices’ Clerks’ Society, 1999) – see 1.2.8 above.

4 Cm 4696, 2000, paras 9–10. Discretion inevitably creates inconsistency, for, as Fletcher has observed, ‘Rules connote straight lines … Decisions according to rules run in predictable, straight paths. Discretionary decisions invoke an image of unpredictable tangents. The discretionary line curves and weaves; its course depends on who is drawing it’ (*Basic Concepts of Legal Thought*, 1996, Oxford: OUP, p 43).
2.2.3 The Act seeks to give effect to these sentiments by requiring that licences and other authorisations must be granted by the licensing authority (in the absence of any ‘relevant representations’, that is objections) where various criteria are met. This applies in respect of a premises licence, a CPC, a personal licence and a TEN. Thus s 18(2) provides that the authority must grant a premises licence where an application has been made in accordance with statutory requirements set out in s 17 (for example that the application is accompanied by an operating schedule giving details of matters such as the licensable activities that will take place and their times), subject only to such conditions as are consistent with the operating schedule and to any mandatory conditions that must be imposed on the licence.5 Section 72(2) makes similar provision in respect of CPCs.6 Section 120(2) provides that the authority must grant a personal licence if it appears to it that: (a) the applicant is aged 18 or over; (b) he possesses a licensing qualification or is a person of a prescribed description; (c) no personal licence held by him has been forfeited in the period of five years ending with the day the application was made; and (d) he has not been convicted of any relevant offence or any foreign offence.7 For TENs, under which licensable activities can take place for periods not exceeding 96 hours, there is not even a requirement for authorisation or permission to be granted, but simply for notice, which complies with certain requirements, to be given to licensing authorities (see ss 98–110 and Chapter 9). In general, only the police may seek to prevent such an event taking place or agree a modification of the arrangements for such an event, and the licensing authority may only ever intervene of its own volition if the limits on the number of notices that may be given in various circumstances would be exceeded (Guidance, para 8.2).

2.2.4 The role and level of discretion

2.2.5 Even in cases where the Act provides for mandatory grants and mandatory conditions, authorities nevertheless retain a measure of discretion. Whilst no discretion exists in respect of grant or refusal of a premises licence or CPC, authorities have some discretion as regards the imposition of conditions, since they can impose such conditions as are consistent with the operating schedule accompanying the application.8 In the case of personal licences and TENs, however, there is no power to impose conditions.9

Where discretion as to grant or refusal comes into play is when, for premises licences and CPCs, relevant representations from interested parties and responsible authorities are received;10 for personal licences, an objection is made by the police on

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5 For details, see Chapter 6. The mandatory conditions, contained in ss 19–21, relate to the supply of alcohol (s 19); exhibition of films (s 20); and door supervisors being licensed by the Security Industry Authority (s 21) – see 6.4.2–6.4.5 below.
6 See 8.4.2 below.
7 For details, see 10.5.6–10.5.12 below. The meaning of ‘licensing qualification’ is contained in s 120(8), ‘relevant offence’ in s 113(1) and Sched 4, and ‘foreign offence’ in s 113(3).
8 See s 18(2)(a) and s 72(2)(a) in respect of premises licences and CPCs.
9 This is except where the licensable activities under a TEN include using the premises for the supply of alcohol, in which case s 100(6) requires that the TEN makes it a condition that such supplies are made by or under the authority of the premises user (who is the person who will give notice of the event to the licensing authority).
10 ‘Interested parties’ are those who live, or are involved with a business, in the vicinity and ‘responsible authorities’ are statutory bodies with expertise in relevant areas, such as the police and environmental health departments – see 6.4.13–6.4.18 below for details.
account of an applicant’s conviction for a relevant offence or foreign offence;\(^{11}\) and, for TENs, an objection is made by the police on the ground that the use of the premises would undermine the crime prevention objective.\(^{12}\) In exercising this discretion, authorities must seek to promote the applicable licensing objectives set out in the Act. Section 4(1) of the Act provides: ‘A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives’, and these objectives are set out in s 4(2), which provides:

The licensing objectives are—

(a) the prevention of crime and disorder;
(b) public safety;
(c) the prevention of public nuisance; and
(d) the protection of children from harm.

Thus an authority must, where representations have been received, reject an application for a premises licence or a CPC if it considers it necessary to promote any of these objectives (see s 18(3)(b) and (4)(d) and s 72(3)(b) and (4)(c)). Similarly, it must, where an objection has been made by the police, reject an application for a personal licence, or issue a counter-notice where a TEN has been given, if it considers it necessary for the promotion of the crime prevention objective (see s 120(7)(b)(i) and s 105(2)(b)). Otherwise the licence or certificate must be granted or, in the case of a TEN, the notice will constitute authorisation for the event to go ahead. An authority’s discretion is therefore confined to determining whether or not the licensing objective or objectives have been satisfied, which in turn will determine whether or not it grants a licence or certificate or allows or prevents the going ahead of a temporary event under a TEN. This is a lower level of discretion to that previously enjoyed when licensing authorities’ discretion extended to all applications and not just ones in respect of which representations or objections were received – they were not obliged in any cases to grant a licence – and there were no statutory objectives to which they were required to have regard.\(^{13}\) Further, where relevant representations are received, authorities are obliged to hold a hearing and have regard to the representations before deciding whether or not to grant or refuse an application.\(^{14}\) Previously, although for liquor licence applications there was always a hearing before justices at licensing sessions, a hearing was not always held when licence applications were determined by local authorities. There was no requirement to hold a hearing to consider representations, although in practice most authorities usually did so.

2.2.6 Whilst an authority is required to make decisions that are necessary to promote the licensing objectives, it is also required to draw up a Statement of Licensing Policy

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\(^{11}\) As to what constitutes a ‘relevant offence’ and a ‘foreign offence’, see 10.5.6–10.5.12 below.

\(^{12}\) Where this is the case, the authority can consider whether to issue a counter-notice precluding the event from taking place – see 9.6 below.

\(^{13}\) The purposes and objectives of the previous licensing arrangements were not expressly stated in the legislation and this was described in the White Paper as ‘a drawback’ (para 4).

\(^{14}\) Quaere whether information that is positive in nature, which a responsible authority might wish to communicate to the licensing authority (eg, where the police might wish to commend the proposed operation of the application premises), constitutes a relevant representation requiring the authority to hold a hearing. Perhaps, if communicated informally, it might not be so regarded or, alternatively, if it is, it might be withdrawn and a hearing dispensed with – see 6.4.9 below.
(SOP), to which it must, by virtue s 4(3)(a), have regard when carrying out its functions. Section 5 provides that an authority must, for each three year period, determine its policy with respect to the exercise of its licensing functions, and publish a statement of that policy, a ‘licensing statement’, before the beginning of the period. There are also requirements for consultation before determining policy, for keeping statements under review and for making revisions as appropriate. Previously, although policy statements were widely adopted by licensing justices in respect of applications for liquor licences, few local authorities had any such policy statements.

In addition to drawing up and having regard to a SOP, a licensing authority must, by s 4(3)(b), also have regard to any Guidance issued by the Secretary of State when carrying out its functions, a requirement which was not contained in any of the previous legislation. Previously, Circulars may have been issued by the relevant Government department to advise licensing authorities on particular matters, to which regard might be had when making decisions, but there was no statutory requirement for the licensing authorities to refer to these. The imposition of general duties on licensing authorities, under which they need to promote licensing objectives as well as have regard to their SOPs and any Guidance issued by the Secretary of State, all represent constraints on the exercise of their discretion. The interrelationship between these various constraints is critical to local authority decision-making and this is examined in Chapter 4.

2.2.7 A final matter concerning the operation of discretion in decision-making under the Act is that there should, at least in theory, no longer be a restrictive approach taken to the granting of licences for alcohol. Restricting the number of outlets has, historically, always been regarded as an essential part of the functions of justices when exercising their licensing responsibilities for the provision of alcohol (see 1.2.4 above). Under the previous law, it was regarded as implicit in the justices’ discretion that regard could be had to the ‘need’ or ‘demand’ for additional outlets for alcohol and applications for the grant of new licences could be refused merely on the ground that there was no need or demand for a new licence in the area. In recent years, however, Government opinion has swung decisively against need and it was no surprise to find that it did not feature in the new legislation.15

2.3 ADMINISTRATIVE AND LEGAL FRAMEWORK

2.3.1 The licensing authorities

The split of administrative responsibility between two different licensing authorities – licensing justices (alcohol) and local authorities (entertainment and late night refreshment services) – that existed under the previous law has been replaced under the 2003 Act. Responsibility for administration of licensing was entrusted to local

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15 For the background to the rejection of need, see 1.2.8 above and Justices’ Clerks’ Society, Good Practice Guide (Justices’ Clerks’ Society, 1999), para 3.26. The issue was regarded as having been resolved ahead of the White Paper, which accordingly did not address the matter, but did state that: ‘Licensing authorities should not be able to take into account commercial matters such as the economic demand for a new venue’ (para 46). This view is reiterated in the Guidance, para 3.12: ‘“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 policy. “Need” is a matter for planning committees and for the market.’
authorities, rather than justices or some other body, because, according to the White Paper (Cm 4696, 2000, para 123), there were ‘three compelling reasons’ for doing so:

- accountability: we strongly believe that the licensing authority should be accountable to local residents whose lives are fundamentally affected by the decisions taken …
- accessibility: many local residents may be inhibited by court processes, and would be more willing to seek to influence decisions if in the hands of local councillors …
- crime and disorder: local authorities now have a leading statutory role in preventing local crime and disorder, and the link between alcohol and crime persuasively argues for them to have a similar lead on licensing.

The licensing authorities themselves are for the most part the same bodies that had responsibility for discharging the licensing of entertainments and late night refreshment services under the pre-2003 Act law. In England, licences are granted by district or county councils, except in London where they are granted by borough councils or the Common Council of the City of London, and in Wales they are granted by county or county borough councils. Licensing authorities include three additional bodies: the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple, and the Council of the Isles of Scilly. Section 3(1) and (2) provides:

1. In this Act ‘licensing authority’ means—
   a. the council of a district in England,
   b. the council of a county in England in which there are no district councils,
   c. the council of a county or county borough in Wales,
   d. the council of a London borough,
   e. the Common Council of the City of London,
   f. the Sub-Treasurer of the Inner Temple,
   g. the Under-Treasurer of the Middle Temple, or
   h. the Council of the Isles of Scilly.

2. For the purposes of this Act, a licensing authority’s area is the area for which the authority acts.

2.3.2 An integrated scheme and authorisations for licensable activities

2.3.3 The Act introduces a single, integrated scheme for licensing premises that provide alcohol, entertainment and/or late night refreshment services, in place of the plethora of different legislative provisions previously governing the licensing of these facilities. This reflects and seeks to give effect to the view expressed in the White Paper that the previous law was both complex and placed unjustified burdens and costs on the leisure industry.16 A single premises licence can be obtained under which a person

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16 See the ‘Home Secretary’s Foreword’ to the White Paper, Cm 4696, 2000, pp 5–6, the relevant parts of which are mentioned in 1.2.8 above. The points mentioned there about ‘complexity’ and ‘unnecessary red tape and burdens’ are reinforced in paras 9–10 where it is stated that, for alcohol, the Licensing Act 1964 ‘provides for over 40 different kinds of licence or permission’ and ‘[p]roblems with the public entertainment licensing arrangements include … separate licensing systems for theatres, cinemas and clubs, producing unnecessary complexity when the main purposes of regulation are essentially the same’. Further, ‘problems often compound each other, because pubs, clubs and other outlets are caught by more than one licensing scheme run on different lines. The result is that business has to work under unnecessary difficulties and costs, and that consumer choice is unnecessarily restricted’ (para 11).
can provide any or all of these facilities or ‘licensable activities’ as they are designated in the legislation. Section 1(1) of the Act defines ‘licensable activities’ as:

(a) the sale by retail of alcohol,
(b) the supply of alcohol by or on behalf of a club to or to the order of a member of the club,
(c) the provision of regulated entertainment, and
(d) the provision of late night refreshment.17

Similarly, any or all of these licensable activities can be provided, as temporary activities for a period of time not exceeding 96 hours provided certain requirements are met, under the authority of a TEN. Section 2(1) provides:

A licensable activity may be carried on–

(a) under and in accordance with a premises licence (see Part 3), or
(b) in circumstances where the activity is a permitted temporary activity by virtue of Part 5.

2.3.4 Certain licensable activities are also ‘qualifying club activities’ and s 1(2) provides:

the following licensable activities are also qualifying club activities –

(a) the supply of alcohol by or on behalf of a club to or to the order of a member of the club,
(b) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place, and
(c) the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests.

The provision of a CPC for the above activities continues the special arrangements that have generally been applied to the consumption of alcohol on the premises of non-profit making clubs18 and extends the arrangements to the provision of entertainment in clubs. As regards the provision of late night refreshment services in clubs, these are ‘exempt supplies’ and do not constitute licensable activities for which an authorisation is required (see 5.4.6 below).

2.3.5 In most cases, however, authorisation for licensable activities will be provided by a premises licence. Such a licence can authorise licensable activities either indoors or outdoors,19 but on its own will be insufficient where the licensable activities include the sale of alcohol for consumption on or off the premises. In this instance, a personal

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17 The meaning of ‘licensable activities’ is considered in detail in Chapter 5.
18 Under the previous law, in particular under Pt II of the Licensing Act 1964, such clubs were able to supply members with alcohol under a registration certificate without having to obtain a justices’ licence. This had several advantages, eg, the restrictive approach (implicit in the justices’ discretion) to granting licences was inapplicable and renewal could be at longer intervals. The White Paper recommendations included preservation of the special status of clubs: ‘We recognise that there is much to be valued in the club movement, which remains an important institution of which this country can be proud. Private premises, to which public access is restricted and where alcohol is supplied other than for profit, give rise to different issues for licensing law from commercial enterprises selling direct to the public’ (Cm 4696, 2000, para 102).
19 Section 193 provides: ‘... “premises” means any place ...’
licence will also be needed, held by an individual and authorising him to sell the alcohol. The rationale for this was set out in the White Paper as follows:

The argument for licensing people as well as premises is that there needs to be a reasonable assurance that anyone responsible for the sale of alcohol is aware of his or her obligations and is capable of fulfilling them. In addition, a great many public houses are these days managed by people on behalf of large pub operating companies and the normal transfer of managers from one set of premises to another is unnecessarily inhibited by the current law which ties the licence holder and the venue together. A split licensing system therefore offers much greater flexibility to the industry in terms of human resources. The licence would be held by the person running the premises on a day to day basis … (Cm 4696, 2000, para 39)

 Whilst a personal licence is needed for the provision of alcohol, one is not required for the provision of entertainment or late night refreshment services. This might be seen as a significant weakness in the legislation, since, if the premises are suitable and a premises licence is granted, this will authorise provision, irrespective of how ill-suited personally an individual may be to operate those premises. It is surely open to question whether a person with convictions for offences such as rape, indecent assault, and supply of controlled drugs should be able to operate premises regarded as suitable for the provision of music and dancing for young teenagers (where no alcohol is sold). It would nevertheless appear that premises could be so operated, although almost certainly they could not have been under the previous law since it is inconceivable that such a person would have been regarded as a fit and proper person to hold a licence. Attempts during the course of the legislation’s passage to extend the requirement for a personal licence beyond the provision of alcohol were resisted by the Government on the unconvincing ground that, as Lord Davies stated on 16 January 2003, ‘the risks associated with the provision of public entertainment or late-night refreshment without alcohol are not so great that a system of personal vetting is needed’ (HL Deb, vol 643, col 395).

 2.3.6 In addition to the need for a personal licence where alcohol is sold, there needs to be a ‘designated premises supervisor’ (DPS) where alcohol is sold under a premises licence. The DPS can, but need not be, the premises licence holder and the purpose of this requirement is to ensure that, in the case of premises selling alcohol to the public, there is someone with overall responsibility for the sale of alcohol on the premises who can be readily identified and held to account. The Government considered it essential that police officers, fire officers or officers of the licensing authority be able to identify immediately the person at any premises selling alcohol in a position of authority. Whilst this is an important consideration, it clearly detracts from the ‘portability’ concept of the personal licence and undermines the split between premises and personal licences, since the DPS holding the personal licence is ‘tied’ to the licensed premises for which he is the premises supervisor. Perhaps an alternative way of making sure that there was a person in a position of authority, who could easily be identifiable, would have been to require the premises licence holder to ensure that an identifiable personal licence holder was in charge at all times.

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20 This is not required where alcohol is provided by a qualifying club under a CPC or by a premises user with authorisation under a TEN.
2.4 PROCEDURAL FRAMEWORK

2.4.1 Application procedure and accompanying documentation

2.4.2 Under the previous legislative provisions, there were various procedural requirements in respect of the making of licence applications. In some instances, these were quite prescriptive and needed to be rigidly adhered to, for example, persons intending to oppose an application for the grant by justices of a special hours certificate needed to give notice in writing to the applicant and the justices’ chief executive not later than seven days before commencement of the licensing sessions at which the application was to be made.\(^\text{21}\) In other instances, however, notably in the area of entertainment licensing, the procedural requirements were often minimal and much was left to the discretion of individual licensing authorities. Thus, for instance, for public entertainment licensing, Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982 specified little beyond the need for notice to be given to the police and the fire authority and for any observations submitted to be considered (para 6(1) and (2)). The application procedure essentially depended upon what licensing authorities required from applicants by virtue para 6(3), which provided: ‘An applicant ... shall furnish such particulars and give such other notices as the appropriate authority may by regulation prescribe.’\(^\text{22}\) For alcohol licensing, under Sched 2 to the Licensing Act 1964, in addition to notice to various parties, a plan of the premises had to be deposited with the clerk to the justices; but the Act provided little guidance in respect of the plan and matters of detail were left to the licensing justices.\(^\text{23}\)

The provisions in the 2003 Act, as will be seen below, are more prescriptive in terms of what is required.\(^\text{24}\) Thus the Act itself contains some requirements for accompanying documentation, for example for premises licence and CPC applications an operating schedule and a plan of the premises\(^\text{25}\) and, for all forms of authorisation, it enables further provision to be made through regulations in respect of a number of matters, including the form of any application or notice, the manner in which it is to be made or given, and information and documents that must accompany it. These regulations are not, however, ones drawn up by individual licensing authorities, but ones issued by the Secretary of State. The Licensing Act 2003 (Premises Licences and

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\(^\text{21}\) Rule 3A, Licensing (Special Hours Certificates) Rules 1982, SI 1982/1384. A failure to comply with this requirement meant that the objection would not be heard.

\(^\text{22}\) The position was similar for theatre licence applications – see Sched 1, para 2 of the Theatres Act 1968.

\(^\text{23}\) Thus no scale for the plan was specified, nor what the plan should contain, and it was common for policy documents drawn up by justices to specify the scale and matters such as the colouring of particular areas, marking of room dimensions and the identification of adjoining premises.

\(^\text{24}\) The requirements might be thought to be overly prescriptive in that many are expressed in mandatory terms and confer no discretion on the licensing authority to waive the requirements even where there is no prejudice to any party, eg, re-advertisement may be necessary where an advertisement, through no fault of the applicant, appears just outside the period prescribed by the regulations.

\(^\text{25}\) Sections 17(3)(a)(b) and 71(4)(a)(b). The Act also requires, in the case of premises licence applications where the licensable activities include the sale or supply of alcohol, a form of consent of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor (s 17(3)(c)); and, for CPC applications, a copy of the club rules (s 71(3)(c)).
Club Premises Certificates) Regulations 2005, SI 2005/42 (LA 2003 (PL and CPC) Regs 2005) regulate premises licences and CPCs, which are for the most part treated in similar fashion, and Licensing Act 2003 (Personal Licences) Regulations 2005, SI 2005/41 (LA 2003 (Personal Licences) Regs 2005) regulate personal licences. For TENs, the Act requires certain matters to be specified in the notice (s 100(4) and (5)) and regulations can prescribe the form for the giving of the notice and additional matters to be contained in it, although at the time of writing no regulations for TENs have in fact been made and are not expected to be introduced until the latter part of 2005.

**Premises licences and CPCs**

The LA 2003 (PL and CPC) Regs 2005 specify the form the applications shall take and the information that they must contain. The Regulations also prescribe the scale and content of the plan (reg 23) and the form of consent for the premises supervisor (reg 24 and Pt A of Sched 11). The LA 2003 (PL and CPC) Regs 2005 make provision for:

- the form in which applications are made;
- the giving of notices and the making of representations;
- the periods of time within which representations must be made;
- the scale of and matters to be delineated in plans of premises; and
- the advertising of applications.

**Form in which applications are made, giving of notices and making of representations**

Not surprisingly there is a requirement for applications, along with notices and representations, to be in writing, but provision is made for transmission by electronic means provided certain requirements, which include subsequent written communication, are met. Regulation 21 provides:

(1) An application, a notice or a representation shall be in writing.

(2) Notwithstanding the requirement in paragraph (1) and subject to paragraph (3), that requirement shall be satisfied in a case where—

(a) the text of the application, notice or representation—

(i) is transmitted by electronic means;

(ii) is capable of being accessed by the recipient;

(iii) is legible in all material respects,26 and

(iv) is capable of being read and reproduced in written form and used for subsequent reference;

(b) the person to whom the application or notice is to be given or the representations are to be made has agreed in advance that an application or a notice may be given or representations may be made by electronic means; and

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26 Under reg 2, “legible in all material respects” means that the information contained in the application, notice or representations is available to the recipient to no lesser extent than it would be if given by means of a document in written form.”
(c) forthwith on sending the text of the application, notice or representations by electronic means, the application, notice or representations is given or made, as applicable, to the recipient in writing.27

(3) Where the text of the application, notice or representations is or are transmitted by electronic means, the giving of the application or notice or the making of the representation shall be effected at the time the requirements of paragraph 2(a) are satisfied, provided that where any application or notice is required to be accompanied by a fee, plan or other document or information that application or notice shall not be treated as given until the fee, plan or other document or information has been received by the relevant licensing authority.

The effect of reg 21(3) is that in cases where additional documentation is required the electronic transmission is not effective until that documentation is received by the licensing authority. Whilst this may not give rise to difficulties in many cases, there may be some instances where this might prove problematic, notably in respect of applications under s 37 by the premises licence holder to vary the designated premises supervisor (DPS) for the premises following a request by the incumbent DPS under s 41 to be removed as the premises supervisor (see 6.9.7 and 6.9.1 below). The request for removal requires no additional documentation and is effective when notice is transmitted electronically to the licensing authority. If the request becomes effective outside office hours, when the licensing authority’s offices are closed, an application by the premises licence holder to vary the DPS, if transmitted electronically, does not have immediate effect. This is because, under s 37(2)(b), it needs to be accompanied by a fee and the application is not to be treated as given under reg 21(3), until the fee has been received by the licensing authority. This may mean that there is a period when there is no DPS for the premises, during which it will not be possible for sales of alcohol to take place as this is one of the mandatory conditions for the sale of alcohol (see 6.4.2 below).

**Periods of time within which representations must be made**

Under reg 22(b), representations must generally be made within a period of 28 consecutive days after the day on which the application to which it relates was given to the authority by the applicant.28

**Scale of and matters to be delineated in plans of premises**

The plans, unless the applicant has requested an alternative scale plan and the authority has given written confirmation that is acceptable, must be to a scale of 1:100 centimetres and must show: the location of the boundary and any external and internal walls of the building and perimeter of the premises; exits, escape routes and any fixed structures that might impact on the ability to use these without impediment; where the licensable activities take place if there is more than one; any stage or raised area, including height; the location of any steps, stairs, elevators or lifts; the location of any public conveniences; fire safety and other safety equipment, including the type;

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27 For the meaning of ‘forthwith’, see 6.6.2 below.
28 An exception is provided by reg 22(a) in relation to review of a premises licence following a closure order, where the period is seven working days – see 11.14.21 below.
and any kitchen. Inclusion of these details is important to make it clear which premises or parts of premises have been licensed if the application is granted; and to enable responsible authorities and interested parties to better consider the adequacy of any operating schedule.\(^{29}\) In order to show the location of these items, symbols may be used. Regulation 23 provides:

1. An application for a premises licence under section 17, or a club premises certificate under section 71, shall be accompanied by a plan of the premises to which the application relates and which shall comply with the following paragraphs of this regulation.

2. Unless the relevant licensing authority has previously agreed in writing with the applicant following a request by the applicant that an alternative scale plan is acceptable to it, in which case the plan shall be drawn in that alternative scale, the plan shall be drawn in standard scale.\(^{30}\)

3. The plan shall show—
   
   (a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
   
   (b) the location of points of access to and egress from the premises;
   
   (c) if different from sub-paragraph (3)(b), the location of escape routes from the premises;
   
   (d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
   
   (e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
   
   (f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
   
   (g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
   
   (h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
   
   (i) the location and type of any fire safety and any other safety equipment\(^{31}\) including, if applicable, marine safety equipment; and
   
   (j) the location of a kitchen, if any, on the premises.

4. The plan may include a legend through which the matters mentioned or referred to in paragraph (3) are sufficiently illustrated by the use of symbols on the plan.

It seems that the plan itself may well form part of the licence. Section 24(1) provides that the premises licence must be in a prescribed form and s 24(2) provides: ‘Regulations under subsection (1) must, in particular, provide for the licence to … (b) include a plan of the premises to which the licence relates …’ (see 6.6.3 below). Regulation 33 and Pt A of Sched 12 to the LA 2003 (PL and CPC) Regs 2005 prescribe the format of the premises licence and the Schedule contains four annexes, the first

\(^{29}\) DCMS, *Consultation on Draft Regulations and Order to be Made under the Licensing Act 2003*, 2004, para 5.28.

\(^{30}\) Regulation 2 provides: ‘“standard scale” means that 1 millimetre represents 100 millimetres’ and ‘“alternative scale plan” means a plan in a scale other than the standard scale’.

\(^{31}\) Regulation 2 provides: ‘“fire and other safety equipment” includes fire extinguishers, fire doors, fire alarms, marine safety equipment, marine evacuation equipment and other similar equipment.’
three of which relate to conditions (Annex 1 – Mandatory Conditions; Annex 2 – Conditions Consistent with the Operating Schedule; and Annex 3 – Conditions Attached after a Hearing by the Licensing Authority) and the fourth relates to the plan (Annex 4 – Plans). Section 78(1)(2), along with reg 35 and Pt A of Sched 13 to the Regulations, makes similar provision in respect of a club premises certificate (CPC). If conditions attached as an Annex to the licence or CPC are a part of the licence or CPC, and they undoubtedly are, it is difficult to resist the conclusion that plans are also part of the licence or CPC. Further, this is reinforced by the fact that in the Consultation on Draft Regulations and Order to be made under the Licensing Act 2003, para 5.45 states: ‘The plans submitted with the application would form part of the licence’, and para 5.51 states: ‘The plans submitted with the application would form part of the certificate.’ This may mean that where changes are made to the plans, even if a relatively minor nature, for example removal or movement of fire equipment, an application for variation of the premises licence or CPC might be needed under s 34 or s 84 (see 6.9 and 8.9 below). Where there are relatively minor changes to the plan, this seems unduly onerous, given the advertisement requirements for variation applications. However, it may be that a s 34 or s 84 application is not needed for all variations, and minor variations might be dealt with informally by the licensing authority (see 6.9.5 below).

Advertising of applications

Applications for the grant or variation of premises licences and CPCs, and for the issuing of a provisional statement, must be advertised in two ways. First, the applicant must display a notice, of at least A4 size on pale blue paper with black type or legible printing to a size of at least 16 point font, at or on the application premises where it can conveniently be read from the exterior of the premises for not less than 28 consecutive days starting on the day following the giving of the application to the licensing authority. In cases where the premises are over 50 square metres, similar notices must be placed every 50 metres along the external perimeter of the premises abutting any highway. Secondly, the applicant must publish a notice, on at least one occasion during the period of 10 working days starting on the day following the giving of the application, in a local newspaper (or local newsletter, circular or similar document where none exists) circulating in the vicinity of the premises. Regulation 25 provides:

In the case of an application for a premises licence under section 17, for a provisional statement under section 29, to vary a premises licence under section 34, for a club premises certificate under section 71 or to vary a club premises certificate under section 84, the person making the application shall advertise the application, in both cases containing the appropriate information set out in regulation 26–

(a) for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority, by displaying a notice,

(i) which is–

(aa) of a size equal or larger than A4,
(bb) of a pale blue colour,
(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;

(ii) in all cases, prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises and in the
case of a premises covering an area of more than fifty metres square, a further notice in the same form and subject to the same requirements every fifty metres along the external perimeter of the premises abutting any highway; and

(b) by publishing a notice –

(i) in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises;

(ii) on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the relevant licensing authority.

The information that the premises and newspaper notices must contain includes: the name and postal address of the applicant; the postal address and any website address of the licensing authority where the register of the relevant licensing authority is kept and where the record of the application may be inspected; the dates within which relevant representations in writing can be made; and a statement of the offence and maximum fine for knowingly or recklessly making a false statement in connection with an application. The notices must also: state the relevant licensable or qualifying club activities that it is proposed to carry on; briefly describe the proposed variation in the case of a variation application; and, in the case of a provisional statement application, state that representations are restricted after the issue of a provisional statement. Regulation 26 provides:

(1) In the case of an application for a premises licence or a club premises certificate, the notices referred to in regulation 25 shall contain a statement of the relevant licensable activities or relevant qualifying club activities as the case may require which it is proposed will be carried on on or from the premises.

(2) In the case of an application for a provisional statement the notices referred to regulation 25–

(a) shall state that representations are restricted after the issue of a provisional statement; and

(b) where known, may state, the relevant licensable activities which it is proposed will be carried on on or from the premises.

(3) In the case of an application to vary a premises licence or a club premises certificate, the notices referred to in regulation 25 shall briefly describe the proposed variation.

(4) In all cases, the notices referred to in regulation 25 shall state–

(a) the name of the applicant or club;

(b) the postal address of the premises or club premises, if any, or if there is no postal address for the premises a description of those premises sufficient to enable the location and extent of the premises or club premises to be identified;

(c) the postal address and, where applicable, the worldwide web address where the register of the relevant licensing authority is kept and where the record of the application may be inspected;

(d) the date by which an interested party and responsible authority may make representations to the relevant licensing authority;

(e) that representations shall be made in writing; and

(f) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.
**Personal licences**

For a personal licence application, regulations can prescribe its form, the manner in which it is to be made and the information and documents that must accompany it. Regulation 4(1) and Sched 1 to the LA 2003 (Personal Licences) Regs 2005, SI 2005/41 specify the form the application shall take and the information that it must contain. They also require it to be accompanied by: two photographs of the applicant, one of which is to be endorsed as a true likeness of the applicant by a solicitor, notary, a ‘person of standing in the community’ or any individual with a professional qualification; a copy of the applicant’s licensing qualification; and a criminal conviction or criminal record certificate or a Police National Computer check no earlier than one calendar month before the application, coupled with a declaration as to any convictions for a relevant offence or foreign offence.

2.4.3 Licence applications invariably need to be accompanied by a licence application fee and the Secretary of State’s powers to make regulations under the Act includes requiring applications to be accompanied by a fee and prescribing the amount of the fee. Under the previous law, fees for justices’ licences were set centrally by the Secretary of State (see s 29 of the Licensing Act 1964) – at an unrealistically low level that fell well short of the administration and enforcement costs of the licensing scheme – although local authorities could charge a ‘reasonable fee’, which enabled them to recoup the administration and enforcement costs if they were minded to do so. Invariably, many authorities were minded to recoup the full cost of the scheme from licence applicants, and fees charged for public entertainment licences, in particular, were often set at a high level. Whilst this may well have been necessary to ensure the scheme was properly run and enforced, the levels attracted a measure of criticism not only from the licensed trade, but also from central government. In view of this, it was always likely that fees would be centrally set under the 2003 Act, reflecting the Government’s determination to keep fees down to what it saw as a ‘reasonable’ level. Reassurances were given during the course of the legislation’s passage that the fees would be set at a level that enabled full cost recovery for administering the scheme and in its *Consultation on Fee Levels to be Established by Regulation under the Licensing Act 2003* (DCMS, 2004), para 1.4, the Government indicated that:

> [it] ... expects to set fees at a level that would achieve full recovery of the administrative, inspection and enforcement costs falling on any licensing authority associated with their licensing functions under the 2003 Act. It is important to note that cost recovery should be of the full local authority cost under the Act and not just the costs of the licensing authority. This will therefore include some costs that are not associated with formal licensing functions under the 2003 Act. For example, costs

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32 Section 133(1). This is a similar provision to those in ss 54 and 91 for premises licences and CPCs, although the Act does not in other respects make specific provision for personal licence applications.

33 For details, see 10.4.2 below.

34 To the extent that such costs were not recouped, these would have been borne by council taxpayers. It was open to local authorities to determine, as a matter of policy, the extent to which they would seek to recoup the costs of the licensing scheme and whether to set the same or different fees for different types of applications (grants, renewals and transfers): *R v Greater London Council ex p Rank Organisation* [1982] LS Gaz R 643.

incurred by environmental health departments that directly result from their role as a responsible authority under the 2003 Act must be included but not their costs associated with their other non-licensing statutory functions.

It remains to be seen whether the fee levels set will be adequate for these purposes, and the Secretary of State, recognising the level of anxiety expressed by local authorities about their ability to recover their costs under the new regime, has agreed to an independent review of the costs of the regime and the fee levels by the Audit Commission after the regime has become fully operational (para 1.9). In the light of experience fee levels can then revised either by lowering or raising them as appropriate.

2.4.4 Hearing and determining applications

2.4.5 Introduction

As regards the procedure for determination of licence applications, again much was left to the discretion of individual licensing authorities under the previous legislative provisions. Whilst the Licensing Act 1964, in Sched 1, contained provisions for the constitution of licensing committees of justices and for the holding of licensing sessions, the Act laid down no procedure to be followed for the hearing and determination of applications. This was a matter for the licensing committees themselves. Nor was any procedure prescribed for local authorities, whose licensing functions could be carried out in accordance with the general law governing the discharge by local authorities of their statutory responsibilities. Thus authorities might, under s 101 of the Local Government Act 1972, ‘arrange for the discharge of any of their functions … by a committee or sub-committee or an officer of the authority’. In making such arrangements, the power of decision-making may or may not be delegated to the committee, subcommittee or officer hearing the application. The procedure for hearing and determination of applications was again a matter for individual local authorities. The 2003 Act is, however, much more prescriptive in terms of what is required. Section 6 requires the establishing of a licensing committee, s 7 makes provision for the exercise and delegation by a licensing authority of (most of) its licensing functions through the licensing committee, s 9 provides for the establishing of subcommittees and for various aspects of proceedings of the licensing committee and subcommittees to be prescribed by regulations, and s 10 makes provision for the subdelegation by the licensing committee of its functions to subcommittees and officers.38

36 Particularly problematic may be the question of reviews of licences, the numbers (and, in turn, the possible costs) of which may be difficult to predict and over which the licensing authority may have little or no control. For the fee levels set, see Table of Fees, Appendix 9.

37 The review will also examine whether any particular class of premises is giving rise to disproportionate costs relating to inspection and enforcement (para 1.10).

38 Section 8 makes provision for the keeping of a register and is considered below – see 2.4.14–2.4.17 below.
2.4.6 Establishing the licensing committee and its discharge of licensing functions

2.4.7 Composition and political balance of licensing committee

Section 6(1) provides that: ‘Each authority must establish a licensing committee consisting of at least ten, but not more than fifteen, members of the authority’, and s 7 provides for the exercise and delegation of licensing functions through the licensing committee. There is no provision in the 2003 Act that licensing committees need to be politically balanced so that membership reflects the balance of different political groups having seats on the authority. Although there are provisions in the Local Government and Housing Act 1989 requiring political balance on local authority committees, it seems unlikely that these will have application to licensing committees established under s 6 of the 2003 Act. This is because the provisions in the 1989 Act are not expressed to be of general application to local authority committees. Instead, s 15(7) provides that Sched 1 to the 1989 Act shall have effect for determining the bodies to which the provisions on political balance are to have application, and under para 1 of Sched 1 there are three categories:

(a) any ordinary committee or sub-committee of the authority (defined respectively in para 4(1) to mean “the authority’s education committee, their social services committee or any other committee of the authority appointed under s 102(1)(a) of the Local Government Act 1972” and “any sub-committee of the authority’s education committee or social services committee or any other sub-committee of that authority appointed under s 102(1)(c) of the Local Government Act 1972”);

(b) any advisory committee of the authority (which will be a committee appointed by the authority under s 102(4) Local Government Act 1972) and any sub-committee appointed by such an advisory committee; and

(c) any such body falling within para 2 of Sched 1 (eg a local fisheries committee for any sea fisheries district or a National Parks Committee) to which at least three seats fall to be filled by appointments by the authority or committee.

Licensing committees are established under s 6 of the 2003 Act (and subcommittees, to which the discharge of licensing functions can be delegated, are established under s 9 – see 2.4.11 below) and do not fall within any of these categories in Sched 1. Most local authorities arrange for the discharge of their functions under s 101 of the Local Government Act 1972 by committees and subcommittees that are appointed under s 102 of that Act, but para 58 of Sched 6 to the 2003 Act specifically provides for their exclusion in relation to the discharge of licensing functions under the 2003 Act by adding to s 101 a new sub-s (15), which provides: ‘Nothing in this section applies in relation to any function under the Licensing Act 2003 of a licensing authority (within the meaning of that Act).’ It would seem therefore that the requirement for political balance under the 1989 Act will not have application.

39 The requirements for establishing a licensing committee and for the exercise and delegation of licensing functions through the licensing committee do not apply in cases where the licensing authority is the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple – see s 6(2) and s 7(10).

40 See ss 15–17 and Local Government (Committees and Political Groups) Regulations 1990, SI 1990/1553. There does not appear to be any provision in the 2003 Act for co-opting of members, or outside representatives, so it must be assumed that there can be no additional persons co-opted onto the committee.
The effect of this will be that most local authority committees and subcommittees will need to be politically balanced, but licensing committees and subcommittees discharging licensing functions will not. The rationale for this is not apparent. If political balance is thought to be desirable and applies in most cases (and this seems to be the general legislative intent underlying the 1989 Act), it is not obvious why this should not equally apply to licensing committees. Further, where a matter relates to a licensing function under the 2003 Act and to a function of the authority that is not a licensing function, the authority can, under s 7(5), arrange for the discharge of that function either by the licensing committee or by another of its committees.41 If it arranges for discharge by another committee, that committee will need to be politically balanced, but this will not be the case if it arranges for discharge by the licensing committee. A requirement for political balance in one case, but not the other, seems difficult to defend. Nevertheless, this seems to be the legal position although, as a matter of practice, local authorities may well decide that the licensing committee should in any event be politically balanced.

2.4.8 Quorum for licensing committee

As to whether all members of the licensing committee need to be present for the committee to be quorate, the position is unclear. The Act contains no express provision in this respect, although s 7(9) does provide that:

Where a licensing committee is unable to discharge any function delegated to it in accordance with this section because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it, the committee must refer the matter back to the licensing authority and the authority must discharge that function.

This begs the question of when the committee will be unable to discharge any delegated function because of the numbers of members who cannot participate, which may be for a number of reasons, including where members have a ‘prejudicial interest’ in a matter which requires them to withdraw when that matter is being considered.42 However, s 7(9) gives no clear steer on the answer. There seem to be three possible

41 See 2.4.10 below.
42 Where a member has a ‘personal interest’ in a matter (of which he has given notice in the statutory register of members’ interests or if a decision upon the matter might reasonably be regarded as affecting him to a greater extent than other council taxpayers), he must disclose the interest to any meeting where the issue is to be discussed, although he can still take part in the meeting and vote, but if the ‘personal interest’ is also a ‘prejudicial interest’ then he cannot participate and must withdraw. Under para 12(1) of the Model Code of Conduct (for which provision is made in the Local Authorities (Model Code of Conduct) (England) Order 2001, SI 2001/3575), ‘a member with a prejudicial interest in any matter must (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting …’. Under para 10(1), a member has a prejudicial interest in a matter ‘if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest’. For the Model Code of Conduct in Wales, see the Conduct of Members (Model Code of Conduct) (Wales) Order 2001, SI 2001/2289. An instance of where a number of members may be required to withdraw and be unable to participate might be where an application is made by a football club where the members are season ticket holders (cf R v Local Commissioner for Administration in North and North East Engand ex p Liverpool City Council [2001] 1 All ER 462, a case concerning a planning application by Liverpool FC, where the Court of Appeal held that Liverpool FC season ticket holders and other regular attenders should have declared their interest).
answers. First, all members of the licensing committee may have to be present for the committee to be quorate and, whenever any member cannot be present, there is no quorum and the matter must be referred back to the licensing authority for it to discharge the function. If this is the meaning of s 7(9), it is neither sensible nor practical.\(^{43}\) Secondly, whatever number at which the composition of the committee is fixed between 10 and 15, the number present must never fall below 10 for the committee to be quorate. This is more sensible and practical, but may still present problems for small authorities. Thirdly, whilst the committee must have between 10 and 15 members appointed to it (so as to comply with s 6(1)), it can still meet and discharge licensing functions delegated to it when fewer than 10 members are present, without having to refer the matter back to the licensing authority, provided some specified quorum for meetings is complied with.\(^{44}\) This is the most sensible and practical answer, since it allows for diversification and differences in size between different licensing authorities.

Whilst the Act makes provision in s 9(2)(a) for the Secretary of State to set quorum limits through secondary legislation,\(^{45}\) the Secretary of State has not done so and it would seem that in the absence of any regulations the quorum may well be a matter for the licensing committee to determine. Support for this view can be found from the following statement by Lord Davies, a Government spokesman, at the Report Stage of the Bill in the House of Lords:

... the Bill gives the Secretary of State power to make regulations setting out, among other matters, the quorum for meetings of the licensing committee and its sub-committees ... If the Secretary of State does not make such regulations ... each licensing authority can choose to regulate its own procedure and that of its sub-committees. So if the Secretary of State does not make regulations, then the responsibility will be devolved to the licensing committee.’ (HL Deb, vol 645, cols 382–83, 27 February 2003)

There remains an element of doubt about this, however, since these remarks were preceded by an earlier statement, during the Committee Stage, that: ‘all members of the licensing committee will have to be present for the committee to be quorate’,\(^{46}\) and when the Bill was subsequently considered in the House of Commons no clear statement could be discerned from the debates there on the matter of when committees will be quorate.

\(^{43}\) That the Act contains a specified number of members for the licensing committee and for subcommittees should not be seen as indicative of the quorum. If it was intended that the number specified in the Act was to be the quorum, s 9(2)(a) would not have made provision for regulations to extend to the quorum for meetings.

\(^{44}\) The local authority can make general provision as to the quorum in its standing orders and, subject to the standing orders, this is a matter for the committee or subcommittee. Section 106 of the Local Government Act 1972 provides:

Standing orders may be made as respects any committee of a local authority by that authority or as respects a joint committee of two or more local authorities, whether appointed or established under this Part of this Act or any other enactment, by those authorities with respect to the quorum, proceedings and place of meeting of the committee or joint committee (including any sub-committee) but, subject to any such standing orders, the quorum, proceedings and place of meeting shall be such as the committee, joint committee or sub-committee may determine.

A quorum of one quarter of members is commonly adopted.

\(^{45}\) See 2.4.11 below.

\(^{46}\) HL Deb, vol 642, col 835, 19 December 2002 (Lord Davies).
A further matter affecting whether the licensing committee is quorate and, in turn, whether matters delegated to it need to be referred back to the licensing authority under s 7(9) because there is an insufficient number of members who can participate, is whether members precluded from participating by a ‘prejudicial interest’ might obtain a dispensation to do so. Under s 81(4) of the Local Government Act 2000 a member is able to participate if a dispensation from the prohibition on being present is granted by the authority’s standards committee and it seems that, if one were to be granted and this would make the committee quorate, the matter should not be referred back to the licensing authority. It is unlikely that s 7(9) was intended to prevent a member obtaining a dispensation. It is clearly established under s 81(4) that members can obtain dispensations and there would seem to be no good reason why s 7(9) should be regarded as overriding this. Certainly, on the wording of s 7(9), if a dispensation is granted, it will not prevent the member from taking part in the consideration or discussion of the matter in question or voting on it. The matter will not therefore need to be referred back to the licensing authority under s 7(9) because the committee will be able to discharge the function delegated to it. Section 7(9) should therefore be regarded as confined to cases where a dispensation cannot be granted and, as a result, there is an insufficient number of members for the committee to be quorate. It is only then that the matter should be referred back to the licensing authority.

2.4.9 Licensing functions discharged by the licensing committee

As a general rule, all matters relating to the discharge by a licensing authority of its licensing functions must be exercised by the licensing committee. One exception is under s 7(9) if the licensing committee is unable to discharge any function because of an insufficient number of members (see 2.4.8 above). Other exceptions are the formulation and publication of the Statement of Licensing Policy (SOP), where arrangements have been made for discharge of licensing functions by another committee, or any matters relating to either of these cases. Section 7(1) and (2) provides:

(1) All matters relating to the discharge by a licensing authority of its licensing functions are, by virtue of this subsection, referred to its licensing committee and, accordingly, that committee must discharge those functions on behalf of the authority.

(2) Subsection (1) does not apply to—

(a) any function conferred on the licensing authority by section 5 (statement of licensing policy), or

(b) any function discharged under subsection (5)(a) below by a committee (other than a licensing committee),47

or any matter relating to the discharge of any such function.

In the case of arrangements made for discharge of licensing functions by another committee (s 7(2)(b)), it is self-evident that the other committee will discharge those functions, but it is not self-evident which body will discharge the functions of formulation and publication of the SOP (s 7(2)(a)). It is not clear from the 2003 Act whether this function should be discharged by the full council or by its executive, but,

47 See 2.4.10 below.
as regards local authorities in England, amendments to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853 make it clear that the function should not be discharged by an authority’s executive. Part 1 of Sch 1 to these regulations specifies various functions that are not to be the responsibility of an authority’s executive and the Local Authorities (Functions and Responsibilities) (Amendment No 3) (England) Regulations 2004, SI 2004/2748, reg 2 and para 1(1) of Sch 1, include within these functions those relating to licensing under ss 5–8 of the 2003 Act. Accordingly, where the licensing authority is a local authority, formulation and publication of the SOP should be determined by the full council of the authority. It is difficult to see why the position should be any different in Wales, but amendments to the Local Authorities (Executive Arrangements) (Wales) Regulations 2001, SI 2001/2291 made by the Local Authorities Executive Arrangements (Functions and Responsibilities) (Amendment) (Wales) Regulations 2004, SI 2004/3093 provide only for the inclusion, within functions that are not to be the responsibility of an authority’s executive, of functions in respect of establishing a licensing committee under s 6 of the 2003 Act. Since the function of formulation and publication of the SOP falls within s 5, it remains a matter of some doubt whether this should or should not be the responsibility of the executive.

2.4.10 Discharge of licensing related functions

A licensing authority may also arrange for the discharge by its licensing committee of additional functions of the authority that are related to its licensing functions. No criteria are provided to determine whether a function is ‘related’ to a licensing function, so this will be a matter of interpretation and a question of fact in the circumstances. Instances of where a function might be related could perhaps include planning requirements concerning licensed premises or promotion of tourism in connection with entertainments licensable under the 2003 Act. They might also include activities for which a licence is needed under other legislation, for example a race track licensed for the sale of alcohol will also require a track betting licence under s 6 and Sch 3 to the Betting Lotteries and Gaming Act 1963. If the authority chooses to discharge such related functions itself, it must before doing so, except in urgent cases, consider any relevant report prepared by the licensing committee. This ensures that the licensing committee will have an input into any matter relating to the authority’s licensing functions. In cases where a matter relates to both a licensing function and a function that is not a licensing function, a licensing authority may choose to refer the matter either to the licensing committee or to another committee. Where it opts for the

48 Planning requirements might include the hours during which premises may operate and the hours specified in any planning permission might, but need not necessarily, be the same as hours specified in any premises licence or CPC. This is because in each case the hours are determined by reference to different considerations – planning in the one instance and promotion of the licensing objectives in the other. If, for instance, the hours are longer under the premises licence or CPC than under the planning permission, it will be perfectly permissible under the 2003 Act to keep the premises open to the hour specified in the premises licence or CPC but, in doing so, there will be a breach of planning control for which enforcement action and criminal proceedings may be taken under planning legislation. If, however, hours of operation have been specified in the planning permission prior to an application under the 2003 Act, the view may be taken that promotion of the licensing objective of prevention of crime and disorder might require that longer hours are not specified under the premises licence or CPC, since if they are this might encourage a (criminal) breach of planning control.
former committee, it must consult the licensing committee and, where it opts for the latter, the other committee must, when considering the matter, take account of any relevant report prepared by the licensing committee. Section 7(3)–(8) provides:

(3) A licensing authority may arrange for the discharge by its licensing committee of any function of the authority which—
   (a) relates to a matter referred to that committee by virtue of subsection (1), but
   (b) is not a licensing function.

(4) Where the licensing authority does not make arrangements under subsection (3) in respect of any such function, it must (unless the matter is urgent) consider a report of its licensing committee with respect to the matter before discharging the function.

(5) Where a matter relates to a licensing function of a licensing authority and to a function of the authority which is not a licensing function ('the other function'), the authority may—
   (a) refer the matter to another of its committees and arrange for the discharge of the licensing function by that committee, or
   (b) refer the matter to its licensing committee (to the extent it is not already so referred under subsection (1)) and arrange for the discharge of the other function by the licensing committee.

(6) In a case where an authority exercises its power under subsection (5)(a), the committee to which the matter is referred must (unless the matter is urgent) consider a report of the authority’s licensing committee with respect to the matter before discharging the function concerned.

(7) Before exercising its power under subsection (5)(b), an authority must consult its licensing committee.

(8) In a case where an authority exercises its power under subsection (5)(b), its licensing committee must (unless the matter is urgent) consider any report of any of the authority’s other committees with respect to the matter before discharging the function concerned.

The procedure for exercise and delegation of functions set out above represents a marked change from that under the previous law. Prior to the Act there was no requirement for local authorities to establish a licensing committee to deal with their licensing responsibilities for entertainment or late night refreshment services. Whilst authorities might establish such a committee, those responsibilities could be, and often were, discharged by other committees (or subcommittees) and, in either case, the committee’s composition, in terms of numbers of members, was entirely a matter for the authority.

2.4.11 Licensing subcommittees and officers and their discharge of licensing functions

Section 9 provides that a licensing committee can establish one or more subcommittees consisting of three members of the committee, and that regulations made by the Secretary of State may make provision about the proceedings of licensing committees and their subcommittees. The regulations may also extend to other matters, including public access to meetings, publicity to be given to those meetings, agendas and records
to be produced in respect of those meetings and public access to such agendas and records and other information about those meetings.\(^{49}\) In other respects, however, each licensing committee may regulate its own procedure and that of its subcommittees.\(^ {50}\) Section 9 provides:

1. A licensing committee may establish one or more sub-committees consisting of three members of the committee.

2. Regulations may make provision about—
   - the proceedings of licensing committees and their sub-committees (including provision about the validity of proceedings and the quorum for meetings),
   - public access to the meetings of those committees and sub-committees,
   - the publicity to be given to those meetings,
   - the agendas and records to be produced in respect of those meetings, and
   - public access to such agendas and records and other information about those meetings.\(^ {51}\)

3. Subject to any such regulations, each licensing committee may regulate its own procedure and that of its sub-committees.

As regards a quorum for subcommittees, this is not specified in any regulations under the 2003 Act, but it seems to have been the Government’s intention that the quorum should be three members; there is a clear statement to this effect during the committee stage of the Bill in the House of Commons.\(^ {52}\) However, in the absence of any specified quorum, local authorities appear free to set their own. Whilst they are perhaps most likely to adopt a quorum of three, they are not obliged to do so nor, as with the licensing committee, would there seem to be a need for political balance (see 2.4.7 above). Less clear is whether the three members need to be identified individuals from the licensing committee, with only those three members able to sit on the subcommittee, or whether any three members from the licensing committee might sit whenever the subcommittee is convened. Either view seems a permissible interpretation on the wording of s 9(1). Since the latter approach incorporates a greater degree of flexibility, it may be that this is the one most likely to be adopted by licensing authorities. If this approach is followed, it would be sensible for more than one subcommittee to be established in order to enable sittings of subcommittees to be held simultaneously. If only one subcommittee were established, although any three

\(^{49}\) The relevant regulations are the Licensing Act 2003 (Hearings) Regulations 2005 – see 2.4.13 below.

\(^{50}\) This is, however, subject to the provision in s 183(1), under which regulations may prescribe the procedure to be followed in relation to a hearing held by a licensing authority – see 2.4.13 below.

\(^{51}\) Regulations made under s 9(2) may differ in content from any provision specified in other legislation (eg, the Local Government Act 1972) as having general application to local authorities in respect of the matters mentioned in s 9(2). Where regulations under s 9(2) have application to licensing committees discharging licensing functions under the 2003 Act, there seems little doubt that the regulations will fall within the scope of the enabling legislation (ie, the 2003 Act). Less clear is whether, when licensing committees are discharging other functions, eg, determining licence applications under other legislation (as they can do – see 2.4.10 above), the regulations might be seen as outside the powers of the enabling legislation and in conflict with rights granted by other legislation.

\(^{52}\) ‘The sub-committee must have three members to be quorate.’ HC Standing Committee D, col 179, 8 April 2003 (Dr Kim Howells).
members of the licensing committee might sit on it, only three members could sit at any one time. This could be avoided if several subcommittees were established with their membership of three drawn from any of the 10 to 15 members of the licensing committee.

2.4.12 Section 10 enables the licensing committee to arrange for the discharge of any functions exercisable by it by a subcommittee established by it, and, in certain circumstances (essentially where an application is uncontested), the subcommittee can arrange for discharge by an officer of the licensing authority. More than one subcommittee can be established and the same function can be discharged concurrently by more than one subcommittee or officer. Section 10(1)–(3) provides:

(1) A licensing committee may arrange for the discharge of any functions exercisable by it—
   (a) by a sub-committee established by it, or
   (b) subject to subsection (4), by an officer of the licensing authority.

(2) Where arrangements are made under subsection (1)(a), then, subject to subsections (4) and (5), the sub-committee may in turn arrange for the discharge of the function concerned by an officer of the licensing authority. 53

(3) Arrangements under subsection (1) or (2) may provide for more than one subcommittee or officer to discharge the same function concurrently.

Arrangements for discharge by an officer are effectively confined to uncontested cases by s 10(4), which provides:

Arrangements may not be made under subsection (1) or (2) for the discharge by an officer of—

(a) any function under
   (i) section 18(3) (determination of application for premises licence where representations have been made),
   (ii) section 31(3) (determination of application for provisional statement where representations have been made),
   (iii) section 35(3) (determination of application for variation of premises licence where representations have been made),
   (iv) section 39(3) (determination of application to vary designated premises supervisor following police objection),
   (v) section 44(5) (determination of application for transfer of premises licence following police objection),
   (vi) section 48(3) (consideration of police objection made to interim authority notice),
   (vii) section 72(3) (determination of application for club premises certificate where representations have been made),
   (viii) section 85(3) (determination of application to vary club premises certificate where representations have been made),

53 Section 10(5) provides: ‘The power exercisable under subsection (2) by a sub-committee established by a licensing committee is also subject to any direction given by that committee to the sub-committee.’
(ix) section 105(2) (decision to give counter notice following police objection to temporary event notice),

(x) section 120(7) (determination of application for grant of personal licence following police objection),

(xi) section 121(6) (determination of application for renewal of personal licence following police objection),

(xii) section 124(4) (revocation of licence where convictions come to light after grant etc),

(b) any function under section 52 (2) or (3) (determination of application for review of premises licence) in a case where relevant representations (within the meaning of section 52(7)) have been made,

(c) any function under section 88(2) or (3) (determination of application for review of club premises certificate) in a case where relevant representations (within the meaning of section 88(7)) have been made, or

(d) any function under section 167(5) (review following closure order) in a case where relevant representations (within the meaning of section 167(9)) have been made.

This provision in s 10(4), by confining decisions by licensing officers to uncontested cases, represents a narrowing of the range of responsibilities of officers. Previously, the extent to which decisions were delegated to officers was a matter for the local authority and, although contested cases were frequently dealt with by committees or subcommittees, the authority could, if minded to do so, delegate decisions in contested cases to officers. In some authorities, there was an Officer Panel dealing with some opposed applications in order to relieve the burden on elected members (normally with a right of appeal to the committee or subcommittee), but this is now no longer possible.

Further, the extent to which decisions might be determined by a committee or subcommittee was previously a matter for the local authority, but the Guidance contains a ‘Recommended delegation of functions’ in para 3.63, as follows:

**Recommended delegation of functions**

<table>
<thead>
<tr>
<th>Matter to be dealt with</th>
<th>Full Committee</th>
<th>Subcommittee</th>
<th>Officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application for personal licence</td>
<td></td>
<td>If a police objection</td>
<td>If no objection made</td>
</tr>
<tr>
<td>Application for personal licence with unspent convictions</td>
<td></td>
<td>All cases</td>
<td></td>
</tr>
<tr>
<td>Application for premises licence/club premises certificate</td>
<td></td>
<td>If a relevant representation made</td>
<td>If no relevant representation made</td>
</tr>
<tr>
<td>Application for provisional statement</td>
<td></td>
<td>If a relevant representation made</td>
<td>If no relevant representation made</td>
</tr>
<tr>
<td>Application to vary premises licence/club premises certificate</td>
<td></td>
<td>If a relevant representation made</td>
<td>If no relevant representation made</td>
</tr>
<tr>
<td>Application to vary designated premises supervisor</td>
<td></td>
<td>If a police objection</td>
<td>All other cases</td>
</tr>
</tbody>
</table>
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

It can be seen that the recommended delegation is for all functions (insofar as they are not dealt with by officers) to be dealt with by a subcommittee, with none of the above functions being discharged by the licensing committee itself. This does not, however, mean that the licensing committee has no effective role, since it can exercise an overseeing role, monitoring and receiving reports from subcommittees on decisions taken by them, and can in appropriate instances (for example, particularly contentious or high profile cases) determine applications itself. Although under s 4(3)(b) local authorities must have regard to the recommendations in the Guidance, they are not bound by them and can depart from them where there are good reasons for doing so (see 4.5.4 below), as there may be in the instances mentioned.

2.4.13 Procedure in relation to hearings and associated matters

Where hearings are held by a licensing authority under the 2003 Act, there is a general provision contained in the legislation for the Secretary of State to issue regulations prescribing the procedure to be followed at hearings, whilst at the same time indicating particular aspects that the regulations might encompass. These are the giving of notice of hearings, expedited procedures in urgent cases, the rules of evidence to be applied and legal representation at hearings. Section 183(1) provides:

Regulations may prescribe the procedure to be followed in relation to a hearing held by a licensing authority under this Act and, in particular, may—

(a) require a licensing authority to give notice of hearings to such persons as may be prescribed;
(b) make provision for expedited procedures in urgent cases;
(c) make provision about the rules of evidence which are to apply to hearings;
(d) make provision about the legal representation at hearings of the parties to it;
(e) prescribe the period within which an application, in relation to which a hearing has been held, must be determined or any other step in the procedure must be taken.

Under the previous law, procedure in relation to local authority hearings was largely a matter for individual authorities, the only constraint being the need to comply with the
rules of natural justice. Either the applicant or objectors could be heard first; evidence did not need to be on oath nor cross-examination allowed, provided interested parties had an opportunity to comment on and refute what was put forward; nor did the strict rules of evidence that applied in court proceedings need to be observed and any evidence that was logically probative (that is, going to proving a relevant issue) could be admitted. In addition, local authorities (and licensing justices) might take into account their own local knowledge. To a large extent this position is retained under the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44 (LA 2003 (Hearings) Regs 2005), with reg 21 providing: ‘Subject to the provisions of these Regulations, the authority shall determine the procedure to be followed at the hearing.’ Indeed, there are some aspects of procedure to which reference is made in s 183(1), but on which the Regulations make no provision, namely, the order in which parties should appear, the rules of evidence which are to apply and the use of local knowledge, and here it may be assumed that the above principles will continue to apply.

The Regulations go on to make only minimal provision in respect of the procedure at the hearing, regulating the procedure in only four respects. First, under reg 22, the authority must explain to parties to the hearing the procedure which the authority proposes to follow at the hearing and must consider any request made by a party for permission, which must not be unreasonably withheld, for another person to appear at the hearing. The requirement to explain the procedure, although now a formal legal requirement, unlike under the previous law, represents no real change of substance since, as a matter of good practice, authorities were always likely to have explained the procedure to the parties. The requirement to request permission for another party to appear, however, is a more substantial change. Under the previous law, parties were generally able, at least as a matter of practice, to call any witnesses in support of their application without the need to obtain any permission from the authority. This is now no longer the case and the opportunity to do so is dependent on permission being given by the authority. How substantial this change is, and the extent, if any, to which authorities seek to prevent someone appearing to give evidence as a witness, remains to be seen.

54 For details on these matters, see 12.2.2 below and Manchester, C, Entertainment Licensing Law and Practice, 2nd edn, 1999, London: Butterworths, paras 5.08–5.16.
55 The position in respect of costs remains the same as under the previous law in respect of licences issued by local authorities, with s 183(2) providing that the licensing authority ‘may not make any order as to the costs incurred by a party in connection with a hearing under this Act’.
56 The request for permission is made in accordance with reg 8(2), which requires a brief description of the point(s) on which that person may be able to assist the authority – see below. Under reg 2(1), a ‘party to the hearing’ is a person to whom the notice of hearing is to be given in accordance with reg 6(1) – see below. This essentially comprises applicants and those making relevant representations.
57 It is doubtful that there was any right as a matter of law to call witnesses in hearings before local authorities (or before licensing justices) since each was considered to have an inherent discretion as to how they regulated their proceedings. The following remarks of Lord Denning MR in the Court of Appeal, in TA Miller Ltd v Minister of Housing and Local Government [1968] 1 WLR 992, 995, made in respect of a town planning inquiry conducted by an inspector, were regarded as having general application to tribunals: ‘a tribunal of this kind is master of its own procedure, provided that the rules of natural justice are applied.’
Secondly, under reg 23, the hearing must take the form of a discussion led by the authority, with cross-examination not permitted unless the authority considers that cross-examination is required to enable the authority to consider the representations, application or notice. This certainly represents a substantial change from previous practice, where hearings generally followed a court-like procedure with an opportunity for cross-examination, and on the face of it seems to enable the licensing authority to adopt a very cursory approach to dealing with the hearing. If an authority were to adopt such an approach, and not permit cross-examination, it might, however, run the risk of costs being awarded against it on appeal in the magistrates’ court if the court found the lack of cross-examination persuasive when reaching a decision to reverse the authority’s ruling. Further, it might run the risk of contravening Art 6(1) of the European Convention on Human Rights (see 3.5.9 below). In the light of this possibility, the prudent course for an authority may be to take the view that cross-examination is required in order to consider the representations, application or notice.

Thirdly, under reg 24, the parties must be allowed an equal maximum period of time in which to present their case. Whilst the sentiments underlying this provision are admirable to ensure fairness and parity of treatment, the provision may prove problematic in application. All persons making relevant representations are ‘parties’ and, in the case of ‘interested parties’ living in the vicinity, there may be a considerable number of them. If the provision in reg 24 is given a literal interpretation, each ‘interested party’ is entitled to the same period of time as any other interested party, even if making a substantially similar point. A pragmatic (and tentative) approach may be to require persons making substantially similar points to elect a spokesperson to present the case, with that person being allowed an equal maximum time to other parties (for example, the applicant, a responsible authority).58 This might (perhaps) be justified if a purposive interpretation is given to reg 24 and the underlying aim or objective is seen as ensuring that equal time is afforded to competing viewpoints or arguments.

Fourthly, under reg 25, any person attending the hearing who, in the opinion of the authority, is behaving in a disruptive manner may be required to leave the hearing. Where a person who is disruptive is required to leave, the authority may refuse to permit him to return or permit him to return only on such conditions as the authority may specify, but such a person may, before the end of the hearing, submit to the authority in writing any information which he would have been entitled to give orally had he not been required to leave.

No reference is made in the Regulations to the role of the licensing officer in hearings. Under the previous law it was common for a report to be produced by a licensing officer prior to the hearing, to which parties had access, which dealt with issues relevant to the hearing, for example a summary of the application and objections, and for the officer to be present at a hearing to provide professional expertise and assistance to the committee or subcommittee (hereafter ‘committee’) to enable to it come to a balanced and informed decision on the merits of the application. This report may or may not have included recommendations (dependent on findings of fact made by the committee), for practice amongst authorities differed on whether licensing officers’ reports included recommendations. Given that the Regulations are

58 This does, however, sit rather uneasily with reg 16(c) which provides: ‘At the hearing a party shall be entitled … to address the authority.’ See below.
silent on this matter, it might be expected that production of a report (which could include relevant parts of the authority’s Statement of Licensing Policy and the Secretary of State’s Guidance), either with or without recommendations, is likely to continue according to local practice. The Regulations are similarly silent on whether a licensing officer might be present at the hearing and whether he might assist the committee. An officer, not being a party to the hearing as defined in reg 2 (see above), has none of the rights afforded to parties under the Regulations, for example the right to notice of the hearing under reg 6 and the right to attend under reg 15, but his presence at the hearing (at the committee’s request) is not precluded by the Regulations. The committee is entitled under reg 21 to determine the procedure to be followed at the hearing and under reg 17 members ‘may ask any question of any party or other person appearing at the hearing’. These provisions in combination seem wide enough to enable the committee to determine that a licensing officer (and other persons who are not parties, for example a legal officer) may be present if it thinks that their presence may be of assistance. The reference in reg 17 to ‘other person appearing’ is wide enough to cover not only persons who a party has requested permission for them to appear (on his behalf) in accordance with reg 22, but also other persons who the committee may wish to appear to assist it with its deliberations.

Section 183(1) provides that the Regulations can prescribe the procedure to be followed in relation to ‘a hearing held by a licensing authority under this Act’ and this will most obviously include hearings held in contested cases where the licensing authority has received relevant representations (for example, on applications for a premises licence or CPC) or a police objection notice (for example, on applications for a personal licence or on the issuing of a TEN) when it is discharging its licensing functions under the Act. Less clear is whether the hearing procedure specified by the Regulations applies when the licensing authority is discharging a licensing related function under s 7(3)–(4) or dealing with a matter that relates to both a licensing function and another function under s 7(5)–(8) (see 2.4.10 above). In the case of a licensing related function, the licensing authority can arrange for this to be dealt with by the licensing committee or discharge it itself. In either instance this could be said to be ‘a hearing held by a licensing authority under this Act’, in which case the hearing procedure specified by the Regulations might apply. In the case of a matter that relates to both a licensing function and another function, the licensing authority can arrange for this to be dealt with by the licensing committee or by another of its committees. Again, where this is dealt with by the licensing committee and (perhaps) where it is dealt with by another committee (since this might nevertheless be seen as dealt with by the licensing authority, albeit through one of its committees), this could be said to be ‘a hearing held by a licensing authority under this Act’. However, it may be that these cases do not fall within the scope of the Regulations that have been prescribed under s 183(1). Regulation 3 of the LA 2003 (Hearings) Regs 2005 provides that: ‘These Regulations are to make provision for the procedure to be followed in relation to hearings held under the Act by an authority.’ By reg 2, ‘“authority” means, in relation to a hearing, the relevant licensing authority which has the duty under the Act to hold the hearing which expression includes the licensing committee or licensing sub-committee discharging the function of holding the hearing’ and ‘“hearing” means the hearing referred to in column 1 of the table in Schedule 1 as the case may require’. The reference here is to the authority having the ‘duty’ to hold the hearing, but no duty is expressed to arise under s 7 where licensing related functions are discharged or a matter that relates to both a licensing function and another function is dealt with.
Further, the hearings to which reference is made in Sched 1 comprise contested cases where there is an express statutory obligation under the Act to hold a hearing. In light of this, it seems that the hearing procedure specified by the Regulations may well not apply to cases determined under s 7.

The Regulations, in cases where they have application, contain a number of detailed prescriptive requirements in respect of notice and holding of hearings, in addition to the requirements set out above in respect of the procedure at hearings. First, they prescribe the period of time within which hearings must be held, which in general is 20 working days. Secondly, they require a ‘notice of hearing’ to be given to various persons; the notice must set out the date, time and place at which the hearing is to be held, be given within a specified period before the hearing and contain certain information. The persons to whom notice must be given will vary according to the particular provision in question, but will generally include applicants and licence holders, persons who have made relevant representations and the police, where only they have a right to object. The period of notice that must be given is, in general, 10 working days and the information that the notice must contain, under reg 7(1), is:

- the rights of the party in relation to the hearing;
- the consequences of non-attendance or lack of representation at the hearing;
- the procedure to be followed at the hearing; and
- any matters about which the licensing authority wants clarification from a party at the hearing.

Further, additional documents must be given with the notice of hearing in certain cases to particular parties (for example relevant representations made by responsible authorities and interested parties must be given to applicants for premises licences).

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59 Regulation 5 and Sched 1. Exceptions are 10 working days for reviews of premises licences following closure orders (s 167(5)(a)), determinations of applications for conversion by holders of existing licences and certificates (Sched 8, paras 4(3)(a), 16(3)(a) and 26(3)(a) to the 2003 Act) and determinations of applications by holders of a justices’ licence for grant of personal licences (Sched 8, para 26(3)(a) to the 2003 Act); seven working days where a counter-notice is given following a police objection to a TEN (s 105(2)); and five working days where an interim authority notice (IAN) is cancelled following police objections (s 48(3)(a)).

60 For details, see Sched 2 to the Regulations.

61 Regulation 6(4) (added by the Licensing Act 2003 (Hearings) (Amendment) Regulations 2005, SI 2005/78 after this provision, which appeared in the draft of the Regulations, was omitted from the final version of SI 2005/44). Exceptions, under reg 6(3), are five working days for review of a premises licence following a closure order (s 167(5)(a)) and determinations of applications for conversion by holders of existing licences and certificates (Sched 8, paras 4(3)(a), 16(3)(a) and 26(3)(a) to the 2003 Act); and, under reg 6(2), two working days where an IAN is cancelled following police objections (s 48(3)(a)) and where a counter notice is given following a police objection to a TEN (s 105(2)).

62 See regs 15 and 16. The rights are to attend and be assisted or represented by any person, whether or not that person is legally qualified (reg 15), and to produce supporting information in response to any point on which the authority has given notice that it requires clarification, to question any party if given permission by the authority, and to address the authority (reg 16).

63 Regulation 7(2). The relevant hearings, the parties to whom the additional documentation must be given and the documents to be given are listed in cols 1–3 respectively to Sched 3 to the Regulations.
Thirdly, the Regulations require persons given a notice of hearing to give the licensing authority a notice indicating whether they intend to attend or be represented at the hearing and whether a hearing is considered unnecessary. Where a party wishes a person (other than someone representing him at the hearing) to appear at the hearing, under reg 8(2), the notice he gives that he will be attending the hearing must also contain a request for permission for that person to appear, along with that person’s name and a brief description of the point(s) on which that person may be able to assist the authority. Such a notice must, in general, be given within five working days before the day or the first day on which the hearing is to be held. Fourthly, reg 10 makes provision for the withdrawal of representations, permitting a party to withdraw them either by giving notice to the authority no later than 24 hours before the day or the first day on which the hearing is to be held, or orally at the hearing. If all representations are withdrawn, the position will be the same as if no representations had been received and the authority in this instance is obliged to grant the application, subject only to such conditions as are consistent with the operating schedule and to any mandatory conditions that must be imposed on the licence (see 2.2.3 above). Fifthly, where the giving of notice is required by the Regulations, reg 34(1) provides that the notice must be given in writing, although reg 34(2) goes on to provide that this is satisfied where the text of the notice is transmitted by electronic means, provided certain requirements are met. Nevertheless, a measure of discretion is conferred on an authority in respect of the above requirements in that it can extend time limits where it considers this to be necessary in the public interest and can adjourn hearings or arrange additional hearing dates. It remains to be seen what use will be made of this power to extend time limits in the public interest and how the concept of ‘public interest’ will be interpreted.

64 Regulation 8(1). Where all parties give notice that they consider a hearing is unnecessary, the licensing authority, if it agrees a hearing is unnecessary, must forthwith give notice to the parties that the hearing has been dispensed with: reg 9. For the meaning of ‘forthwith’, see 6.6.2 below.

65 Regulation 8(5). Exceptions, under reg 8(4), are two working days for reviews of premises licences following closure orders (s 167(5)(a)), determinations of applications for conversion by holders of existing licences and certificates (Sched 8, paras 4(3)(a), 16(3)(a) and 26(3)(a) to the 2003 Act), and determinations of applications by holders of justices’ licence for grant of personal licences (Sched 8, para 26(3)(a) to the 2003 Act); and, under reg 8(3), one working day where an IAN is cancelled following police objections (s 48(3)(a)) and where a counter-notification is given following a police objection to a TEN (s 105(2)).

66 These requirements are that the text is capable of being accessed by the recipient, is legible in all material respects, and is capable of being reproduced in written form and used for subsequent reference (reg 34(2)(a)); the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by those electronic means (reg 34(2)(b)); and forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing (reg 34(2)(c)). Where the text of the notice is transmitted by electronic means, the giving of the notice is effected at the time the recipient receives the transmission of the text in accordance with reg 34(2)(a): reg 34(3).

67 See regs 11 and 12. An authority may not, however, exercise these powers in such a way that the effect will be that an application will be treated as granted or rejected under the transitional provisions under Sched 8 to the 2003 Act or it would fail to reach a determination on a review of a premises licence following a closure order under s 167 within the period specified in s 167(3): reg 13.

68 Quaere whether time limits might be extended on this ground when hearing applications during the transitional period because of a backlog of hearings or whether extensions might be justified on grounds unconnected with the merits of the individual application, eg, lack of availability of council rooms, council officers or council members.
Where a hearing is held, the Regulations require that it is held in public. A discretion is, however, given to the licensing authority to exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public. It is not clear how this ‘public interest’ test should be applied and, where the licensing authority is a local authority (which will be the case in most instances), there is an apparent conflict between the power to exclude the public under this provision and the power to exclude the public under the provisions of the Local Government Act 1972. Section 100A(1) of the 1972 Act requires meetings of local authorities to be held in public and provides for exclusion of the public if it is likely that confidential information would be disclosed to them in breach of the obligation of confidence (s 100A(2)) or, following the passing of a resolution, if it is likely that certain categories of ‘exempt information’ would be disclosed to them (s 100A(4)). There are a number of examples of what constitutes ‘exempt information’ and these are specified in Sched 12A to the 1972 Act. Whether a ‘public interest’ test would include some or all of these examples, or might extend beyond them, is uncertain and, further, with competing provisions, it is not certain which should be applied.

Parties to the hearing have the right to attend, with or without legal or other assistance or representation, to produce supporting information in response to any point on which the authority has given notice that it requires clarification, to question any party if given permission by the authority, and to address the authority. Under reg 18, any supporting documentary evidence or other evidence produced by a party to the hearing can be taken into account by the licensing authority either before the hearing or, with the consent of all the other parties, at the hearing. The authority can, however, under reg 19, disregard any information or evidence that is not relevant to the party’s case and to the promotion of the licensing objectives. Regulation 19 provides:

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69 Regulation 14(1). In this respect the Regulations have been made under the power conferred by s 9(2) rather than s 183(1) – see 2.4.11 above.

70 Regulation 14(2). The power to exclude extends to a party or any person assisting or representing him, for reg 14(3) provides: ‘For the purposes of paragraph (2), a party and any person assisting or representing a party may be treated as a member of the public.’

71 Where an authority has not been informed that the party does not intend to attend, it may adjourn the hearing to a specified date if it considers it necessary in the public interest (reg 20(2)(a)), although it must forthwith notify the parties to the hearing of the date, time and place to which the hearing has been adjourned (reg 20(4)). For the meaning of ‘forthwith’, see 6.6.2 below.

72 Regulations 15 and 16. Regulation 17 also provides that ‘members of the authority may ask any question of any party or other person appearing at the hearing’, although the scope of this provision is unclear. The wording is wide enough to include any member of the authority, even though not a member of the licensing committee, although it might be doubted whether the entitlement should extend this far. Even if confined to members of the licensing committee, it is nevertheless uncertain whether it would extend only to the members sitting on the subcommittee at the hearing or whether it might also include other members of the licensing committee who were not sitting on the subcommittee.

73 In the case of hearings to consider a notice given by a chief officer of police, it will be information that is not relevant to the crime prevention objective. Information that might be disregarded will include not only that put forward by a party but also information by another person who, having been given permission by the authority to appear, has appeared at the party’s request.
The authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to—

(a) their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and

(b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

Regulation 19(b) is no more than declaratory of the position under the 2003 Act. Section 4(2) requires an authority, when discharging its licensing functions, to promote the licensing objectives and it would be ultra vires for the authority to have regard to any information not relevant to the promotion of the objectives as such information falls outside the scope of its statutory powers under the Act. Regulation 19(a) requires the authority to disregard any information given by a party or a person whose appearance the party has requested, which is ‘not relevant to’ the application, representation or notice. If interpreted literally, this may prevent a party from either raising at the hearing, or commenting on, any matter that is not contained in the application, representation or notice. This might mean that an interested party or responsible authority has relevant matters to put before the licensing authority, but the licensing authority has to disregard anything that is said or put forward if not contained in the original representation made. This could be a particular problem for residents living in the vicinity of the premises who, on seeing a notice displayed at or on the premises or when applying for a review of a premises licence or CPC, do not include in their representations everything upon which they subsequently wish to rely. Further, information contained in an applicant’s operating schedule, of which residents may be unaware, may impact on their representations, but may not relate specifically to a matter addressed by them in their representations. If the applicant at the hearing were to address the authority in respect of this information, reg 19(b) might prevent residents from cross-examining him on this, even if the authority were willing to grant them permission to do so under reg 23. It can be seen that a literal interpretation might have the effect of requiring the authority to disregard information that is relevant to the promotion of the licensing objectives and may preclude a party from addressing a matter that has been raised by another party to the proceedings. If this were the case, there would be a conflict with the obligation on the licensing authority under s 4(2) to promote the licensing objectives when discharging its licensing functions and also to afford a party the right to a fair hearing under the common law and Art 6(1) of the European Convention on Human Rights (see 3.5 below). These, it is submitted, are overriding obligations on a licensing authority and should be regarded as paramount. A literal interpretation therefore seems to be inappropriate and compliance with these obligations might be achieved by giving a broad purposive interpretation to reg 19(b). The aim or purpose of the provision should be seen as preventing parties from, in effect, introducing new grounds or raising completely different matters at the hearing to those contained in their representations, rather than requiring the authority to disregard anything that is not specifically addressed in the representations.

It might in general be expected that parties will attend the hearing, but reg 20 provides that a failure by a party to attend need not prevent the hearing from proceeding. However, where a party does not attend and a hearing is held, the authority must still consider that party’s case. Under reg 26(2), an authority must
normally makes its determination\(^74\) of the application within five working days beginning with the day or the last day on which the hearing was held, although in cases where there is a greater degree or urgency attached to the outcome the authority must make its determination at the conclusion of the hearing.\(^75\) In cases where the parties have agreed to dispense with a hearing, the authority must, under reg 27, make its determination within 10 working days beginning with the day the authority gave notice that the hearing was dispensed with. As regards notifying parties of its determination, the 2003 Act sometimes makes provision for the period within which the authority must notify a party of its determination, often requiring that notification be given ‘forthwith’ (for example under s 23 where a premises licence application is granted or rejected), but it does not do so in all cases (for example under s 52 for review of a premises licence). Where no provision is made, however, reg 28 provides that notification must be forthwith.\(^76\) When parties are notified of the authority’s determination, reg 29 requires that the notice given must also be accompanied by information regarding the right of a party to appeal against the determination. Finally, under reg 30, a record of the hearing ‘in a permanent and intelligible form’ must be taken and kept for a period of six years from the date of determination, or where an appeal is made, the disposal of the appeal.

It can be seen that the Regulations provide a prescriptive framework within which hearings must be conducted and applications determined, albeit with some measure of discretion available to authorities in respect of the requirements (for example, to extend time limits where it is necessary in the public interest). There is also a measure of discretion available where irregularities or clerical errors occur. Where an authority considers that any person may have been prejudiced by any irregularity resulting from any failure to comply with a requirement before a determination is made, it must take such steps as it thinks fit to cure the irregularity before reaching its determination.\(^77\) Although expressed in mandatory terms, there is a significant element of discretion in respect of taking steps that the authority thinks fit. When a determination has been made, reg 33 provides that clerical mistakes in any document recording the determination or errors arising in the document from an accidental slip or omission may be corrected by the authority.

\(^74\) ‘Determination’ is the outcome of the authority’s consideration of relevant representations or police notices of objection, as appropriate – see Sched 4 to the Regulations.

\(^75\) Regulation 26(1). These cases are: (a) where an application for variation of a premises licence or the DPS is made at the same time as an application for conversion of an existing licence (Sched 8, para 2); (b) where an application for variation of a CPC is made at the same time as an application for conversion of an existing club registration certificate (Sched 8, para 14); (c) a counter-notice given following police objection to a TEN (s 105(2)(a)); (d) a review of a premises licence following closure order (s 167(5)(a)); (e) determination of an application for conversion by the holder of an existing licence (Sched 8, para 4(3)(a)); (f) determination of an application for conversion of a club registration certificate (Sched 8, para 16(3)(a)); and (g) determination of an application by the holder of a justices’ licence for grant of a personal licence (Sched 8, para 26(3)(a)).

\(^76\) Similarly, in cases where the Act provides for the police to be notified of the determination of an authority, but the police are not a party to the hearing (eg, under s 31(4) for determination of applications for provisional statements), the police must be notified forthwith of the determination: reg 28(2). For the meaning of ‘forthwith’, see 6.6.2 below.

\(^77\) Regulation 32. The irregularity does not of itself render the proceedings void: reg 31.
2.4.14 Keeping a register

2.4.15 Section 8 requires an authority to keep a record of all premises and personal licences and CPCs issued by it, any TENs received by it, various matters specified in Sched 3, the name and address of anyone who is an owner or lessee of premises and has a superior interest to the occupier, and any other information prescribed in regulations issued by the Secretary of State. Regulations may, in addition, prescribe the form or manner in which the register is kept. Section 8(1) and (2) provides:

(1) Each licensing authority must keep a register containing–
   (a) a record of each premises licence, club premises certificate and personal licence issued by it,
   (b) a record of each temporary event notice received by it,
   (c) the matters mentioned in Schedule 3, and
   (d) such other information as may be prescribed.

(2) Regulations may require a register kept under this section to be in a prescribed form and kept in a prescribed manner.

2.4.16 The matters mentioned in Sched 3 comprise the keeping of a record of any applications, notices or requests received under the Act, whether in respect of premises licences, CPCs, TENs or personal licences. Schedule 3 prescribes inclusion in the Register of the following information:

The licensing register kept by a licensing authority under section 8 must contain a record of the following matters–
   (a) any application made to the licensing authority under section 18 (grant of premises licence),
   (b) any application made to it under section 25 (theft etc of premises),
   (c) any notice given to it under section 28 (surrender of premises licence),
   (d) any application made to it under section 29 (provisional notice in respect of premises),
   (e) any notice given to it under section 33 (change of name, etc of holder of premises licence),
   (f) any application made to it under section 34 (variation of premises licence),
   (g) any application made to it under section 37 (variation of licence to specify individual as premises supervisor),
   (h) any notice given to it under section 41 (request from designated premises supervisor for removal from premises licence),
   (i) any application made to it under section 42 (transfer of premises licence),
   (j) any notice given to it under section 47 (interim authority notice),
   (k) any application made to it under section 51 (review of premises licence),
   (l) any application made to it under section 71 (application for club premises certificate),
   (m) any application made to it under section 79 (theft, loss, etc of certificate or summary),
   (n) any notice given to it under section 81 (surrender of club premises certificate),
(o) any notice given to it under section 82 or 83 (notification of change of name etc.),
(p) any application made to it under section 84 (application to vary club premises certificate),
(q) any application made to it under section 87 (application for review of club premises certificate),
(r) any notice given to it under section 103 (withdrawal of temporary event notice),
(s) any counter notice given by it under section 105 (counter notice following police objection to temporary event notice),
(t) any copy of a temporary event notice given to it under section 106 (notice given following the making of modifications to a temporary event notice with police consent),
(u) any application made to it under section 110 (theft etc of temporary event notice),
(v) any notice given to it under section 116 (surrender of personal licence),
(w) any application made to it under section 117 (grant or renewal of personal licence),
(x) any application made to it under section 126 (theft, loss or destruction of personal licence),
(y) any notice given to it under section 127 (change of name, etc of personal licence holder),
(z) any notice given to it under section 165(4) (magistrates’ court to notify any determination made after closure order),
(zi) any application under paragraph 2 of Schedule 8 (application for conversion of old licences into premises licence),
(zii) any application under paragraph 14 of that Schedule (application for conversion of club certificate into club premises certificate).

The Licensing Act 2003 (Licensing Authority’s Register) (Other Information) Regulations 2005, SI 2005/43 made under s 8(1)(d) prescribe additional information for certain types of application. First, this information includes operating schedules and plans where applications are made for premises licences, provisional statements and CPCs and revised operating schedules where applications for variation are made. Regulation 2(2) provides:

In the case of an application under the following provisions of the Act–

(a) section 17 (application for premises licence), the accompanying operating schedule (provided that the name and address of the premises supervisor, if any, shall be removed from the schedule before it is recorded) and plan of the premises to which the application relates;

(b) section 29 (application for a provisional statement where premises being built, etc), the accompanying schedule of works and plans of the work being or about to be done at the premises;

(c) section 34 (application to vary premises licence), the accompanying revised operating schedule (provided that the name and address of the premises supervisor, if any, shall be removed from the schedule before it is recorded), if any;

(d) section 71 (application for club premises certificate), the accompanying club operating schedule and plan of the premises to which the application relates; and
(e) section 84 (application to vary club premises certificate), the accompanying revised club operating schedule, if any.

Secondly, under reg 2(3) the information includes, in the case of an application for review of a premises licence under s 51 or a CPC under s 87 or a premises licence review under s 167 following a closure order, the ground(s) of review. Thirdly, under reg 2(4) the information includes, in the case of conversion of an existing licence or club certificate under paras 2 and 14 of Sched 8, the existing licensable activities or existing qualifying club activities and the accompanying plan of the premises.

Under the previous law, there was no requirement for local authorities to keep any register in respect of licences for entertainment, although there was for late night refreshment services. Section 6 of the Late Night Refreshment Houses Act 1969 required every licensing authority to keep a register showing, in respect of each licence, the name and place of abode of the licensee and the name and description of the premises that were the subject of the licence. Under the Licensing Act 1964, there was a requirement for the justices’ chief executive to keep a register of licences in such form as the justices prescribed, containing details of all justices’ licences in the district, the premises for which they were granted, the names of the owners of those premises, and the names of the holders of the licences.78

2.4.17 Facilities must be made available for inspection of the register by any person during office hours and without payment and a copy of information contained in any entry must be supplied on request, for which a reasonable fee can be charged. Section 8(3)–(5) provides:

(3) Each licensing authority must provide facilities for making the information contained in the entries in its register available for inspection (in a legible form) by any person during office hours and without payment.

(4) If requested to do so by any person, a licensing authority must supply him with a copy of the information contained in any entry in its register in legible form.

(5) A licensing authority may charge such reasonable fee as it may determine in respect of any copy supplied under subsection (4).

The Secretary of State may arrange for any duties imposed under s 8 to be discharged by means of one or more central registers kept by a person appointed pursuant to the arrangements, and licensing authorities may be required to participate in and contribute toward the cost of any such arrangements. Section 8(6) and (7) provides:

(6) The Secretary of State may arrange for the duties conferred on licensing authorities by this section to be discharged by means of one or more central registers kept by a person appointed pursuant to the arrangements.

(7) The Secretary of State may require licensing authorities to participate in and contribute towards the cost of any arrangements made under subsection (6).

78 See ss 30–35. Traditionally called justices’ clerks, the term was changed to ‘chief executive’ by the Access To Justice Act 1999 (Transfer Of Justices’ Clerks’ Functions) Order 2001, SI 2001/618.
It appears that a central register may well be set up to record details of personal licence holders, for the Guidance, para 4.16 provides that: ‘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.’ According to the Consultation on Fee Levels to be Established by Regulation under the Licensing Act 2003, para 4.19, its ‘first stage of development would involve only personal licences and possibly temporary event notices, with other licences likely to be part of later phases’.

2.4.18 Notification of persons with an interest in premises of changes relating to the premises in the register

Since persons other than those holding an authorisation (for example, a premises licence) for licensable activities to take place at premises may be affected by licensing matters relating to the premises, provision is made in s 178 for persons having a ‘property interest’ in the premises to be notified of any changes in the register (kept under s 8) concerning the premises. Persons having such an interest are freeholders, leaseholders, legal mortgagees, occupiers and those with a prescribed interest. Section 178(4) provides:

For the purposes of this section a person has a property interest in premises if–
(a) he has a legal interest in the premises as freeholder or leaseholder,
(b) he is a legal mortgagee (within the meaning of the Law of Property Act 1925 (c.20)) in respect of the premises,
(c) he is in occupation of the premises, or
(d) he has a prescribed interest in the premises.79

Notification is not automatic and it is necessary for persons with such an interest to give notice of their interest to the licensing authority. This must be in the form prescribed under reg 9 and Sched 1 to the LA 2003 (PL and CPC) Regs 2005 and be accompanied by a prescribed fee, which under reg 8 and Sched 6 to the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, is £21. Notification lasts for a period of 12 months from the day it is received by the authority. Effectively, therefore, annual renewal is required if persons with the necessary interest are to continue receiving notification of any changes made in the register relating to the premises. Section 178(1) and (2) provides:

(1) This section applies where–
(a) a person with a property interest in any premises situated in the area of a licensing authority80 gives notice of his interest to that authority, and
(b) the notice is in the prescribed form and accompanied by the prescribed fee.

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79 No interests have been prescribed by the Secretary of State under this provision.
80 Section 178(5) provides: ‘In this section–
(a) a reference to premises situated in the area of a licensing authority includes a reference to premises partly so situated ...’
(2) The notice has effect for a period of 12 months beginning with the day it is received by the licensing authority.

Where a change is made to the register for premises in respect of which a notice of interest has been given and has effect, the licensing authority must forthwith notify the person who gave the notice of the change and his right to obtain a copy of the information contained in any entry in the register. Section 178(3) provides:

If a change relating to the premises to which the notice relates is made to the register at a time when the notice has effect, the licensing authority must forthwith notify the person who gave the notice—
(a) of the application, notice or other matter to which the change relates, and
(b) of his right under section 8 to request a copy of the information contained in any entry in the register.81

Whilst the authority is required to give notice of the change ‘forthwith’, this requirement applies only once the change has been made to the register and making the change in the register may not be done immediately. The ordinary meaning of ‘forthwith’ is ‘at once, without delay’, but this does not mean necessarily mean that notice must be given immediately, for the courts have equated ‘forthwith’ with as soon as is reasonably practicable and ‘what is practicable must depend on the circumstances of each case’.82 This seems to be reinforced by the fact that reg 42 of the LA 2003 (PL and CPC) Regs 2005 provides that an authority ‘shall as soon as reasonably practicable on receipt of a notification to it under section 178 acknowledge its receipt by returning a copy of the notification to the notifier duly endorsed’. In this instance, however, once a change is made to the register, it should be possible for more or less immediate notification to be given to a person who has given notice of his interest in the premises. This will certainly be the case if use is made of the optional facility for inclusion of an email address on the form for notification of an interest (in Sched 1 to the LA 2003 (PL and CPC) Regs 2005). Notification by email may be particularly important in some cases, such as where a premises licence has been surrendered by its holder under s 28 and another person (for example, the freeholder of the premises) wishes to apply for transfer to him of the premises licence. Although the premises licence lapses on surrender, s 50 provides for its reinstatement if application for transfer is made within seven days of surrender. Speedy communication, to the person who has given notification of an interest, that there has been a change to the register will be particularly important in such cases, otherwise the opportunity for reinstatement through a transfer application may be lost. In the absence of email notification, how soon notification is received will depend on the method by which notification is given. This is governed by s 184, which is considered below.

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81 Section 178(5) provides: ‘In this section—
(b) “register” means the register kept under section 8 by the licensing authority mentioned in subsection (1)(a).’

82 See Sameen v Abeyewickreme [1963] AC 597, 609, per Lord Dilhorne LC; and 6.6.2 below.
2.4.19 Notification procedures: the giving of notices

2.4.20 The 2003 Act also sets out rules for delivery of documents under the licensing regime, where statements of reasons or notices need to be given.\(^83\) Whenever delivery is required under the Act, it must be in accordance with the rules set out in s 184. Section 184(1) provides:

\[
\text{This section has effect in relation to any document required or authorised by or under this Act to be given to any person (‘relevant document’).}^{84}\]

In cases where delivery to the licensing authority is required the document must be addressed to the authority and left at or posted to its principal office or any other office at which it accept such documents. Section 184(2) provides:

\[
\begin{align*}
\text{Where that person is a licensing authority, the relevant document must be given by addressing it to the authority and leaving it at or sending it by post to} & - \\
\text{(a) the principal office of the authority, or} & \\
\text{(b) any other office of the authority specified by it as one at which it will accept documents of the same description as that document.}
\end{align*}
\]

2.4.21 In any other case, such as documents sent by the authority or the police to applicants, interested parties, etc, the document may be personally delivered or left at or sent through the post to a person at his proper address. Section 184(3) provides:

\[
\begin{align*}
\text{In any other case the relevant document may be given to the person in question by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.}
\end{align*}
\]

As a general rule, a person’s proper address will be his last known address, but the position is different in two instances. One is where documents are given (by any of the means specified in s 184(3)) to a body corporate, partnership or unincorporated association. In the case of such organisations, provision is made for the documents to be given to individuals within the organisations (as an alternative to delivery to the organisation’s principal office in the UK or, in the case of a body corporate, at its registered office). The particular individuals are, in the case of a body corporate, its secretary or clerk; in the case of a partnership, a partner or person having control or management of the partnership business; and, in the case of an unincorporated association, an officer of the association. Section 184(4) and (5) provides:

\[
\begin{align*}
\text{(4) A relevant document may} & - \\
\text{(a) in the case of a body corporate (other than a licensing authority), be given to the secretary or clerk of that body;} & \\
\text{(b) in the case of a partnership, be given to a partner or a person having the control or management of the partnership business;}
\end{align*}
\]

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\(^{83}\) Although the section refers to ‘documents’ and not ‘notices’, it is apparent from the marginal note to the section (‘Giving of notices etc’) that it is intended to cover the latter.

\(^{84}\) These replace the rules of service of notices on or by local authorities under the Local Government Act 1972. Section 184(8) provides: ‘The following provisions of the Local Government Act 1972 (c. 70) do not apply in relation to the service of a relevant document – (a) section 231 (service of notices on local authorities etc), (b) section 233 (service of notices by local authorities).’
(c) in the case of an unincorporated association (other than a partnership), be given to an officer of the association.

(5) For the purposes of this section and section 7 of the Interpretation Act 1978 (c.30) (service of documents by post) in its application to this section, the proper address of any person to whom a relevant document is to be given is his last known address, except that—

(a) in the case of a body corporate or its secretary or clerk, it is the address of the registered office of that body or its principal office in the United Kingdom;

(b) in the case of a partnership, a partner or a person having control or management of the partnership business, it is that of the principal office of the partnership in the United Kingdom; and

(c) in the case of an unincorporated association (other than a partnership) or any officer of the association, it is that of its principal office in the United Kingdom.

2.4.22 The other instance where a person’s proper address will not be his last known address is where the person is given the document in his capacity as the holder of a licence or certificate or as a designated premises supervisor. Here the address will be that given for the person in the record of licence contained in the licensing register.\(^85\) Section 184(6) and (7) provides:

(6) But if a relevant document is given to a person in his capacity as the holder of a premises licence, club premises certificate or personal licence, or as the designated premises supervisor under a premises licence, his relevant registered address is also to be treated, for the purposes of this section and section 7 of the Interpretation Act 1978, as his proper address.

(7) In subsection (6) ‘relevant registered address’, in relation to such a person, means the address given for that person in the record for the licence or certificate (as the case may be) which is contained in the register kept under section 8 by the licensing authority which granted the licence or certificate.

2.5 REGULATORY CONTROL UNDER THE LICENSING ACT 2003

The framework within which decisions are made under the Act, in all the above respects, is much more tightly constrained than under the previous legislation. Gone is the wide measure of discretion entrusted to licensing authorities in their decision-making, which was largely unfettered and which inevitably produced a wide diversity of approach in both procedural matters and in substantive decision-making. In its place is a more prescriptive framework, within which applications in a number of instances may well be decided in accordance with pre-determined criteria and where discretion will have a more limited role to play. On the one hand, this should result in a greater degree of predictability in decisions and a more uniform and consistent approach on the part of licensing authorities, although perhaps the specified objectives in the 2003 Act are sufficiently open-textured to allow some diversity of approach, on

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\(^85\) As to the licensing register, see 2.4.14–2.1.17 above.
account of divergent interpretations of the meaning of the objectives. On the other hand, there will generally be less flexibility in decision-making and less opportunity to have regard to all the circumstances of each case. The Act readjusts the balance between consistency and flexibility in favour of consistency and it remains to be seen whether this will be to the benefit or detriment of local authority decision-making on licence applications.
CHAPTER 3

LICENSING AND HUMAN RIGHTS

3.1 INTRODUCTION

When the Human Rights Act 1998 (the 1998 Act) came into force on 2 October 2000, it ‘incorporated’ into English law much of the European Convention on Human Rights and Fundamental Freedoms (the Convention), which had been adopted in 1950, following widespread concern in Europe about atrocities associated with the Second World War. The Act was concerned with giving ‘further effect’ (as the long title to the Act indicates) to rights and freedoms guaranteed by the Convention or what the Act describes as ‘Convention rights’.1

3.2 THE HUMAN RIGHTS ACT 1998 AND GIVING ‘FURTHER EFFECT’ TO CONVENTION RIGHTS

3.2.1 The Act seeks to give ‘further effect’ in two ways. First, existing and future legislation has to be interpreted in conformity with Convention rights, although where a compatible interpretation is not possible, legislation continues to have effect despite incompatibility. Section 3(1) and (2) provides:

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section–

(a) applies to primary and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

In cases of incompatibility, however, certain courts have a discretion to make a ‘declaration on incompatibility’ under s 4.2 Where such a declaration is made in a case, it has no legal effect since s 4(6) provides that it does not affect the validity, continuing operation or enforcement of the legislation and it is not binding on the parties. Rather, it is a mechanism for putting pressure on the Government to take action to remove the incompatibility.3

1 ‘Convention rights’ are defined in s 1(1) of the Act as the rights and fundamental freedoms set out in: (a) Arts 2–12 and 14 of the Convention; (b) Arts 1–3 of the First Protocol to the Convention; and (c) Arts 1–2 of the Sixth Protocol to the Convention – see 3.3.1 below.

2 These include the House of Lords, Privy Council, Court of Appeal and High Court (s 4(5)), but do not include the Crown Court or magistrates’ courts.

3 Under s 10 and Sched 2, ministers are empowered in certain cases to amend legislation by a ‘remedial order’.
Secondly, under s 6(1), it is ‘unlawful for any public authority to act in a way which is incompatible with a Convention right’. A ‘public authority’ will include: (a) a court or tribunal; and (b) any person certain of whose functions are functions of a public nature (s 6(3)). This broadly defined latter category will clearly include local authorities who act as licensing authorities under the 2003 Act. However, it will not be unlawful, under s 6(2), if the public authority is prevented from acting compatibly either by primary legislation or by provisions made under primary legislation that cannot be read or given effect in a way that is compatible with the Convention. When a public authority has acted (or proposes to act) unlawfully under s 6, s 7 provides a remedy for persons affected by the actions of the authority, which is in addition to any other remedies that such persons may have, for example judicial review. A person affected may, by s 7(1), bring proceedings against the authority (these will be civil proceedings for breach of the statutory duty under s 6) or rely on the Convention right or rights concerned in any legal proceedings, provided he is (or would be) a ‘victim’ of the unlawful act. Where a court finds the act (or proposed act) of a public authority is (or would be) unlawful, it may, under s 8, grant to the victim such relief or remedy or make such order as it considers just and appropriate.

3.2.2 When seeking to give further effect to Convention rights in accordance with s 3 (interpreting legislation compatibly) and s 6 (public authority acting incompatibly and unlawfully), s 2(1) requires that rulings of various Strasbourg institutions be considered. It provides that a court or tribunal, when determining a question that has arisen under the 1998 Act in connection with a Convention right, must take into account such rulings, whenever made or given, so far as they are relevant to the proceedings in which that question has arisen. The requirement in s 2 is only to take rulings into account. Rulings are not binding and courts are free to decide the extent to which they are relevant on particular issues and the extent to which they shall be taken into account. The rulings that must be taken into account include any judgment,

4 Less clear is whether it will include the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple, who are licensing authorities under s 3(1)(f) and (g) of the 2003 Act – see 2.3.1 above. Given that, when acting in their capacity as a licensing authority, they are acting in a similar manner to local authorities, they may well be regarded as a ‘public authority’ for the purposes of the Act when exercising their licensing functions.

5 A person can, under s 7(7), make a claim only if he would be a ‘victim’ for the purpose of Art 34 of the Convention if proceedings were brought in the European Court of Human Rights at Strasbourg (ECHR) in respect of that act. Thus a person can make a claim under s 7 only if entitled to bring proceedings before the ECHR for violation of Convention rights. Normally, this will mean a person will need to show that the act has had some personal effect on him and he has been directly affected by it (Amuur v France (1996) 22 EHRR 533). However, there are exceptions where a reasonable likelihood or sufficient risk of being affected has sufficed, eg Campbell and Cosans v UK (1982) 4 EHRR 293 (pupils’ attendance in school where corporal punishment was used, held to be a sufficient risk of degrading treatment violating Art 3 of the Convention). Section 7(1) seems to anticipate that a sufficient risk of being affected might suffice, since it permits proceedings to be brought not only in respect of actual unlawful acts but also proposed acts, and a proposed act will not have had a personal effect on a person. Thus, for example, if a licensing authority were to include in its Statement of Licensing Policy drawn up under s 5 of the 2003 Act a matter that violated Convention rights, a person not affected by the matter (but who might be) could be regarded as a ‘victim’ and this could enable him to challenge the authority’s inclusion of the matter.

6 If case law is not considered relevant by a court, or is considered relevant and is taken into account, but not applied, reasons may need to be given by the court for the decision that it has reached in this respect. Article 6(1) of the Convention provides that ‘everyone is entitled to a fair and public hearing ... by an independent and impartial tribunal’ and this right to a fair hearing requires courts to give reasons for their judgments, which have to be sufficient so that a party can effectively exercise any right of appeal: Hadjianastassiou v Greece (1992) 16 EHRR 219 – see 3.5.9 below.
decision, declaration or advisory opinion of the European Court of Human Rights (ECtHR) (s 2(1)(a)), together with opinions and decisions from other bodies that, prior to reorganisation of the Convention’s institutional framework in 1998, exercised judicial or quasi-judicial functions. The latter include opinions of the (now defunct) European Commission on Human Rights given in a report (to the Committee of Ministers) adopted under Art 31, that is, whether there has been a violation of Convention rights (s 2(1)(b)); decisions of the Commission in connection with Arts 26 or 27(2), that is, the admissibility of petitions claiming a violation of Convention rights (s 2(1)(c)); and decisions of the Committee of Ministers taken under Art 46, that is, whether there has been compliance with a judgment of the ECtHR (s 2(1)(d)).

3.3 CONVENTION RIGHTS

3.3.1 The Convention rights to which the 1998 Act seeks to give further effect are identified in s 1(1), which provides:

In this Act, ‘the Convention rights’ means the rights and fundamental freedoms set out in—

(a) Articles 2 to 12 and 14 of the Convention,
(b) Articles 1 to 3 of the First Protocol, and
(c) Articles 1 and 2 of the Sixth Protocol,

as read with Articles 16 to 18.8

The Articles are set out in Sched 1 to the Act (s 1(3)) and are as follows:

(a) Articles 2–12 and 14 of the Convention:
• the right to life (Art 2);

Since 1998, the ECtHR has been the only Strasbourg institution exercising judicial functions or quasi-judicial functions. Previously such functions were exercised by the European Commission on Human Rights, which could investigate alleged breaches of the Convention and give a decision on its findings as to the admissibility of the case for consideration by the ECtHR. The Commission could also submit reports on cases to the Committee of Ministers, giving an opinion as to whether there had been a violation of Convention rights, in cases decided by the Committee rather than the ECtHR (eg, cases not involving any new issue, which were not referred to the ECtHR). Although no judicial or quasi-judicial functions were exercised by the Committee of Ministers nor any reasoned judgments given when reaching its decisions, opinions of the Commission, like ECtHR judgments, were sophisticated, generally well-reasoned and contributed to the general jurisprudence surrounding the Convention. Although judicial or quasi-judicial functions are now exercised only by ECtHR, decisions, reports and opinions of the Committee nevertheless continue to be an important source of Convention law.

Articles 16–18 are concerned with interpretation of other Convention provisions. Article 16 permits parties to the Convention to impose restrictions on the political activity of aliens, notwithstanding the provisions in Arts 10, 11 and 14. Article 17 provides that nothing in the Convention may be interpreted as implying for any State, group or individual a right of action aimed at destroying or restricting any right set out in the Convention to a greater extent than is provided for in the Convention. This is to prevent persons (extremists) using Convention provisions to destroy the Convention rights of others. Article 18 is concerned with preventing restrictions of rights permitted under the Convention being applied for purposes other than those for which they have been prescribed. This is to prevent legitimate restrictions being used for ulterior purposes, ie, being subverted and used as a pretext for measures that have other, improper purposes.
• prohibition of torture (Art 3);
• prohibition of slavery and forced labour (Art 4);
• right to liberty and security (Art 5);
• right to a fair trial (Art 6);
• no punishment without law (Art 7);
• right to respect for private and family life (Art 8);
• freedom of thought, conscience and religion (Art 9);
• freedom of expression (Art 10);
• freedom of assembly and association (Art 11);
• right to marry (Art 12);
• prohibition of discrimination (Art 14).

(b) Articles 1–3 of Protocol 1:9
• the protection of property;
• right to education;
• right to free elections.

(c) Articles 1 and 2 of Protocol 6:
• the abolition of the death penalty;
• death penalty in time of war.

3.3.2 Articles 1 and 13, although ratified by the UK Government and binding upon it, are excluded from ‘the Convention rights’ set out in the Act. Article 1, which requires parties to the Convention to ‘secure to everyone within their jurisdiction’ the rights under the Convention, was excluded because the 1998 Act itself was regarded as meeting this requirement. Article 13, which provides that everyone shall have ‘an effective remedy before a national authority’ for violation of their Convention rights, was excluded because the remedial provisions contained in the Act, particularly s 8 (under which a court can grant ‘such relief or remedy, or make such order, within its powers as it considers just and appropriate’), were regarded as meeting this requirement. Other Convention rights also excluded, obviously, are those not ratified by the UK Government and not binding on it, for example rights under Protocol 4, such as the right (under Art 1) not to be imprisoned for debt. These rights do not fall within the scope of the 1998 Act.

3.4 ASCERTAINING COMPATIBILITY WITH CONVENTION RIGHTS

3.4.1 Convention right(s) having application

3.4.2 When seeking to ascertain whether legislation is compatible with Convention rights, or whether public authorities are acting incompatibly with Convention rights, it

9 Protocols are amendments to the Convention, which have extended its original scope.
will be necessary first to look at whether there is any Article containing a Convention right that has application. There may be more than one right and rights perhaps most likely to have particular application to licensing are the right to a fair trial (Art 6), protection of property (Protocol 1 of Art 1), freedom of expression (Art 10) and protection of private and family life (Art 8). There may be others, however, that have application, for example prohibition of discrimination (Art 14).¹⁰

When looking at Convention Articles to see whether they have application (and, in turn, whether there is compatibility), some appreciation is needed of the meaning attributed to terms used in the Convention and in domestic legislation, and the interpretation adopted by the ECtHR in respect of Convention provisions. As regards terms used, these are generally given their ordinary meaning (under Art 31 of the Vienna Convention on the Law of Treaties 1969), but the meaning given will be an autonomous one, that is, it will be independent of any particular meaning that the terms might have in domestic law.¹¹ Thus, for example, when Article 6 refers to ‘the determination of his civil rights and obligations’ and a hearing before an independent and impartial tribunal, the reference to ‘rights’ will include benefits granted as a matter of discretion, rather than as a matter of right.¹² It is not decisive whether a certain benefit, or possible claim that a person may make, is characterised as a ‘right’ under the domestic legal system, for the term will be given an autonomous meaning. Licences granted at the discretion of licensing authorities, where an applicant has no right to the licence, might therefore be characterised as ‘rights’ and fall within the scope of Art 6.¹³

3.4.3 As regards interpretation, the general approach adopted by the ECtHR (usually referred to as a teleological approach) has been to interpret the Convention’s provisions in the light of its object and purpose, which is to protect human rights. In Wemhoff v Federal Republic of Germany (1968) 1 EHRR 55, 75, the ECtHR stated that it was necessary ‘to seek the interpretation that is most appropriate in order to realise the aim and achieve the object of the treaty, and not that which would restrict to the greatest possible degree the obligations undertaken by the Parties’.¹⁴ Thus, for example, the right to a fair trial under Art 6, although expressed in terms of everyone being ‘entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’, is not confined to the hearing of a case and conduct of court proceedings. It extends to cases where obstacles are placed in the way

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¹⁰ Article 14 is not an independent right under the Convention in respect of which any claim can be made and there needs, in addition, to be interference with another Convention right – see 3.9 below.
¹³ The point has not been judicially determined, but support might be found in the House of Lords’ decision in R (on the application of Alconbury Developments and Others) v Secretary of State for the Environment [2003] 2 AC 295, where a decision to grant planning permission was held to be a determination of civil rights, ie the right to develop one’s own land.
¹⁴ See also Soering v UK (1989) 11 EHRR 439, para 87, where the ECtHR stated: ‘the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective.’
of commencing court proceedings\textsuperscript{15} and also includes the giving of reasons for judicial decisions.\textsuperscript{16}

A further consequence of focusing on the object and purpose of the Convention is that, when identifying the scope of particular provisions, they should not be considered in isolation and should be interpreted having regard to the Convention as a whole.\textsuperscript{17} The ECtHR has also demonstrated a commitment to what may be described as an ‘evolutionary approach’ to interpretation, that is, that the Convention must be interpreted in the light of current social mores. Thus in *Tyrer v UK* (1978) 2 EHRR 1, para 31, the court stated that ‘the Convention is a living instrument which ... must be interpreted in the light of present-day conditions’ and, when interpreting the Convention, judges should be influenced by ‘the developments and commonly accepted standards in the penal policy of the member States and of the Council of Europe in this field’.\textsuperscript{18} Consequently older decisions may afford less guidance than more recent ones when a contemporary construction of Convention rights is sought and may be less likely to be followed.\textsuperscript{19}

3.4.4 Compatibility with Convention right(s): balancing competing interests and the principle of proportionality

3.4.5 Once a particular Convention right is considered to have application, it will then be necessary to determine whether there is compatibility with that Convention right or whether there is a violation of it. The ordinary meaning of compatibility is ‘consistent with’ and there would seem to be consistency with the Convention if there is no conflict in principle and there is compliance with the underlying aims. Deciding whether legislation or the actions of public authorities comply with the underlying aims of the Convention may well require a teleological approach to be adopted when interpreting legislative provisions. Any differences in language between the Convention and legislative provisions may need to be disregarded and the principle that words should be regarded as having an autonomous meaning applied. Techniques similar to those employed by the ECtHR when interpreting the Convention may therefore need to be employed, in order to ascertain whether compatibility might be achieved.

3.4.6 In determining whether there is compatibility or violation of a Convention right, there will be a ‘margin of appreciation’, that is, a considerable measure of

\begin{itemize}
\item \textsuperscript{15} *Golder v UK* (1975) 1 EHRR 524 (serving prisoner refused permission to correspond with a solicitor about instituting a defamation action against a prison officer; held to be denied the right of access, through his solicitor, to a court).
\item \textsuperscript{16} *Hadjianastassiou v Greece* (1992) 16 EHRR 219, para 33 (the decision-maker must ‘indicate with sufficient clarity the grounds on which they base their decision’ in order that an individual can determine whether or not to exercise any right of appeal).
\item \textsuperscript{17} See, eg, the *Belgian Linguistic Case (No 2)* (1968) 1 EHRR 252, para I B 1, where it was stated that ‘the provisions of the Convention and Protocol [1] must be read as a whole’.
\item \textsuperscript{18} The reference to penal policy related to the facts of the case, which concerned whether the practice of birching (ie corporal punishment by beating) as a criminal punishment in the Isle of Man was a breach of the prohibition under Art 3 against ‘degrading treatment or punishment’. The court held that it was.
\item \textsuperscript{19} Although the ECtHR is not bound by its previous decisions, they are usually followed, but (older) decisions may be departed from where it is necessary to ‘ensure that the interpretation of the Convention reflects societal changes and remains in line with present day conditions’ (*Cossey v UK* (1990) 13 EHRR 622, para 35).
\end{itemize}
discretion available as to how compliance with a Convention provision is achieved. No one uniform method need be employed, for, as Lord Hope stated in *R v Director of Public Prosecutions ex p Kebiliene* [2000] 2 AC 326, 380–81, ‘the Convention should be seen as an expression of fundamental principles rather than as a mere set of rules’. There may therefore be more than one means of complying with the fundamental principles. ‘The questions which the courts will have to decide in the application of these principles’, as Lord Hope went on to state, ‘will involve questions of balance between competing interests and issues of proportionality’. Balancing competing interests is inherent in many of the Convention rights, which are qualified, rather than absolute ones. Whilst some rights are absolute (for example, the prohibition against torture), most are qualified to the extent that restrictions on the rights are permissible (for example, where these are necessary in a democratic society in the interests of national security, public safety, for the prevention of crime and disorder, for the protection of health or morals or for the protection of the rights and freedoms of others). In striking a balance between competing interests, the principle of proportionality is particularly important.

Under this principle, measures taken (whether to protect rights or impose legitimate restrictions) or penalties imposed need to bear a reasonable and proportionate relationship to their intended objectives. Thus, if an objective can be achieved by means which interfere either not all or to a lesser extent with a person’s Convention rights, those means should be used. Similarly, if in achieving the objective there is only a marginal social gain, but an excessive and disproportionate effect on an individual’s rights, the measures should not be taken. In other words, the disadvantages caused must not be disproportionate to the aims pursued. Put simply, and in popular parlance, a sledgehammer should not be used to crack a nut. An example is provided by the offence of unauthorised licensable activities in s 136 of the 2003 Act. As originally drafted (as cl 134), all unlicensed public entertainment was criminalised and this included the actions of performers who participated in it. The Joint Committee on Human Rights (JCHR) in its Fourth Report on the Licensing Bill questioned whether this could be justified in terms of the rights to freedom of expression under Art 10 and concluded that clause 134 would give rise to ‘a significant risk of disproportionality, and hence incompatibility under Article 10’. An amendment was consequently introduced, the effect of which was that a person did not commit an offence if his only involvement in the provision of the entertainment was as a performer. This still enables the objective of ensuring that a venue is properly licensed to be achieved, firmly placing responsibility on the occupier of the premises where the entertainment is to take place and on the organiser of the entertainment. It does so without interference with performers’ rights and the JCHR was accordingly able to reach the following conclusion in its Seventh Report:

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20 See, eg, the remark of Goldring J in *R (on the application of Davies and Atkins) v Crawley BC* [2002] LLR 68, para 136, a case concerning street trading and, *inter alia*, whether there was a violation of the right to protection of property under Protocol 1 Article 1: ‘In my view, Article 1 itself bestows a very wide margin of appreciation.’


22 The amendment became s 136(2) – see 11.2.1 below.
By avoiding the criminalisation of performers, the amendment to clause 134 seems to us to re-balance the rights and interests affected so as to prevent any interference with the performers’ right to freedom of expression being disproportionate.23

3.5 ARTICLE 6: RIGHT TO A FAIR TRIAL

3.5.1 Article 6(1)

3.5.2 Article 6(1) is concerned with fairness in respect of civil rights and criminal charges and provides that:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly ...24

3.5.3 Determination of civil rights and obligations

3.5.4 The first issue that will arise in a case concerning Art 6(1) will be whether there is a ‘determination’ of a civil right (or criminal charge). This will be so only where there is a dispute over a civil right and where the proceedings are determinative of a civil right.25 This aspect of Art 6(1) was explained by the ECtHR, in James v UK (1986) 8 EHRR 123, para 81, as follows:

Article 6(1) extends only to ‘contestations’ (disputes) over (civil) ‘rights and obligations’ which can be said, at least on arguable grounds, to be recognised under domestic law: it does not in itself guarantee any particular content for (civil) ‘rights and obligations’ in the substantive law of the Contracting States.

It is necessary therefore to identify at least an arguable claim under English law to put before a national tribunal on a matter arising under national law, otherwise there can be no dispute. Contested licensing cases might give rise to such a claim, based on a dispute between the licence applicant or licence holder and other persons such as objectors.

The applicable principles for determining whether there is a ‘dispute’ were laid down by the ECtHR in Benthem v Netherlands (1985) 8 EHRR 1, para 32, where it was stated that:

(a) Conformity with the spirit of the Convention requires that the word ‘contestation’ (dispute) should not be construed too technically and should be given a substantive rather than a technical meaning ... (b) The ‘contestation’ (dispute) may relate not only


24 The press and public may be excluded in certain instances (see 3.5.10 below). Article 6 clearly overlaps with the rules of natural justice that the courts have developed at common law, ie, the audi alterem partem (hear the other side) rule, under which both sides should be heard before a decision is given, and the rule against bias, under which the decision-maker must not have an interest in the outcome of the proceedings, must not actually be biased nor must there be an appearance of bias (for which the test laid down in Magill v Porter [2001] 1 All ER 4653, para 103, ‘is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased’). For bias under Art 6, see 3.5.14 below.

25 The requirement for a dispute is clearer from the French text of the Convention, which refers to ‘une contestation’.
to the existence of a right but also to its scope or the manner in which it may be exercised. It may concern both questions of facts and questions of law. (c) It must be genuine and of serious nature. (d) The expression ... disputes over civil rights and obligations covers all proceedings the result of which is decisive for such rights and obligations ... civil rights must be the object, or one of the objects, of the ... dispute; the result of the proceedings must be directly decisive for such a right.

This last-mentioned principle means that Art 6(1) will apply through all the stages of determination of the dispute, from pre-hearing stages through to cost proceedings.26

3.5.5 Secondly, the dispute will have to concern a ‘right’ that is ‘civil’ in character. A ‘right’ can, as seen, include a benefit granted as a matter of discretion, as well as one to which a person is entitled as of right.27 The ECtHR has held that a licence, which is granted as a matter of discretion, confers a ‘right’ in the form of an authorisation to carry out the licensed activity. In *Tre Traktörer Aktiebolag v Sweden* (1989) 13 EHRR 309, where the applicants ran a restaurant, which had a licence to sell alcohol, it was stated that ‘subject to the possibility of its being revoked, the licence conferred a “right” on the applicant company in the form of an authorisation to sell alcoholic beverages in the restaurant Le Cardinal in accordance with the conditions set out in the licence’.28 Thus, in *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295, Lord Clyde (at para 150) stated that:

> It is … clear that article 6(1) is engaged where the decision which is to be given is of an administrative character, that is to say one given in an exercise of a discretionary power, as well as a dispute in a court of law regarding the private rights of the citizen, provided that it directly affects civil rights and obligations and is of a genuine and serious nature.

As to whether a right is ‘civil’ in character, the term ‘civil’ will be given an autonomous meaning, so how the right might be classified in domestic law will not be decisive.29 In

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26 For application to pre-hearing stages, see *Golder v UK* (1975) 1 EHRR 524 (3.4.3 above), and for application to costs, see *Robins v UK* (1998) 26 EHRR 527 (resolution of costs proceedings took over four years, with responsibility on the part of the authorities for about half that period, which was held to have constituted a violation of the right to a hearing within a reasonable time under Art 6(1)).
27 See *W v UK*, Commission Report, 15.10.85, para 115; and 3.4.2 above.
28 Even where the discretion to grant a licence is very wide, this will still constitute a ‘right’. It has been argued, but unsuccessfully, that where there is a very wide discretion to grant a licence, applicants could not be said to have a ‘right’ under Art 6(1). In *Axelsson v Sweden* (1989) 65 DR 99, taxi drivers could obtain a reserve taxi licence for a reserve car; the reserve licence could be granted provided the applicant was suitable and the taxi service in question was deemed necessary and otherwise appropriate, without any more precise criteria specified in the legislation. The European Commission held that nevertheless there was a ‘right’ under Swedish law to obtain reserve taxi licences, stating (at paras 49–50):

> the discretion at issue in the present case was wide but not unlimited and had to be exercised in the framework of the applicable law ... the authorities did not have an unfettered discretion ... [and were] obliged, when examining the applicants’ request, to take all the different public and private interests involved into account as well as the general purposes of the applicable transportation legislation.

There will therefore be a ‘right’ to licences under the 2003 Act, not only in cases where the licensing authority must grant the licence, but also in cases where it has a discretion (which is in any event not as wide a discretion as was available to authorities under the previous law – see 2.2 above).
determining whether a right is ‘civil’, the ECtHR has drawn a distinction not only between civil rights and criminal charges, but also between public and private law rights. It has interpreted ‘civil’ to mean, in effect, ‘private law’, so that in relation to a public law right or obligation Art 6 will not apply (Konig v Federal Republic of Germany (1978) 2 EHRR 170, para 95). It will therefore be necessary to determine whether a right is private or public and, according to Konig, this will depend on the ‘character’ of the right. In some areas, the character of a right will obviously be private (for example, contract, tort, succession), but in other areas, and this will include licensing, there may be aspects of both public and private rights. In licensing, there are private law rights (for example, the provision of services by licence holders as a commercial activity carried on with the object of earning profits and based on a contractual relationship between the licence holder and his customers) and there are public law rights (for example, licence holders being properly regulated in the public interest to prevent public disorder and to ensure public safety).

3.5.6 It seems, however, clear from ECtHR case law that the public law aspects or features of licensing are not sufficient to exclude it from being a ‘civil’ private law right and from Art 6(1) having application. In Pudas v Sweden (1987) 10 EHRR 380, which concerned revocation of a taxi licence issued by the County Administrative Board of a district in Sweden, the ECtHR stated (at para 37) that, although taxi licensing had certain public law features, these did not suffice to exclude from the category of civil rights under Art 6(1) the rights conferred on the licence holder by virtue of the licence:

The maintenance of the licence to which the applicant claimed to be entitled was one of the conditions for the exercise of his business activities. Furthermore, public transport services in Sweden are not ensured by a State monopoly but both by public bodies and private persons ... At least in the latter event, the provision of such services takes the form of a commercial activity. It is carried out with the object of earning profits and is based on a contractual relationship between the licence-holder and the customers.

Similarly, in Tre Traktörer Aktiebolag v Sweden (1989) 13 EHRR 309, it was held, in respect of a licence for the sale in a restaurant of alcoholic beverages, that ‘subject to the possibility of its being revoked, the licence conferred a “right” on the applicant company in the form of an authorisation to sell alcoholic beverages in the restaurant ... in accordance with the conditions set out in the licence’ (para 39). Further, this right was ‘civil’ in character, since ‘it is enough that the outcome of the proceedings should be decisive for private rights and obligations ... the serving of alcoholic beverages in restaurants and bars is entrusted mainly to private persons and companies through the issuing of licences ... [and] the persons and companies concerned carry on a private commercial activity’ (paras 41 and 43). Revocation or withdrawal of a licence, as had occurred in this case, was not, however, regarded as ‘the determination of a criminal

30 These included the fact that taxi drivers were required to perform a service regulated in considerable detail by public authorities, as part of public authorities’ provision of public transport services, with a substantial part of the licence holder’s costs of running the business being covered by public funds: (1988) 10 EHRR 380, para 36.

31 The court rejected the Swedish government’s claim that the licence was concerned not with civil rights but with aspects of public law, eg, it was the means of implementing the government’s social policy of limiting total consumption and counteracting abuse and resultant damage to health. The ECtHR has shown an increasing willingness to find a ‘civil right’ within, or alongside, a public law right, especially where economic interests are involved.
charge’ for the purposes of Art 6(1). This was because ‘it cannot be characterised as a penal sanction; even if it was linked with the licensee’s behaviour, what was decisive was suitability to sell alcoholic beverages’.32

The rights of those involved in or affected by licensable activities under the 2003 Act will thus be ‘civil’ rights for the purposes of Art 6(1). This is consistent with the approach taken by the House of Lords in R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions [2003] 2 AC 295, where the House regarded a dispute under planning law as involving the determination of civil rights and expressed the view (at para 41) that: ‘planning, compulsory purchase and other related decisions do affect civil rights even if the procedures and decisions are of an administrative law nature rather than strictly civil law in nature’ (per Lord Slynn). Indeed, the matter seems not to have been regarded as in doubt by the JCHR which, in its Fourth Report on the Licensing Bill, stated (at para 7) that:

As the rights of those in possession of property, and perhaps those entertainers whose freedom of expression would be limited, are civil rights within the meaning of ECHR Article 6.1, the licensing procedures would have to be compatible with the right to a fair hearing by an independent and impartial tribunal under that Article.

3.5.7 Fair and public hearing within a reasonable time

3.5.8 Where there is a ‘determination of a civil right’, as in the above cases, it will be necessary that there is a ‘fair and public hearing’ by ‘an independent and impartial tribunal established by law’. The requirements of a fair hearing have not been specifically laid down by the ECtHR, but the overriding obligation is one of ensuring that proceedings are fair. Therefore a person must have an opportunity to present his case; submissions, arguments and evidence must be properly examined; and a reasoned decision must be given. Of particular importance is the concept of ‘equality of arms’, introduced in Neumeister v Austria (1968) 1 EHRR 91, which requires a fair balance to be maintained between the opportunities afforded to parties involved in civil litigation. As the ECtHR stated in Dombo Beheer BV v Netherlands (1993) 18 EHRR 213, para 33:

as regards [civil] litigation involving opposing private interests, ‘equality of arms’ implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage vis-à-vis his opponent.33

Although this statement was made in respect of civil litigation, it should have equal application to civil proceedings generally and should therefore extend to licensing hearings.

3.5.9 Other elements that may be inherent in a fair hearing are the opportunity to call witnesses and to cross-examine witnesses, and to have reasons for a tribunal’s decision. As regards witnesses, Art 6(3)(d) specifically provides that everyone charged with a criminal offence has the right ‘to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf and

33 In this case, it was held that there been a failure to comply with this requirement where one side had been allowed to call one of the parties to an agreement, but the other side had not been permitted to call the other party to the agreement.
under the same condition as witnesses against him’, although there is no equivalent provision in Art 6(1) in respect of determinations of civil rights. However, in *X v Federal Republic of Germany*, Application No 852/60, 19 September 1961, the European Commission stated:

> it is nevertheless conceivable that, in certain types of cases or in certain circumstances, the refusal by a court to allow the witness or witnesses called by the plaintiff to testify, could involve a violation of Article 6, paragraph (1), which recognises the right of everyone to a fair hearing by an impartial tribunal that will determine his civil rights.34

The applicant was found in this case to have ‘failed to adduce the slightest prima facie evidence’ of his allegation that he had been refused permission to call one of his witnesses and the application was duly dismissed. In *X v Austria*, Application No 5362/72; (1972) 42 CD 145, where the applicant was both refused permission to call a witness and to cross-examine another witness, the European Commission referred with approval to the above statement and regarded it as having application to a refusal for a person ‘to call a witness or to examine a witness against him’. Again it did not find that in the circumstances the court’s refusal was inconsistent with Art 6(1) because it did not find the witness’s evidence or the cross-examination to be relevant. Nevertheless, in *Elsholz v Germany*, Application No 25377/94, 13 July 2000, the ECtHR held that, in proceedings for child access, a failure of the court to seek psychological expert evidence as to the child’s views, which was requested by the child’s father and supported by the Youth Office, constituted a violation of Art 6(1). Although these decisions concern court proceedings, the same principle should have application to licensing and similar hearings. For licensing hearings under the 2003 Act, reg 8(2) of the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44 (LA 2003 (Hearings) Regs 2005), requires a party to the hearing to request permission for any other person, other than someone representing him, to appear (as a witness), with an indication of how that person will assist the authority and reg 23 requires the hearing to take the form of a discussion led by the authority, with cross-examination not permitted unless the authority considers it to be necessary to consider the application or any relevant representations made or notice given (see 2.4.13 above). A refusal of permission will not necessarily infringe Art 6(1), although in the light of the above decisions it is certainly possible that it might do.

As regards the right to reasons, this is important because both the parties and the public as a whole have a legitimate interest in knowing the basis for any judgment and, further, without reasons, a party cannot effectively exercise any right of appeal. As the ECtHR stated in *Hadjianastassiou v Greece* (1992) 16 EHRR 219, para 33:

> The national courts ... must indicate with sufficient clarity the grounds on which they base their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him.35

The extent to which this requirement applies, however, and when there will be compliance with it, depends on the circumstances. As the ECtHR stated in *Hiro Balani v Spain* (1994) 19 EHRR 565, para 27:

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34 Details of the case can be found in the 1961 Yearbook of the European Convention on Human Rights at 346–54.

35 Although this statement is expressed with reference to national courts and in relation to the accused person in a criminal case (which involved disclosure of military secrets of minor importance for reward), the requirement to give reasons will apply to decision-makers generally and to civil cases.
Article 6(1) obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision.

This means that every point does not have to be covered, but obviously crucial submissions need to be addressed. In *Hiro Balani*, the plaintiff in a trademark case contested removal of her trademark from the register, but the court did not address her argument that she had priority over a competing trademark registered by someone else because of an earlier trademark that she had registered. This was a submission affecting the plaintiff’s argument contesting removal and the failure to give reasons for not accepting the argument was held to be a violation of Art 6(1).

Under the 2003 Act, in several instances where licensing authorities are making decisions there is now a statutory duty to give reasons (for example, under s 18(8), where an authority determines that representations are frivolous or vexatious and under s 23(3), where an application for a premises licence is rejected), unlike under the previous law. To the extent that there may be no statutory duty, however, authorities will still be required to give reasons in order to comply with Art 6(1).

3.5.10 Article 6(1) requires that the hearing be conducted generally in public (‘everyone is entitled to a fair and public hearing’) and that judgment be pronounced publicly, although the Article does go on, as follows, to provide for the exclusion of the press and public in certain circumstances:

judgment shall be pronounced publicly but the press and public may be excluded from all or any part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interest of justice.

Regulation 14(1) of the LA 2003 (Hearings) Regs 2005 provides for licensing hearings to be held in public, although under reg 14(2) the licensing authority has a discretion to exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public (see 2.4.13 above). This is a more general test than that specified in Art 6(1), although it is difficult to think of instances where there might be exclusion of the public under this test which might not be justified under Art 6(1). As to a hearing within a reasonable time, what is a reasonable time will depend on the circumstances, which could include the complexity of factual or legal issues, the conduct of the parties and what was at stake for the applicant.36 There is no absolute period for what is unreasonable, although significant delays are likely to be needed for a violation of Art 6(1), as in *Robins v UK* (1998) 26 EHRR 527 (see 3.5.4 above). It is to be hoped that no such delays will arise in the respect of licensing hearings, which are required to be held within prescribed periods of time under the above Regulations (see 2.4.13 above).

3.5.11 Independent and impartial tribunal established by law

3.5.12 It is necessary that the decision-making body is a ‘tribunal’ for the purposes of Art 6 and this means that it must exercise a judicial function and its decisions must

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36 *Zimmermann and Steiner v Switzerland* (1983) 6 EHRR 17. In civil proceedings, time generally runs from commencement of the proceedings and will continue until enforcement.
have the force of law. A body that carries out functions other than judicial ones, such as including administrative functions, may nevertheless be a ‘tribunal’ for the purposes of Art 6(1). Local authorities, as licensing authorities under the 2003 Act, may therefore be a ‘tribunal’ since they will be exercising administrative functions, along with a quasi-judicial function (in contested cases), when determining or reviewing licence applications. However, a tribunal must be ‘established by law’, as opposed to depending on the discretion of the executive, and be ‘independent’, in the sense that it is independent of the executive and of the parties. This is not the case with local authorities since they are part of the executive and not therefore independent of it. Nevertheless, where the decision-making body itself is not an ‘independent tribunal’ for the purposes of Art 6(1), there will be no violation of the right to a fair hearing under the Article if there is available a right of appeal to a body that is an independent tribunal. In other words, if there is access to an independent judicial body, which is able to hear the complaint that the applicant wishes to bring and which satisfies the Art 6 requirements, this will suffice, even though in the case of the decision-making body one (or more) of the elements required by Art 6(1) is lacking.

In Albert and Le Compte v Belgium (1983) 5 EHRR 533, the ECtHR held that there would be no violation of the Convention if the proceedings before a body are ‘subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6’. The focus is on whether the decision-making process as a whole complies with Art 6 and not simply the original proceedings before the initial tribunal.

In the case of local authority decisions it is therefore important that an appeal can be made to a court which has ‘full jurisdiction’ as to both law and fact in order to satisfy the requirement of an ‘independent tribunal’. As the ECtHR stated in Le Compte, Van Leuven and de Meyere v Belgium (1981) 4 EHRR 1, para 51:

Article 6(1) draws no distinction between questions of fact and questions of law. Both categories of question are equally crucial for the outcome of proceedings relating to ‘civil rights and obligations’. Hence the ‘right to a court’ and the right to a judicial determination of the dispute cover questions of fact as much as questions of law.

Under the 2003 Act the requirement is satisfied by a right of appeal to the magistrates’ court where the appeal takes the form of a re-hearing (see 12.1.2 below) and where the court can hear any complaint that the applicant wishes to bring.

3.5.13 Even if under the 2003 Act a right of appeal to a court for a re-hearing is unavailable, the requirement for ‘full jurisdiction’ may be met by the availability of

37 Benthem v Netherlands (1985) 8 EHRR 1, para 40 (‘a power of decision is inherent in the very notion of a “tribunal” within the meaning of the Convention’).
38 Campbell and Fell v UK (1984) 7 EHRR 165, paras 33 and 81 (Board of Visitors in prisons).
39 ‘Only an institution that has full jurisdiction and satisfies a number of requirements, such as independence of the executive and also of the parties, merits the design “tribunal” within the meaning of Article 6(1)’: Beaumartin v France (1994) 19 EHRR 485, para 38.
40 This appears to be the case in respect of a determination that a representation by an interested party is frivolous or vexatious and accordingly does not constitute a ‘relevant representation’ – see 6.4.22 below.
appeal to the High Court for judicial review of a decision.\footnote{See \textit{R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions} [2003] 2 AC 295, where the House of Lords held that this was the case where the Secretary of State, who was not himself an independent tribunal, had called in a planning application under s 77 of the Town and Country Planning Act 1990 for his own determination.} The availability of judicial review is governed by the principles laid down by the Court of Appeal in \textit{Associated Provincial Picture Houses Ltd v Wednesbury Corporation} [1948] 1 KB 223, a case concerning a challenge to the exercise of a local authority’s powers to licence cinematograph exhibitions, where Lord Greene MR stated (at 233–34) that:

The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it.

These principles were subsequently reformulated by the House of Lords in \textit{Council of Civil Service Unions v Minister of State for the Civil Service} [1985] AC 374 so that the grounds for seeking judicial review fell under three heads: illegality, irrationality and procedural impropriety. Whilst judicial review will be available in principle in respect of all licensing decisions, it may not be able to address all points that are in contention in a dispute concerning a civil right. Disputes on points of law are likely to fall within the three heads recognised and the third heading of procedural impropriety might allow disputes on some factual issues to be addressed. However, it is conceivable that there might be other contested factual issues (for example, the veracity of evidence on a particular matter, the weight to be given to evidence or inferences to be drawn from facts) that cannot be considered, in which case there may be a violation of Art 6(1).

When considering the sufficiency of judicial review in respect of factual matters, the ECtHR, in \textit{Bryan v UK} (1996) 21 EHRR 342, para 45, stated that: ‘in assessing the sufficiency ... it is necessary to have regard to matters such as the subject matter of the decision appealed against, the manner in which that decision was arrived at, and the content of the dispute, including the desired and actual grounds of appeal’. Where the matters concerned are administrative ones of a relatively technical nature, a restricted review of decisions is common amongst States where the Convention applies and in \textit{Zumtobel v Austria} (1994) 17 EHRR 116, the ECtHR recognised that courts may legitimately restrict judicial review on expediency grounds. It was also recognised in \textit{Bryan} that, where the subject matter of the decision was of a specialised character (planning in the case itself), which required the exercise of discretion in the regulation of citizens’ conduct, a restricted review as regards the factual application of this discretion was permissible. Factual issues in such cases were established in a quasi-judicial procedure that in many respects was compliant with Art 6(1) safeguards and a limited review was therefore justified. In the House of Lords in \textit{Runa Begum v Tower Hamlets London Borough Council} [2003] 2 AC 430, a housing case, Lord Hoffmann, having regard to the decision in \textit{Bryan}, stated (at para 53): ‘In my opinion the Strasbourg court has accepted, on the basis of general state practice and for ... reasons of good administration ... that in such cases a limited right of review on questions of...
fact is sufficient. In the light of this, a restricted right of judicial review by the High Court under the 2003 Act may be regarded as permissible and as satisfying the requirement for ‘full jurisdiction’ as set out in *Albert and Le Compte v Belgium* (1983) 5 EHRR 533.

3.5.14 The requirement that the tribunal is ‘impartial’, although clearly linked with the independence of the tribunal, extends beyond independence to include an absence of prejudice or bias. There are two aspects to this requirement. First, the tribunal must be subjectively free of personal prejudice or bias. Secondly, it must also be impartial from an objective point of view, that is, it must offer sufficient guarantees to exclude any legitimate doubt as to impartiality. In *Huaschildt v Denmark* (1989) 12 EHRR 266, para 46, the ECtHR stated:

The existence of impartiality for the purposes of Article 6(1) must be determined according to a subjective test, that is on the basis of the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.

Impartiality is presumed, as stated by the ECtHR in *Le Compte, Van Leuven and De Meyere v Belgium* (1981) 4 EHRR 1, para 58, until there is proof to the contrary. The burden of proving subjective bias is obviously difficult to surmount and it is much easier to establish a violation of Art 6 on the basis of an appearance of bias through the objective test of ‘legitimate doubt’.

In the context of the 2003 Act, an appearance of bias may arise in a licensing subcommittee hearing, for instance, if a member of a subcommittee that was to hear an application had previously sat on another committee (for example, the planning committee) that had made a decision that involved passing some judgment on the merits of the application. If planning permission had been granted by the planning committee and an application were made for a premises licence, there may be, to objectors to the application, an appearance of bias in that the member had previously voted in favour of the application. In order to avoid this, it would be advisable for the member not to sit on the licensing subcommittee to hear the premises licence application. Similarly, if the member is a ward councillor for the area in which the

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42 His Lordship also found support for his opinion in the following statement in *Kingsley v UK* (2002) 35 EHRR 177, para 32, a case where the Gaming Board had decided the applicant was not a fit and proper person to hold a management position in the gaming industry, a decision from which there was no right of appeal:

The subject matter of the decision appealed against was ... a classic exercise of administrative discretion, and to this extent the current case is analogous to the case of Bryan, where planning matters were initially determined by the local authority and then by an inspector ... The Court does not accept the applicant’s contentions that, because of what was at stake for him, he should have had the benefit of a full court hearing on both the facts and the law.

43 It is uncertain whether the objective test of ‘legitimate doubt’ differs in substance from the common law test of a ‘real possibility of bias’ in *Magill v Porter* [2001] 1 All ER 4653, para 103 (see 3.5.2 above), but the ECtHR, in *Gregory v UK* (1997) 25 EHRR 577, made no adverse comment on the common law test.

44 It is thought that there would be an appearance of bias only if the member were to sit on the subcommittee hearing the application and not simply if he were a member of the licensing committee, since as a member who did not sit he would take no part in the decision-making process.
application premises are situated, the member should not sit if he wishes to make representations on behalf of his constituents.\textsuperscript{45} Again, any expression of views by a member in respect of particular applications ahead of the hearing of the case might give rise to an appearance of bias and the member should not sit.\textsuperscript{46}

3.5.15 Finally, the tribunal will have to be ‘established by law’, which means that it must not depend on the discretion of the executive. Local authority committees and subcommittees might meet this requirement, as local authorities have a general power by statute under s 101 of the Local Government Act 1972 to arrange for the discharge of any of their functions by a committee or subcommittee, to which the power of decision may or may not be delegated. Further, and more particularly, under s 6(1) of the 2003 Act, local authorities are required by statute to establish a licensing committee which, under s 7(1), must discharge the authority’s licensing functions. This committee is ‘established by law’, as are subcommittees, which the committee may establish under s 9(1) and through which it may under s 10(1) arrange for the discharge any of its licensing functions (see 2.4.5–2.4.12 above).

3.5.16 In conclusion, licensing decisions made by local authorities in contested cases may fall within the scope of Art 6(1) as constituting a determination by the authority of civil rights and obligations. The fact that licensing decisions are made by local authorities, which themselves are not an ‘independent’ tribunal for the purposes of Art 6(1), does not constitute a violation of the Article, provided the complaint can be addressed on appeal by an independent tribunal, that is a court having ‘full jurisdiction’. This might be either the magistrates’ court in a re-hearing of the case under the 2003 Act or the High Court on judicial review. Whether there will be violation will depend on whether authorities, when making licensing decisions under the 2003 Act, comply with the requirements outlined above.

3.5.17 Article 6(2)

3.5.18 Article 6(2) provides:

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

The general principle applying in respect of this provision is set out in Barberà, Messequé and Jabardo v Spain (1988) 11 EHRR 360, para 77, where the ECtHR stated:

Paragraph 2 embodies the principle of the presumption of innocence. It requires, \textit{inter alia}, that when carrying out their duties, the members of the court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defence accordingly, and to adduce evidence sufficient to convict him.

This accords with the common law approach whereby the legal (or persuasive) burden of proof rests with the prosecution, which must prove the existence of the conduct

\textsuperscript{45} See Guidance, para 5.32, and 6.4.17 below where there is considered in more detail.

\textsuperscript{46} Mere expression of views on subjects, however, does not in itself disqualify a member from sitting on a committee – see Darker Enterprises v Dacorum Borough Council [1992] COD 465 (a case decided under the common law rule against bias).
(actus reus) and mental (mens rea) elements of the criminal offence(s) in question and must do so to a standard of beyond reasonable doubt.47

3.5.19 This principle is, however, subject to any statutory exception and it has not been uncommon for statute to modify the normal burden of proof, either in relation to a definitional element of the offence or (more usually) a statutory defence that is provided, and to place the legal burden upon the accused.48 In these cases, often referred to as ‘reverse onus clauses’, the standard of proof required of the accused is the normal civil standard of a balance of probabilities, that is the existence of that which has to be established is more likely than not. There is clearly a potential conflict with Art 6(2) where the legal burden is placed on the accused and there may, but not necessarily will, be a violation of Art 6(2). According to the leading ECtHR decision of Salabiaku v France (1988) 13 EHRR 379, para 28:

Presumptions of fact or law operate in every legal system. Clearly, the Convention does not prohibit such presumptions in principle. It does, however, require the contracting states to remain within certain limits in this respect as regards criminal law. Article 6(2) does not therefore regard presumptions of fact or law provided for in the criminal law with indifference. It requires states to confine them within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence.

In essence, Art 6 requires only a fair trial and the presumption of innocence in Art 6(2) is merely one aspect of that requirement and not a free-standing obligation, which is

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47 Woolmington v DPP [1935] AC 462 (‘Throughout the web of the English Criminal Law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt subject to … the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner, as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained’, per Viscount Sankey LC at 481). The burden of proof on the prosecution may also extend to disproving beyond reasonable doubt the existence of various ‘defences’ raised by the defendant, eg self defence, duress. Where such defences are raised, the defendant will have merely an evidential burden, ie adducing some evidence to raise the issue and the legal burden will then be on the prosecution to disprove its existence.

48 It was recognised by the House of Lords, in the leading case of R v Hunt [1987] AC 352, that this might be done ‘either expressly or by necessary implication’. The former might arise where a statute uses words such as ‘it shall be a defence for the defendant to prove’. The latter might arise by virtue of the provision in s 101 of the Magistrates’ Courts Act 1980, which provides that:

Where the defendant to an information or complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence or matter of complaint in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him; and this notwithstanding that the information or complaint contains an allegation negativing the exception, exemption, proviso, excuse or qualification.

This applies to all summary trials (ie, before magistrates) and, although there is no corresponding statutory rule for trials on indictment (ie before a judge and jury), the courts have held that s 101 restates an earlier common law rule that applied to all criminal trials, including those on indictment – see R v Edwards [1975] QB 27 (a liquor licensing case where, for the offence of selling liquor without a licence, the Court of Appeal held that the burden of proof was on the defendant to prove that he had a licence) and R v Hunt [1987] AC 352, where Edwards was approved by the House of Lords.
why there can be departure in certain circumstances from the principle that prosecution must prove beyond reasonable doubt all the matters at issue.

3.5.20 Departure is permissible, as can be seen from the last-mentioned sentence in *Salabiaku*, where this is reasonable or proportionate. As Lord Bingham, delivering the leading judgment of the House of Lords in *Sheldrake v Director of Public Prosecutions, Attorney General’s Reference (No 4 of 2002)* [2005] 1 All ER 237, stated (at para 21) when considering *Salabiaku* and subsequent ECtHR case law:

> The overriding concern is that a trial should be fair, and the presumption of innocence is a fundamental right directed to that end. The convention does not outlaw presumptions of fact or law but requires that these should be kept within reasonable limits and should not be arbitrary. It is open to states to define the constituent elements of a criminal offence, excluding the requirement of *mens rea*. But the substance and effect of any presumption adverse to a defendant must be examined, and must be reasonable. Relevant to any judgment on reasonableness or proportionality will be the opportunity given to the defendant to rebut the presumption, maintenance of the rights of the defence, flexibility in application of the presumption, retention by the court of a power to assess the evidence, the importance of what is at stake and the difficulty which a prosecutor may face in the absence of a presumption ... The justifiability of any infringement of the presumption of innocence cannot be resolved by any rule of thumb, but on examination of all the facts and circumstances of the particular provision as applied in the particular case.

His Lordship went on to state (at para 31): ‘The task of the court is never to decide whether a reverse burden should be imposed on a defendant, but always to assess whether a burden enacted by Parliament unjustifiably infringes the presumption of innocence.’ In the first instance, therefore, it needs to be established whether a burden enacted by Parliament is in fact a legal burden of proof placed on the defendant and this will be determined according to ordinary principles of statutory interpretation. Once it has been decided that it has, it then needs to be ascertained whether it is fair and reasonable in the achievement of a proper statutory objective for the State to deprive the defendant of the protection normally guaranteed by Art 6(2), that is whether it is a justifiable response. As Lord Bingham went on to remark (at para 1): ‘Thus the first question for consideration in each case is whether the provision in question does, unjustifiably, infringe the presumption of innocence.’

3.5.21 If it does, as Lord Bingham went on to say (at para 1), it is possible that the court may, under s 3(1) of the 1998 Act, interpret the legislation in a way that is compatible with Convention rights (see 3.2.1 above) by ‘reading down’ the legal burden imposed by the statute so that is an evidential burden:

> If it does the further question arises whether the provision can and should be read down in accordance with the courts’ interpretative obligation under s 3 of the 1998 Act so as to impose an evidential and not a legal burden on the defendant. An evidential burden is not a burden of proof. It is a burden of raising, on the evidence in the case, an issue as to the matter in question fit for consideration by the tribunal of fact.

49 The case concerned two appeals that were heard simultaneously.

50 As his Lordship stated later in his judgment (at para 53), ‘reading down ... so as to impose an evidential instead of a legal burden falls well within the interpretative principles’.
If the provision is thus ‘read down’ to impose only an evidential burden, the legal burden will be on the prosecution. If, on the other hand, it is a justifiable response, it then needs to be determined whether the exception is proportionate, that is whether it goes no further than is reasonably necessary to achieve the statutory objective. If it goes no further than necessary, it will be possible to say, to use the words of Lord Bingham (at para 50), that ‘imposition of a legal burden on a defendant in this particular situation is a proportionate and justifiable legislative response’.

3.5.22 There are a number of instances under the 2003 Act of criminal offences to which a defence is provided, where the courts may be required to determine on whom the legal burden of proof lays. There is a defence of ‘due diligence’ in s 139, which applies in respect of the offences of carrying on an unauthorised licensable activity under s 136(1)(a), exposing alcohol for unauthorised sale under s 137 and keeping alcohol on the premises for unauthorised sale under s 138 (see 11.2.10 below). There is a similar defence in s 156(3) in respect of the offence under that section of selling by retail alcohol from a vehicle when it is not permanently or temporarily parked, that is when the vehicle is moving (see 11.8.2 below). Although these provisions refer to a ‘defence’, they do not use the term ‘to prove’ and are thus ‘neutral’ as far as the burden of proof is concerned. Nevertheless, given the reference to ‘defence’, it seems likely that, applying ordinary principles of statutory construction to these provisions, the legal burden of proof will be on the defence.

It seems likely that placing such a burden, in these cases, on the defence, thereby depriving the defendant of Art 6(2) protection, is fair and reasonable in the achievement of a proper statutory objective, the effective regulation of licensable activities. Even if it does infringe the presumption of innocence, the infringement may well be regarded as justified and proportionate. Taking into account the essentially regulatory nature of the offences and making reference to factors to which Lord Bingham (at para 21) refers (see 3.5.20 above), the importance of what is at stake is not especially high, there is an opportunity given to the defendant to rebut the presumption and the difficulty which a prosecutor may face in the absence of a presumption is significant. Matters appertaining to ‘due diligence’ are likely to be within the defendant’s knowledge (or means of knowledge) and not especially difficult for him to prove, although they may be for the prosecution. Thus placing the legal burden of proof on the defence for these offences may be justified and not disproportionate, in which case there will be no violation of Art 6(2).

3.5.23 Support for this view can be found in the decision of the Administrative Court in R (Grundy and Co Excavations Ltd and Parry) v Halton Division Magistrates’ Court and

51 No indication as to the burden of proof is given in Explanatory Note 223 to s 139 or Explanatory Note 245 to s 156 of the 2003 Act.

52 This is in contrast to the position in the Attorney General’s Reference (No 4 of 2002), which concerned offences in s 11(1) of the Terrorism Act 2000 of being a member of a proscribed organisation and professing to be a member of such an organisation, to which s 11(2) provided a defence for a person to prove that the organisation was not proscribed and that he had not taken part in the activities of the organisation at any time while it was proscribed. The case of Sheldrake concerned being in charge of a motor vehicle in a public place, having consumed an excess amount of alcohol contrary to s 5(1)(b) of the Road Traffic Act 1988, to which s 5(2) provided a defence for a person to prove that there was no likelihood of his driving the vehicle whilst the level of alcohol remained likely to exceed the prescribed limit. In both cases, the maximum sentence for these offences includes imprisonment (10 years in the case of s 11(1) and three months in the case of s 5(1)(b)).
the Forestry Commission [2003] LLR 335. In this case a prosecution was instituted for the felling of some trees on a farmer’s land without a licence contrary to s 17 of the Forestry Act 1967 and an application was made for judicial review of the trial judge’s ruling that the legal burden of proof was on the accused to prove on the balance of probabilities that a licence was not required under one of the exceptions in s 9 of the Act. It was accepted that there was an evidential burden on the accused to show that one of the exceptions applied, but it was contended that the burden was not a legal one and the legal burden remained on the prosecution. It was held, applying the provisions of s 101 of the Magistrates’ Courts Act 1980 and the principles in R v Edwards [1975] 1 QB 27 and R v Hunt [1987] AC 352 (see 3.5.19 above), that there was a reverse burden on the accused to show that one of the exceptions in s 9 applied and that this was a legal burden. It was recognised that the reverse burden of proof provisions in ss 9 and 17 of the 1967 Act derogated from the presumption of innocence in Art 6(2), but the derogation was regarded as justified, because it was impossible to negative all defences in advance, and it was proportionate. The legislative scheme, it was felt, would only really work if the burden was on the accused. Much the same may well be said of the legislative scheme in the 2003 Act.53

3.6 PROTOCOL 1 OF ARTICLE 1: PROTECTION OF PROPERTY

3.6.1 Protocol 1 of Article 1 is concerned with the protection of property and provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.54

The right under Art 1 is a qualified one, for many other rights and interests can only be satisfactorily protected if the State is permitted to override individual claims to enjoyment of property, and Art 1 is restricted to the circumstances in which interference might take place.

53 This decision, although cited in Attorney General’s Reference (No 4 of 2002), was not referred to by the House of Lords in its judgments. However, the decision was considered when the case was heard in the Court of Appeal (see [2004] 1 All ER 1) where the fact that the legislative scheme in Halton was a regulatory one seems to have been regarded as a matter of some significance. Reference was made to this by Latham LJ (at para 40) when comparing the case to the one that was before the court: ‘That type of statutory provision [in Halton] is clearly different from the one under consideration in this case. In particular the context of those cases was that the statutory provisions were regulatory in nature’.

54 The Convention did not originally include any guarantee of respect for property, but Art 1 of Protocol 1, drawn up in 1952, subsequently afforded protection for property. A desire to avoid obstruction of economic and social programmes perhaps accounted for the original exclusion and this anxiety has influenced the formulation of Art 1, under which there is a strong presumption of government entitlement to interfere with property interests.
3.6.2 The first issue that will arise is what constitutes ‘possessions’. As with other provisions in the Convention, this term will be given an autonomous meaning (see 3.4.2 above). It can cover a wide range of property interests, although there must be a right in national law to the property interest and the entitlement to enjoy it. It can include not only tangible property, but also intangible property and economic interests in property. Such an interest can include a person’s right to enjoyment of property in respect of which a licence is held. In *Tre Traktörer Aktiebolag v Sweden* (1991) 13 EHRR 309, the ECtHR rejected an argument that a licence was not a ‘possession’ because it conferred no rights in national law and stated (at para 53):

The Government argued that a licence to serve alcoholic beverages could not be considered to be a ‘possession’ within the meaning of Article 1 of the Protocol (P1-1). The provision was therefore, in their opinion, not applicable to the case. Like the Commission, however, the Court takes the view that the economic interests connected with the running of Le Cardinal [restaurant] were ‘possessions’ for the purposes of Article 1 of the Protocol (P1–1). Indeed, the Court has already found that the maintenance of the licence was one of the principal conditions for the carrying on of the applicant’s company business, and that its withdrawal had adverse effects on the goodwill and value of the restaurant. Such withdrawal thus constitutes, in the circumstances of the case, an interference with ... [the applicant’s] right to the ‘peaceful enjoyment of [its] possessions’.

This case does not decide that a licence is (or is not) a ‘possession’, but rather that economic interests in property in respect of which the licence is held can be ‘possessions’. Whether a licence can be a ‘possession’ is a matter of some uncertainty. It might well be if it were a licence that could be assigned or transferred (as of right) to another, since the licence would then be much the same as any other item of property that a person possesses, but this is not the case with most licences, including those under the 2003 Act. Licences normally take the form of a permission or authorisation. Even if granted on an indefinite basis, as with premises licences (see 6.7.1 below), provision is made for their revocation in certain circumstances and applications are needed to transfer a licence to another person. Where this is the case, it seems that the licence will not be regarded as a possession. Thus in *X v Federal Republic of Germany* (1982) 26 DR 255, where a driving licence was confiscated following motoring convictions, the European Commission stated (at 256): ‘As regards the alleged violation of Article 1 of the First Protocol, the Commission finds that the position of the holder of a driving licence does not amount to a property right.’

3.6.3 If the principle in *Tre Traktörer* is applied where licensable activities are carried on under and in accordance with a premises licence granted under the 2003 Act, and account is taken of Strasbourg case law under s 2 of the 1998 Act, then

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55 *S v UK* (1986) 47 DR 274, 279 (occupation of property without a legal right held to be not ‘possession’).

56 The case, involving a driving ban, was decided primarily on the ground of an alleged violation of Art 6(1) and the European Commission confined its remarks to the quoted statement when considering the alleged violation of Art 1. There are other European Commission decisions that follow a similar approach – see *Batelaan and Huiges v Netherlands* (1984) 41 DR 170 (licence for doctor to dispense medicines); *M v Federal Republic of Germany* (1985) 44 DR 203 (authorisation to practice medicines under a health insurance scheme); and *Stærksen v Norway* (1994) 78 DR 88 (fishing licence).

57 These are the sale or supply of alcohol, provision of regulated entertainment and provision of late night refreshment – see s 1(1) and 5.1.2 below.
economic interests connected with the running of the premises under a premises licence should be regarded as ‘possessions’. Similarly, where qualifying club activities are carried on under and in accordance with a club premises certificate (CPC), then economic interests connected with the running of the club premises ought to be regarded as ‘possessions’. Less clear is whether the principle will extend to licensable activities in premises carried on under and in accordance with a temporary event notice (TEN). TENs operate only for a limited period (up to 96 hours) and there is an annual restriction on numbers at 12 per premises (see ss 100(1) and 107(4), and 9.2.1 and 9.7.1 below respectively). Whilst maintenance of the licence in \textit{Tre Traktörer} was one of the principal conditions for the carrying on of the applicant’s company business, the same may not be true where a limited number of activities are held under TENs. The economic interests connected with the running of the premises may in such instances not be sufficient to constitute ‘possessions’. The same may be true where a person holding a personal licence is the designated premises supervisor (DPS) under a premises licence.\footnote{This will be where the licensable activities include the supply of alcohol. Where a premises licence authorises the supply of alcohol, the licence must include a condition that supply is made only when there is a designated premises supervisor in respect of the premises licence (ie an individual, who holds a personal licence, specified in the premises licence as the premises supervisor) and the supply is made or authorised by a person who holds a personal licence: s 19; and see 6.4.3–6.4.4 below.} Whilst under s 15(2) the DPS may be the same person who holds the premises licence, he need not be and, where he is not, may well not have any economic interest connected with the running of the business except to the extent that those running it employ him. The position of a DPS here would seem to be analogous to that of a person holding a driving licence, as in \textit{X v Federal Republic of Germany}.\footnote{These are the sale or supply of alcohol and provision of regulated entertainment (the provision of late night refreshment being an ‘exempt supply’ for which authorisation is not required) – see s 1(2) and 5.1.3 below.}

3.6.4 To constitute ‘possessions’, there must be some existing interest in property or at least a legitimate expectation of obtaining effective enjoyment of a property right. In \textit{Kopecky v Slovakia}, Application No 44912/98, 28 September 2004, the ECtHR stated (at para 35): ‘“Possessions” can be either “existing possessions” or assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation” of obtaining effective enjoyment of a property right.’ It will not, however, suffice if there is simply a hope of recognition of a property right to which a person may become entitled, for a person has no right or legitimate expectation to the property in such a case.

Where a premises licence or a CPC is held, there will be an existing economic interest connected with and arising from the running of the premises under the licence or certificate (hereafter ‘licence’) so this will constitute a property right and there will be an interference with that right where the licence or certificate is varied or revoked. It seems that this is provided that any conditions attached to the licence are complied with, for the European Commission in \textit{JS and Others v Netherlands} (1995) 20 EHRRC CD 41, 51 stated:

> the question whether a licence to conduct economic activities amounts to a ‘possession’ within the meaning of Article 1 of Protocol No. 1 depends, \textit{inter alia}, on whether it gives rise to a reasonable and legitimate expectation of continuing benefits. A licence holder cannot be considered to have such an expectation where the conditions attached to the licence are not or no longer fulfilled.
Where, however, an application is made for the grant of a licence for existing premises and this is refused, there is no economic interest connected with or arising from the running of the premises under a licence, since there is no existing licence or any legitimate expectation to a licence. There may be some existing economic interest in the premises and this may be affected by whether or not the licence is granted, but these interests are neither connected with nor derived from the licence. It seems unlikely therefore that refusal to grant will give rise to any actionable interference.

The position seems to be the same if application is made for a provisional statement under s 29 of the 2003 Act in respect of premises that have not yet been built (or extended or otherwise altered) and this is refused (see 6.8 below). Here there may simply be a right to acquire property rather than the actual existence of property in respect of which there is any existing economic interest. This view might be supported by the decision of the European Commission in Linde v Sweden (1986) 47 DR 270, where it was held that, where the applicant was intending to acquire further gaming machines for which an authorisation for use was required and his application for authorisation was refused, this did not constitute an interference with ‘possessions’ under Art 1. The Commission stated (at 271–72):

the applicant had not at that time [when a request for authorisation was made] acquired the gambling machines to which his request for authorisation related. The Commission considers therefore that the present application only concerns the right to acquire property, a right which is not covered by Article 1 of Protocol 1.

3.6.5 Secondly, there will have to be an interference with the peaceful enjoyment of possessions. According to the ECtHR, in Sporring and Lonnroth v Sweden (1983) 5 EHRR 35, para 61, the provision in Art 1 comprises three distinct rules.

The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property; the second rule, contained in the second sentence of the same paragraph, covers deprivation of possessions and makes it subject to certain conditions; and the third rule, stated in the second paragraph, recognises that contracting states are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not ‘distinct’ in the sense of being unconnected: the second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule ...

3.6.6 The first rule, peaceful enjoyment, is wider than the second and third, which cover only particular forms of interference (deprivation and control of use), and can extend to cases outside these instances.60 In applying this rule, the court, in Sporring and Lonnroth, went on to state (at para 69):

the Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the

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60 See, eg, the Sporring and Lonnroth case itself, where there was a long delay – 23 and 25 years in one case and eight and 12 in the other – between an initial decision that property was likely to be expropriated for redeveloping the city centre in Stockholm and the execution of the decision. This was held to be an interference with peaceful enjoyment of property, even though there was no deprivation of or measure of control over the property.
This principle of ‘fair balance’, which was devised to assess compliance with the first rule, has subsequently been applied to the second and third rules as well and will determine whether there is a deprivation of property in the public interest under the second rule or a control of use in accordance with the general interest under the third rule. All cases have accordingly tended to be decided by reference to ‘fair balance’, irrespective of which of the three rules is identified as having application.

3.6.7 The second rule of deprivation of property has been construed rather narrowly and requires that all legal rights in property be extinguished. If ownership of property remains and there is some ability to use of it, a finding of deprivation is unlikely and the third rule, control of the use of property, will be considered to apply. Revocation of a licence has thus been regarded as a control of use rather than a deprivation (and the same may be true for non-renewal), since the licence holder will still retain rights in the property in respect of which the licence is held. In *Tre Traktörer Aktiebolag v Sweden* (1989) 13 EHRR 309, the ECtHR stated (at para 55):

> Severe though it may have been, the interference at issue [revocation] did not fall within the ambit of the second sentence of the first paragraph [of Article 1]. The applicant company, although it could no longer operate Le Cardinal as a restaurant business, kept some economic interests represented by the leasing of the premises and the property assets contained therein, which it finally sold in June 1984 ... There was accordingly no deprivation of property in terms of Article 1 of the Protocol (P1–1).

If the court, in *Tre Traktörer*, had chosen to regard the licence as a ‘possession’, it would perhaps have been difficult not to regard revocation of the licence as a deprivation of property since all rights would have been extinguished in respect of the licence. Had there been a deprivation, the question of payment of compensation would then have arisen, for the ECtHR has taken the view that a ‘fair balance’ requires the payment of some compensation for deprivation in all but the exceptional case (for example, time of war). There is no such expectation of compensation in the case of control of use; the payment of compensation (or lack if it) may be a relevant factor in such a case, but there can be a fair balance between the community interest and protection of an

61 This reference to the search for balance being inherent in the whole of the Convention needs to be treated with caution, since there are some Convention rights that are absolute. They take the form of a prohibition and no balancing of interests is needed – see, eg, the prohibition on torture in Art 3, mentioned in 3.3.1 above.


63 Deprivation of possessions might occur in other instances, however, eg, where there are powers of forfeiture available in relation to property used in connection with licensing offences. A constable has the power to require the surrender of alcohol from persons under the age of 18, under s 1 of the Confiscation of Alcohol (Young Persons) Act 1997. This provision has been amended by s 155(1) of the 2003 Act so that the power is exercisable in respect of sealed containers, if the constable reasonably believes that the person is, or has been, consuming, or intends to consume, alcohol in any relevant place, ie any public place, other than licensed premises, or any place, other than a public place, to which the person has unlawfully gained access – see 11.7.36 below.

64 *James v UK* (1986) 8 EHRR 123, para 54 (‘the taking of property in the public interest without payment of compensation is treated as justifiable only in exceptional circumstances’).
individual’s rights even where no compensation is payable. Although a justified licence revocation may have been considered an exceptional case, the compensation issue could be avoided if, as in *Tre Traktörer*, economic interests in the licensed premises were regarded as ‘possessions’ (rather than the licence being regarded as a ‘possession’) and revocation was seen as a control of use. It may perhaps have been for this reason that the court in *Tre Traktörer* formulated its decision the way that it did.

3.6.8 The third rule enables States to control the use of property if this is necessary ‘in accordance with the general interest’, and establishing a violation of Art 1 is therefore dependent on showing that controlling the use of property is not in the general interest. In determining this in accordance with the ‘fair balance’ test, the need for controlling the use of property in the general interest for advancing the public good (the purpose of the interference) will have to be balanced against the burden on the individual of the interference and whether the measures taken are proportionate to the aims to be achieved (impact on property rights).

It cannot seriously be disputed that controlling the use of property through licensing the sale of alcohol, the provision of regulated entertainment and late night refreshment facilities does advance the public good and this might be justified on a number of grounds. In *Tre Traktörer*, for example, the Swedish Government’s claim was that its liquor licensing legislation was to implement the long-standing Swedish policy of restricting the consumption and abuse of alcohol (para 56) and the applicants did not contest this. In respect of the licensing provisions under the 2003 Act, the justification is to be found in the four licensing objectives contained in s 4(2), that is prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm (see 4.2 below).

Whilst the use of property might be controlled in accordance with these objectives in the general interest, there might nevertheless be a violation of Art 1 if an excessive...
burden is imposed on the individual and/or the measures taken are disproportionate. In such a case a fair balance would not be struck and factors particularly relevant in determining this would include the terms and conditions under which the use of property is controlled and whether the purpose could be achieved in some other way without interference (or with less interference) with the rights of the individual, that is whether the control of use is proportionate (see 3.4.6 above). Thus, for example, on reviews of premises licences, the licensing authority, under s 52(4), can take various steps depending on what it considers necessary to promote the licensing objectives. These include modifying the conditions of the licence, excluding a licensable activity from the scope of the licence, removing the designated premises supervisor, suspending the licence for a period not exceeding three months or revoking the licence (see 6.12.8 below). Promotion of the objectives might well be achieved without recourse to the ultimate sanction of revocation of the licence, for example curtailment of excessive noise during the early hours of the morning to prevent public nuisance might be achieved by modifying licence conditions to provide for earlier closure or better soundproofing and would not be a disproportionate interference, whereas revocation might be.

3.7 ARTICLE 10: FREEDOM OF EXPRESSION

3.7.1 Article 10 is concerned with freedom of expression and provides as follows:

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

There are, in essence, three rights falling within Art 10(1), the freedoms of expression, of holding opinions, and of receiving and imparting information. These rights are protected from interference, although they are qualified rights because interference is permissible in certain circumstances under Art 10(2). Particular provision is made in respect of these rights by s 12 of the 1998 Act, of which requires, inter alia, that courts must have ‘particular regard to the importance of the Convention right to freedom of expression’.

3.7.2 The rights

3.7.3 Expression

3.7.4 ‘Expression’ for the most part is concerned with the dissemination of information and ideas, irrespective of whether or not they are valueless, useless or
offensive. It most obviously includes words, either spoken or written, but can extend beyond this to include, for example, artistic expression, actions which are expressive and have communicative potential, and also the ‘means/medium’ of communication of forms of expression. Further, ‘expression’ can take several different forms and might be conveyed through a variety of media, including print, radio, television, stage play, film or video. Various forms of regulated entertainment falling within the 2003 Act might therefore fall within the scope of Art 10, notably the performance of plays and exhibitions of films, and perhaps the performance or playing of music.

3.7.5 The right to freedom of expression in respect of these forms of entertainment is qualified by the third sentence in Art 10(1) which provides: ‘This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema.’ This has, however, been regarded as a very limited qualification, applying only in respect of the imposition of a licensing system. Imposition will not, in itself, constitute a violation of Art 10(1) by virtue of this provision, but licensing requirements themselves and decisions made by licensing authorities in accordance with those requirements do not fall within this restriction. They remain subject to the restrictions in Art 10(2) and will have to be justified under that provision; they cannot be justified because of the provision in the third sentence in Art 10(1). As the ECtHR stated in Groppera Radio AG v Switzerland (1990) 12 EHRR 321 (at para 61):

the third sentence of Article 10 § 1 (art 10-1) of the Convention is to make it clear that States are permitted to control by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects. It does not, however, provide that licensing measures shall not otherwise be subject to the requirements of paragraph 2 (art 10-2), for that would lead to a result contrary to the object and purpose of Article 10 (art 10) taken as a whole.

68 Handyside v UK (1979) EHRR 737, para 49. (‘Freedom of expressions constitutes one of the essential foundations of a [democratic] society, one of the basic conditions for its progress and for the development of [e]very man. Subject to paragraph 2 of the Article 10, it is applicable not only to “information” and “ideas” which are favourably received or regarded as inoffensive but also to those that offend, shock, or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society”.’) Freedom of expression is thus seen as the bedrock of the liberal–democratic form of society that the Convention is concerned with safeguarding, a society in which there is both respect and tolerance for divergent views and where disagreement, even on fundamental issues, is regarded as healthy and meriting protection.

69 Müller v Switzerland (1988) 13 EHRR 212, para 27 (where it was stated that artistic expression ‘affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds’).

70 Steel v UK (1999) 28 EHRR 603, para 92. (‘It is true that these [anti-road building] protests took the form of physically impeding the activities of which the applicants disapproved, but the court considers nonetheless that they constituted expressions of opinion within the meaning of Article 10.’) Acts such as those in this case are expressive in the sense that they allow people to identify themselves with a set of views or values.

71 Autronic AG v Switzerland (1990) 12 EHRR 485, para 47. (‘Article 10 (art 10) applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information.’)

72 It seems not to have decided whether ‘expression’ includes music, although it is thought that it will do so.
3.7.6 Opinions

Article 10(1) provides that the right to freedom of expression includes ‘freedom to hold opinions’. Thus, action by the State that in some way penalises people for ‘holding opinions’, as distinct from ‘expressing’ them, engages Art 10.73

3.7.7 Receive and impart information

Article 10(1) also includes the right to ‘receive and impart information’. The ECtHR has indicated in several cases, for example Sunday Times v UK (1979) 2 EHRR 245, that there is separate protection both for the right to receive and for the right to impart information. A person’s right to receive information does not, however, equate to a right of access to all information generally, but rather it applies in respect of information that others may wish to impart to him. In Leander v Sweden (1987) 9 EHRR 433, para 74, the ECtHR stated:

The Court observes that the right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 (art 10) does not, in circumstances such as those of the present case, confer on the individual a right of access to a register containing information on his personal position, nor does it embody an obligation on the Government to impart such information to the individual.74

3.7.8 Interference

In deciding whether there is an interference with the above rights much will depend on the nature of the interference and, in particular, whether there is pre-publication interference (that is ‘prior restraint’) or post-publication interference, and whether the interference is ‘direct’ or ‘indirect’.

3.7.9 Prior restraint or post-publication interference

3.7.10 Prior restraint is more likely to give rise to a violation of Art 10(1) – as the ECtHR observed in Wingrove v UK (1997) 24 EHRR 1, para 58, ‘prior restraint calls for special scrutiny by the Court’ – since it deprives a person entirely of any opportunity to air his views and deprives society of the opportunity of judging for itself whether the expression merits condemnation. It is generally thought to be more serious than penalising expression after the event, certainly where prior restraint prevents publication permanently as distinct from deferring it for a short time, for example pending trial of an action. Prior restraint operates in respect of some, but not all, forms of media. Generally, it is the visual media that is subject to prior restraint and the print media that is subject to post-publication interference. Thus broadcasts, films and videos are subject to licensing and/or classification regimes, which restrict what can be shown, whereas books, magazines and newspapers are not. The rationale seems to be that something that has a visual impact is more likely to cause harm and therefore a

73 Vogt v Germany (1995) 21 EHRR 205 (teacher dismissed from post because of membership of, and acting as prospective parliamentary candidate for, the German Communist Party).
74 There may, however, be circumstances where the court is willing to find that a person is entitled to information in certain situations, eg, to protect Art 8 rights of privacy, as in Gaskin v UK (1989) 12 EHRR 36 (access to files relating to childhood in care).
stricter regime is justified. The theatre proves an exception to this generalisation since it is a visual media, but not subject to prior restraint in respect of what can be shown. Although licensing control over stage plays has been exercised by local authorities since it was vested in them by the Theatres Act 1968, s 1(2) of that Act made it clear that authorities could not impose conditions as to the nature of the plays or the manner of performance (except insofar as conditions were necessary in the interests of matters such as safety). This continues to be the position under the 2003 Act.

3.7.11 Films, also subject to licensing control by local authorities, can, however, be subject to prior restraint in respect of what can be shown. This might be prior restraint by the British Board of Film Classification or by the local authority. The Board, a self-censoring body established by the film industry in 1912, issues age related classification certificates (‘U’ for universal; ‘PG’ for parental guidance; ‘12’; ‘12A’, for viewing by unaccompanied persons aged 12 years or older or younger persons accompanied by an adult; ‘15’; ‘18’; and ‘R18’ for restricted viewing) and was set up when local authorities were given the power by the Cinematograph Act 1909 to licence films shown in their area. Since the Board’s establishment, local authorities, when granting licences for film exhibitions, have usually imposed a condition to the effect that films exhibited must have a certificate from the Board. The courts have upheld the validity of such a condition, provided authorities use the Board only as an advisory body and retain the power to reject the Board’s views when considering licence applications. Thus local authorities themselves might restrict what can be shown, by refusing to issue a licence for films granted a certificate, and some authorities on occasions have done so. The position is essentially unchanged under the 2003 Act and this may well continue to be the case.

75 Historically, the theatre was subject to prior restraint since a licence for stage plays was required from the Lord Chamberlain, who exercised powers of censorship over plays – see 1.3.2 above. The Lord Chamberlain’s powers of censorship were abolished by the Theatres Act 1968 and plays were thereafter subject to post-publication control via the criminal law, eg, the Act provided an offence of presenting or directing performances that were obscene (s 1) or which used threatening, abusive or insulting words or behaviour, with intent to or likelihood of occasioning a breach of the peace (s 6). A possible explanation of why the theatre may not be subject to prior restraint is that ‘theatre audiences are more sophisticated and less likely to be affected by what they have seen that cinema audiences’: Fenwick, H, Civil Liberties and Human Rights, 3rd edn, 2002, London: Cavendish Publishing, p 277.

76 See s 22 for premises licences and s 76 for club premises certificates, and 6.4.6 and 8.4.3 below. The provision of ‘regulated entertainment’ is one of the licensable activities under the 2003 Act and the performance of a play falls within the meaning of this term – see Sched 1, para 2(1)(a); and 5.3.19 and 5.3.21 below.

77 The aim seems to have been to achieve a degree of uniformity in decision-making by the licensing authorities. The Board can require cuts to be made in films before issuing a certificate or can refuse a certificate.

78 Ellis v Dubowski [1921] 3 KB 621.

79 Notable examples of films banned by some authorities include A Clockwork Orange, The Life of Brian and Crash. Conversely, authorities might grant a licence for films even though they have no certificate, eg, the Greater London Council granted a licence for More about the Language of Love, although the film had been refused a certificate by the Board (see R v Greater London Council ex p Blackburn [1976] 1 WLR 550).

80 The power of licensing authorities, under the 2003 Act, to restrict what can be shown is, however, more limited than under previous law contained in the Cinemas Act 1985. Section 4(1) of the 2003 Act requires authorities, when carrying out their functions under the Act, to do so with a view to promoting the licensing objectives, but there was no such requirement under the 1985 Act. The imposition of age-related classifications of films will fall within the licensing objectives, since one of these is the protection of children from harm (s 4(2)(d)), but restrictions on adults through the banning of films, as in the case of those mentioned in the preceding footnote, may not fall within the objectives.
Since the exhibition of films involves prior restraint, any restrictions imposed are more likely to be regarded as constituting an interference with freedom of expression, not least since films are more heavily censored in England and Wales than in other European jurisdictions. This is due, at least in part, to the nature and composition of the Board as a classification authority. As a film industry body, the Board’s decisions are influenced more by commercial considerations – the need to find the widest audience, which may require cuts to a film to secure a ‘15’ classification – than by artistic ones. This may mean that decisions by the Board, and by local authorities whose licensing decisions follow the Board’s classification, impinge on the creative freedom of film makers and might thereby involve an interference with their Art 10 rights.

3.7.12 Direct or indirect interference

3.7.13 The most obvious form of interference with expression under Art 10(1) is direct interference, where some action is taken that expressly affects a person’s rights. However, interference is not restricted to such circumstances. It can be indirect and this might arise in one of two ways. First, the interference may be a consequence of some other action taken. This could occur under the 2003 Act where, for example, a licensing authority imposes a condition on a premises licence, which has the indirect effect of restricting a person’s ability to carry on an artistic or musical performance at the premises to which the licence relates. Whether this will constitute an interference will, it seems, depend on the extent of the impact resulting from the other action taken and the intention with which the action is pursued. Secondly, there may be inaction of some sort that either itself affects a person’s freedom of expression or results in a third party doing something that affects a person’s freedom of expression. The use of the words ‘without interference by public authority’ in Art 10(1) seems to suggest that the public authority must do something in order to interfere and that interference can only be by a public authority. However the ECtHR has taken the view that Art 10 is not so restricted in scope and has held that ‘positive obligations’ can be imposed to take action to protect freedom of expression. Thus Art 10 is seen as concerned not only with negative prohibitions, that is with precluding the doing of anything that interferes with expression, but also as encompassing positive duties to take action to protect expression.

For a statement to this effect in relation to freedom of assembly under Art 11, which it is generally accepted will have equal application in respect of Art 10, see Plattform ‘Ärzte für das Leben’ v Austria (1988) 13 EHRR 204. ('Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art 11) ... Article 11 (art 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.')

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81 This example was given in Note 49 of the Explanatory Notes accompanying the Licensing Bill when it was published.
82 *Piermont v France* (1995) 20 EHRR 301. (A German MEP, following exclusion from one French overseas territory, French Polynesia, after participation in a pro-independence and anti-nuclear demonstration, was subsequently admitted to another French overseas territory, New Caledonia, but detained at the airport following a demonstration and was issued with an exclusion order. A consequence of the detention was that she was unable to express her views and this was held to constitute an interference with her freedom of expression: ‘The exclusion order ... amounted to an interference with the exercise of the right secured by Article 10 as, having been detained at the airport, the applicant had not been able to come into contact with the politicians who had invited her or to express her ideas on the spot’ (para 81). There was accordingly an interference and, on the facts of the case, this was held not to be justified.)
83 For a statement to this effect in relation to freedom of assembly under Art 11, which it is generally accepted will have equal application in respect of Art 10, see Plattform ‘Ärzte für das Leben’ v Austria (1988) 13 EHRR 204. ('Genuine, effective freedom of peaceful assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere: a purely negative conception would not be compatible with the object and purpose of Article 11 (art 11) ... Article 11 (art 11) sometimes requires positive measures to be taken, even in the sphere of relations between individuals, if need be.')
3.7.14 The extent to which action may need to be taken, however, is difficult to state with any degree of precision. It may be that the requirement extends only to taking action to prevent interference which would ‘strike at the very substance’ of the freedom and that there is no responsibility for actions of other persons that only indirectly affect or only partly affect expression. This seems to follow from the European Commission’s decision in Rommelfanger v Germany (1989) 62 DR 151, a case involving a doctor’s dismissal from employment in a Catholic hospital for expressing in the press an opinion on abortion that was not in conformity with the position of the Church. When considering a claim by the doctor that there had been indirect State interference in that the German courts had failed to protect his freedom of expression against the sanction of dismissal, the Commission stated (pp 160–61):

It is true that under Article 1 of the Convention the State is required to ‘secure’ the Convention rights to everyone within its jurisdiction. In certain cases it may therefore be necessary for the State to take positive action with a view to effectively securing these rights … [however] German law takes account of the necessity to secure an employee’s freedom of expression against unreasonable demands of his employer, even if they should result from a valid employment contract … As regards employers such as the Catholic foundation which employed the applicant in its hospital, the law in any event ensures that there is a reasonable relationship between the measures affecting freedom of expression and the nature of the employment as well as the importance of the issue for the employer. In this way it protects an employee against compulsion in matters of freedom of expression which would strike at the very substance of this freedom … The Commission considers that Article 10 of the Convention does not, in cases like the present one, impose a positive obligation on the State to provide protection beyond this standard.

The Commission accordingly held that there had not been interference with the applicant’s right to freedom of expression under Art 10 nor a failure to comply with positive obligations resulting from that provision.

3.7.15 Permissible interference

Once it is established (or accepted) that there has been an interference with the right in Art 10(1) to freedom of expression, there is then an obligation to justify that interference by reference to the tests set out in Art 10(2):

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

In order to justify the interference, it must first be established that the interference is ‘prescribed by law’, secondly that it is ‘necessary in a democratic society’, and thirdly that it is necessary in accordance with one of the various interests specified in Art 10(2) (national security, territorial integrity, etc).
3.7.16 Prescribed by law

3.7.17 As regards the ‘prescribed by law’ requirement, there will have to be a legal basis, whether at common law or by statute, for constraints on freedom and the legal constraints will have to be both accessible and sufficiently precise.84 There may not be accessibility, for example, if there are unpublished guidelines to which a person does not have access85 and there may be a lack of precision in the relevant law if it allows, or leads to, arbitrary interferences with the right to freedom of expression that are not capable of being subject to effective control or restraint. However, the fact that the law is ambiguous, or to some degree indeterminate, will not necessarily mean that it breaches the ‘prescribed by law’ requirement. All laws are to some extent vague and subject to interpretation, more so in some areas than others, and this has been acknowledged by the ECtHR. ‘The Court recognises’, it was stated in Wingrove v UK (1997) 24 EHRR 1, para 42, ‘that the offence of blasphemy cannot by its very nature lend itself to precise legal definition’ and similarly in Müller v Switzerland (1988) 13 EHRR 212, para 29, the court observed that it was not possible, in the case of obscenity laws, for them to be framed with ‘absolute precision’.

3.7.18 The precise nature of the legal action or legal consequences need not be known and, provided it is foreseeable that legal action of some kind may be taken, this will meet the ‘prescribed by law’ requirement. Thus in Open Door Counselling and Dublin Well Woman v Ireland (1992) 15 EHRR 244, the provision of abortion advice was prohibited by injunctions by the State issued pursuant to a recently included constitutional amendment that provided as follows:

The state acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.

No such injunction had been issued before, and the meaning and legal consequences of this provision had not previously been the subject of interpretation by the Irish courts. It was not therefore known how the State might, through its laws, guarantee respect for the right to life of the unborn. However, the ECtHR held that the applicants could foresee, from the general high threshold of protection afforded by the Irish Constitution to the ‘unborn’, that their actions might have given rise to official action on the State’s part to stop the provision of abortion advice, even if they could not foresee exactly the form (that is, State injunctions) that action would take.

3.7.19 The licensing provisions in the 2003 Act, as enacted, seem likely to meet the ‘prescribed by law’ test. Under s 4(1), licensing authorities must carry out their functions under the Act with a view to promoting the licensing objectives specified in s 4(2) and this should preclude arbitrary interferences with the right to freedom of

84 See Sunday Times v UK (1979) 2 EHRR 245, para 49 of the majority judgment: ‘(1) the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case; (2) a norm cannot be regarded as law unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail’.

85 See Khan v UK (2001) 31 EHRR 45 (an Art 8 right to privacy case concerning Home Office Guidelines on the use of covert listening devices which were not legally binding nor directly publicly accessible).
expression. In carrying out their functions, licensing authorities must, under s 4(3), have regard to their Statement of Licensing Policy, which under s 5 they are required to draw up and publish, and to any guidance issued by the Secretary of State under s 182. Since the Statement of Licensing Policy and the Guidance will both be publicly available, this should ensure compliance with the requirement of accessibility. Less clear is whether such Statements and Guidance, to which licensing authorities will have regard when determining applications, will preclude arbitrary interferences with the right to freedom of expression. Much will depend upon their nature and content and the manner in which it is taken into account.

3.7.20 Necessary in a democratic society

Secondly, it must be established that the interference is ‘necessary in a democratic society’, which will be the case if there is a ‘pressing social need’ for the interference. This involves examining the nature and impact of the particular interference in question, in the light of the (legitimate) aim that, it is claimed, necessitates interfering with the right to freedom of expression. This will be a question of fact in the circumstances of each individual case. In determining what is necessary in a democratic society, the question is not one of balancing competing interests, but rather regarding freedom of expression as paramount, with only compelling arguments sufficient to justify the interference. As the ECtHR observed in *Sunday Times v UK* (1979) 2 EHRR 245, para 65:

> The Court is faced not with a choice between two conflicting principles but with a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted.

As regards the 2003 Act, the Joint Committee on Human Rights (JCHR) has accepted that there is a pressing social need for regulation:

> The licensing regime serves legitimate aims, namely the protection of public safety, the protection of the rights of others, and the prevention of crime and disorder. It is legitimate to say that there is a pressing social need for regulation.86

Nevertheless, the JCHR had reservations about whether extending the licensing regime to performances of live music at all venues could be justified under Art 10(2):

> we consider that the proposed blanket requirement for all premises to be licensed before any live performance takes place in them, regardless of whether there is a real risk of noise or nuisance, the nature of the performance, the nature of the premises, or the number of performers and spectators, is somewhat heavy-handed ... Because the licensing regime would apply generally to live performances, without regard to the circumstances in particular cases, we are not satisfied that the proposed system of entertainment licensing as a whole is a proportionate response to a pressing social need to regulate public performances, as ECHR Article 10.2 requires.87

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The Government’s response of making exemptions from the need to obtain a licence (see 5.3.33–5.3.43 below) and for fee exemptions for premises such as parish or community halls (see 6.3.1 below) went some way towards making the licensing regime more responsive to the requirements of Art 10, although not to the satisfaction of the JCHR, which stated in its Twelfth Report:

We take the view that there is a significant risk that the proposed system of exemptions from the licensing requirements and from the applicable fees as currently set out in the Licensing Bill might … leave a patchwork of different licensing requirements without a coherent rationale, calling in question the existence of a pressing social need for the restriction on freedom of expression through a licensing regime for public entertainment, and so undermining the Government’s claim that such a licensing regime is a justifiable interference with the right to freedom of expression under ECHR Article 10.2.88

The Government’s response was to sidestep the issue of a incoherent patchwork of different licensing requirements in favour of emphasising increased protection for Art 10 rights on account of the deregulatory nature of the legislation:

far from being more restrictive than the current system of regulation, the Bill will generally lead to a greater promotion of Article 10 rights. When compared with the current system of regulation, the new system is streamlined, coherent, cheap and simple and, if industry makes full use of the reforms, should encourage a significant opening up of the opportunities for performing a huge variety of regulated entertainment.

This is not an area of law where we are moving from non-regulation to regulation and, generally speaking, what the Bill requires to be licensed in any event already requires a licence under current law. In terms of its general impact, the Bill will therefore not present increased regulation …89

Indeed, during the latter stages of the legislation’s passage, the patchwork became more pronounced as further exemptions and restrictions, for example for morris dancing and for small premises, were introduced.90 Whilst doubts may remain as to the compatibility of the legislation with Art 10, it is nevertheless open to Parliament to enact legislation which is incompatible with Convention rights, a point remarked upon by the JCHR,91 and it may be that it has done so in this case.

88 Op cit, JCHR, Seventh Report, fn 86, para 3.4.
89 JCHR, Fifteenth Report of 2002–03, Scrutiny of Bills: Further Progress Report, HL Paper 149, HC 1005 (Fifteenth Report), App 2 (Letter to the Committee’s Chairman from Richard Caborn, Minister for Sport, Department of Culture, Media and Sport).
90 See Sched 1, para 11 and s 177; and 5.3.41 and 7.5 below respectively. The JCHR made no comment on these exemptions, noting only that the morris dancing exemption was one ‘which, some correspondents feared, was discriminatory and did not accord with the principles underlying the Bill as a whole’ (Fifteenth Report, para 5.5, note 40).
91 ‘A large number of correspondents wrote to us just prior to the Commons’ consideration of Lords Amendments to the Licensing Bill on 8 July, arguing the case for further intervention before the Bill became law … A number of these were under the misapprehension that the Government would be required to make a “section 19 statement” on the face of the Act, guaranteeing compliance with Convention rights. In fact, of course, the Human Rights Act expressly preserves the right of Parliament to legislate as it thinks fit, having due regard to Convention rights, and to the opinion of the Minister on these matters, which is stated only when a Bill is first introduced into either House. In the case of the Licensing Act, Parliament has now legislated’ (Fifteenth Report, para 5.5).
3.7.21 Necessary in accordance with a specified interest

3.7.22 Thirdly, the interference has to be necessary in accordance with one of the specified interests in Art 10(2) and the exceptions will need to relate to one or other of these interests. Some of these will have application in respect of licensing decisions under the 2003 Act. As was recognised in the Explanatory Notes accompanying the Licensing Bill when it was published, a condition imposed on a premises licence that may involve a restriction on a person’s ability to carry on an artistic or musical performance at the licensed premises would be an interference with his freedom of expression, but this may be justified as necessary in accordance with various interests under Art 10(2):

given that a licensing authority may act only so far as is necessary to promote any of the licensable activities, it is considered that any such restriction will be justified under Article 10(2) as necessary in a democratic society in the interests of public safety, for the prevention of disorder or crime, or for the protection of health and morals or for the protection of the rights of others.92

Whether a particular interference will be justified in the light of these interests will involve an examination of various matters including, first, the ‘expression’ in question, secondly, the form of the interference, and thirdly, the reasons offered and evidence adduced in support of the interference.

3.7.23 The expression

On the first matter, although protection is afforded to a wide range of expression (see 3.7.4 above), not all types of expression are considered to be of the same value or worth. Therefore a decision as to whether interference with expression in any given instance is justified by reference to being necessary in a democratic society will often involve arriving at a view about the importance of the particular type of expression in question, considering at whom it is aimed, and considering its impact or effect. Different types of expression might be accorded different weight or value and in this respect the ECtHR has, in broad terms, drawn a distinction between three categories of expression – political expression, artistic expression and commercial expression. Political expression, especially the freedom of the press to impart information and ideas on political issues, is highly regarded and seen as essential to the proper working of democracy.93 Such expression has been robustly protected by the ECtHR and interference with it has proved difficult to justify under Art 10(2). Artistic or commercial expression, in contrast, is less important in the democratic process – it is

92 Explanatory Note 49. The reference to protection of health or morals would seem to be confined to children, as far as the 2003 Act is concerned, in order to fall within the licensing objectives – see s 4(1) and 4.1.1 below. The reference to protection of the rights of others will include the licensing objective of prevention of public nuisance.

93 Lingens v Austria (1986) 8 EHRR 103, para 41. (‘These principles [of freedom of expression] are of particular importance as far as the press is concerned. Whilst the press must not overstep the bounds set, inter alia, for the “protection of the reputation of others”, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them ...’) As Lord Steyn has stated, in R v Secretary of State for the Home Department ex p Simms [1999] 3 All ER 400, 408, ‘freedom of speech is the lifeblood of democracy’.
supported more by the values of individual autonomy and self-development than self-government – and seems to have been accorded a lesser level of protection. In *X and Church of Scientology v Sweden* (1979) 16 DR 68, the European Commission found that commercial speech was protected by Art 10, but that a lower level of protection should be afforded than for the expression of political ideas. The Commission stated (at 73):

It emerges from the case law of the Convention organs that the ‘necessity’ test cannot be applied in absolute terms, but required the assessment of various factors. Such factors include the nature of the right involved, the degree of interference ie whether it was proportionate to the legitimate aim pursued, the nature of the public interest and the degree to which it required protection in the circumstances of the case.

In considering this question the Commission again attaches significance to the fact that the ‘ideas’ were expressed in a commercial advertisement. Although the Commission is not of the opinion that commercial ‘speech’ as such is outside the protection conferred by Article 10(1) it considers that the level of protection must be less than that accorded to the expression of ‘political’ ideas in the broadest sense, with which the values underpinning the concept of freedom of expression in the Convention are chiefly concerned …

Moreover the Commission has had regard to the fact that most European countries that have ratified the Convention have legislation which restricts the free flow of commercial ‘ideas’ in the interests of protecting consumers from misleading or deceptive practices. Taking both these observations into account the Commission considers that the test of ‘necessity’ in the second paragraph of Article 10 should therefore be a less strict one when applied to restraints imposed on commercial ‘ideas’.

This less strict test has been evident by the fact that the ECtHR seems to have been more willing to find interferences with artistic or commercial expression to be justified.94

The same type of interference thus may or may not be justified, depending on the form of expression involved. Where film exhibitions are authorised under a premises licence or club premises certificate under the 2003 Act, a mandatory condition is attached to the licence or certificate requiring that the admission of children be restricted (see 6.4.4 below). In preventing children of certain ages being admitted to the exhibition, this might interfere with the freedom of expression of the film maker. If the film is of a political nature and involves interference with political expression, this may well be seen as not justified under Art 10(2). If, on the other hand, the film is sexually explicit and interference is only with artistic or commercial expression, this may perhaps be justified, or at least more easily justified, under Art 10(2).

### 3.7.24 Form of the interference

On the second matter, the form of the interference, it will need to be shown that this is proportionate to the legitimate aim that it is claimed necessitates the interference. It is not sufficient that there is a ‘pressing social need’ for the interference, for it needs to be

94 See, eg, *Müller v Switzerland* (1988) 13 EHRR 212 (paintings containing sexual material) and *Otto-Preminger Institut v Austria* (1994) 19 EHRR 34 (blasphemous film), where no violation of Art 10(1) was found and where the ECtHR placed particular emphasis on the Art 10(2) justifications. Conditions imposed on a premises licence may interfere with artistic expression by restricting a person’s ability to carry on an artistic or musical performance at the licensed premises – see 3.7.22 above – but such interference may be found to be justified under Art 10(2).
shown that the interference is proportionate to that need. This will involve an examination of the extent of the interference and the consequences of it. Therefore, if the interference goes too far and its extent is greater than necessary, it may be considered disproportionate. Thus, for example, in *Sunday Times v UK* (1979) 2 EHRR 245, an injunction issued pursuant to a rule of law banning any discussion at all of an ongoing case was regarded as going too far because it failed to leave room for discussion to take place when issues of public importance arose. In contrast, in *Ahmed and Others v UK* (1998) 29 EHRR 1, a restriction on political expression of local government employees that was specifically confined to the top three levels of local authority employees, who were engaged in political sensitive roles, and where provision was made in respect of levels two and three for exemption from the rule in individual cases was considered proportionate. Under the 2003 Act, although there is a ‘pressing social need’ for interference (see 3.7.20 above), doubts may arise as to whether interference is proportionate in relation to the provision of regulated entertainment, given that there is an exemption under para 9 of Sched 1 where this is provided in places of worship, but not in secular venues (see 5.3.39 below). If interference is not necessary in respect of places of public worship, and the exemption indicates that it is not, it may not be necessary in respect of secular venues so the extent of the interference may be greater than necessary. This might give rise to a violation of Art 10(1), as the restriction may not be justified under Art 10(2), and also to a violation of Art 14 on the basis of discrimination on the ground of religion (see 3.9 below).

Similarly, if the consequences of the interference are particularly serious and less onerous means are available to achieve the same objective, it may be considered disproportionate. In *Castells v Spain* (1992) 14 EHRR 445, for example, the Government could have used the media and press to defend itself against allegations made against it without having to resort to criminal sanctions. Such a situation might arise in a licensing context if, for instance, premises were frequented by children and an applicant for a premises licence wished to provide adult entertainment in a part of the premises. If representations were received and the application rejected, this may be disproportionate, as the legitimate aim of the interference, protection of children from (moral) harm, might be achieved by granting the application and imposing conditions which would prevent children being exposed to such activities.

**3.7.25 Reasons offered and evidence adduced in support of interference**

On the third matter, the reasons offered and evidence adduced in support of the interference will have to be ‘relevant and sufficient’ in the particular case. If this is not the case, then the interference will not be justified under Art 10(2). Thus in *Autronic AG v Switzerland* (1990) 12 EHRR 485, for example, the State argued that a satellite dish could pick up uncoded confidential messages, but failed to demonstrate that it could do so. Similarly, in *Observer & Guardian Newspapers v UK* (1992) 14 EHRR 153, the State failed to sustain its argument for the need to suppress a particular publication (*Spycatcher*) dealing with the Security Services and written by a former employee (Peter Wright) when the material had already been published elsewhere and was

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95 Article 10(2) refers to the protection of morals as justifying restriction (see 3.7.15 above) and protection of the morals of children may accord with promoting the licensing objective of protection of children from harm under s 4(2) of the 2003 Act, since, according to para 7.48 of the Guidance, ‘harm’ includes moral harm – see 4.2.14 below.
available in the public domain. In the context of the 2003 Act, this means that evidence will be needed to substantiate restrictions imposed in accordance with the licensing objectives and reasons given as to why the restrictions were necessary to promote the particular objective(s).

3.7.26 ‘Particular regard’ to the Convention right of freedom of expression

3.7.27 Section 12 of the 1998 Act provides as follows:

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (‘the respondent’) is neither present nor represented, no such relief is to be granted unless the court is satisfied–
   (a) that the applicant has taken all practicable steps to notify the respondent; or
   (b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to–
   (a) the extent to which–
      (i) the material has, or is about to, become available to the public; or
      (ii) it is, or would be, in the public interest for the material to be published;
   (b) any relevant privacy code.

(5) In this section–
   (a) ‘court’ includes a tribunal; and
   (b) ‘relief’ includes any remedy or order (other than in criminal proceedings).

3.7.28 The meaning or impact of this provision is presently unclear. One view is that this provision does no more than merely give effect to the positive obligations required by Art 10. First, it makes provision for a regulated process, overseen by a court, to ensure that, where some sort of prior restraint is sought in respect of a publication, the right to freedom of expression is given proper and due consideration, as is required by the Convention. Secondly, it recognises and makes explicit the importance of particular media of expression, for example, journalistic material, which accords with ECtHR case law. A different view is that this provision, particularly s 12(4), attempts to give freedom of expression an exalted status compared to other Convention rights, so that it may (perhaps) take priority or be given prominence over competing rights such as the right to private and family life under Art 8 (see 3.8 below). The courts have not yet decided between these competing interpretations of s 12, although to the extent that the matter has been considered judicial opinion seems to be in favour of the former view. Thus in Ashdown v Telegraph Group Ltd [2001] Ch 685, para 34, Sir Andrew Morritt VC stated:
It is submitted that the phrase ‘must have particular regard to’ indicates that the court should place extra weight on the matters to which the subsection refers. I do not so read it. Rather it points to the need for the court to consider the matters to which the subsection refers specifically and separately from other relevant considerations.

On this view, it would seem that s 12 is simply concerned with providing a procedure in order to comply with the obligations set out in Art 10 of the Convention. If this is correct, then licensing authorities, when discharging their functions under the 2003 Act, should pay no greater regard to the right to freedom of expression than to any other Convention right.

3.8 ARTICLE 8: PROTECTION OF PRIVATE AND FAMILY LIFE

3.8.1 Article 8 is concerned with protection of private and family life and provides as follows:

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society for public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedoms of others.

3.8.2 The primary importance and object of Art 8 is to afford protection from arbitrary interference and direct intrusions into private and family life by State agencies, for example through searches, seizures and surveillance. Such interference could arise in respect of the exercise of inspection and search powers under the 2003 Act. Constables and authorised persons, for example licensing officers, have the power under s 59 to enter and inspect premises, before determination of an application for a premises licence, to assess the likely effect of the grant of the application on the promotion of the licensing objectives (see 6.14 below) and under s 179, if they have reason to believe that premises are being, or are about to be, used for a licensable activity, to see whether the activity is being, or is to be, carried on under and in accordance with an authorisation (see 11.15.1 below). Further, constables have a power, under s 180, to enter and search premises, and to use reasonable force if necessary, where they have reason to believe an offence under the Act has been, is being or is about to be committed (see 11.16 below). Powers might be exercised in respect of premises in which licensable activities are provided, but which also constitute a person’s home, as in the case of premises where there is live-in accommodation, and in such a case the right to respect for private and family life under Art 8 will arise.

Lack of respect for private and family life is not confined to such cases and Art 8 protection also extends to a person’s enjoyment of amenities and the quality of life in respect of his home. The general principles applied by the ECtHR have recently been set out in Moreno Gómez v Spain (2004) Application No 4143/02, 16 November 2004 (at para 35):

Article 8 of the Convention protects the individual’s right to respect for his private and family life, his home and his correspondence. A home will usually be the place, the physically defined area, where private and family life develops. The individual has a right to respect for his home, meaning not just the right to the actual physical area, but also to the quiet enjoyment of that area. Breaches of the right to respect of the home are
not confined to concrete or physical breaches, such as unauthorised entry into a person’s home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious breach may result in the breach of a person’s right to respect for his home if it prevents him from enjoying the amenities of his home.

There will undoubtedly be a measure of interference with private and family life from licensable activities taking place under authorisations (premises licences, CPCs and TENs) under the 2003 Act. Interference may take a variety of forms, prominent amongst which will be noise. Whilst this may engage Art 8 protection, proper regulation by the authorities will not involve a violation of the right. This will either be because respect has been shown for the right under Art 8(1) or because interference can be justified as necessary in a democratic society on one of the grounds mentioned in Art 8(2), for example the protection of the rights and freedoms of others, namely, those who wish to attend the licensable activities. Determining whether respect has been shown or whether interference might be justified will involve balancing competing interests – a fair balance has to be struck between the competing interests of the individual and of the community as a whole. If the balance is in favour of protection of the individual, the fact that interference may result from the actions of other individuals rather than from any direct interference by the licensing authority itself will not prevent an Art 8 claim from succeeding. The ECtHR, in Moreno Gómez, rejected the Spanish Government’s contention that noise from discotheques and nightclubs came from private activities and consequently there had not been direct interference by the public authority in the right to respect for the home and private and family life. The ECtHR stated (at para 55):

> Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it may involve the authorities’ adopting measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves … Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants’ rights under paragraph 1 of Article 8 or in terms of an interference by a public authority to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole.

3.8.3 It can be seen, from the first quotation from Moreno Gómez in the previous paragraph, that a ‘serious breach’ is needed if there is to be a violation of Art 8 and the court in that case was of the view that there had been. In this case the applicant lived in a flat in a residential quarter of Valencia and over a number of years the City Council allowed an increasing number of licensed premises, such as bars, pubs and discotheques, to open in the vicinity of her home, making it impossible for people living in the area to sleep. Various attempts were made by the City Council to deal with the problem of noise, including passing a resolution in 1983 not to permit any more night clubs to open in the area (although the resolution was never implemented and new licences were granted) and designating the area an ‘acoustically saturated zone’ under a bylaw introduced in 1996. In such zones there was a limit on external noise

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96 These are defined by Art 30 of the bylaw as ‘areas in which the large number of establishments, activity of the people frequenting them and passing traffic expose local residents to high noise levels and cause them serious disturbance’ – see para 15 of the court’s judgment.
levels and a ban on new activities, such as nightclubs and discotheques, that had led to
the acoustic saturation but, notwithstanding this, the City Council almost immediately
granted a licence (subsequently declared by a court to be invalid) for a discotheque to
be opened in the building in which the applicant lived. After unsuccessful court
proceedings for violation of her constitutional rights to life, physical and mental
integrity, privacy and the inviolability of the home,\(^97\) the applicant alleged a breach of
her right to respect for her home contrary to Art 8 of the Convention.

In upholding the applicant’s claim, the ECtHR rejected the Spanish Government’s
contention that the noise came from private activities and there had been no direct
interference by the public authority in the right to respect for private and family life
(see 3.8.2 above), indicating (at para 56) that the case ‘does not concern interference by
public authorities with the right to respect for the home, but their failure to take action
to put a stop to third-party breaches of the right relied on by the applicant’. Further
contentions that the applicant had failed to establish that she had been exposed to
noise inside her home emanating from night-time disturbances and that, in any event,
Art 8 protection was restricted to the home and could not apply when the subject
matter of the complaint was a nuisance outside the home were also rejected.

With regard to the contention that the applicant had failed to establish noise levels
inside her home, the ECtHR stated (at para 59):

The Court considers that it would be unduly formalistic to require such evidence in
the instant case, as the City authorities have already designated the area in which the
applicant lives an acoustically saturated zone, which … means an area in which local
residents are exposed to high noise levels which cause them serious disturbance … In
the present case, the fact that the maximum permitted noise levels have been exceeded
has been confirmed on a number of occasions by council staff … Consequently, there
appears to be no need to require a person from an acoustically saturated zone such as
the one in which the applicant lives to adduce evidence of a fact of which the
municipal authority is already officially aware.

With regard to the contention that Art 8 protection was restricted to the home, the
ECtHR stated (at para 53):

The individual has a right to respect for his home, meaning not just the right to the
actual physical area, but also to the quiet enjoyment of that area. Breaches of the right
to respect of the home are not confined to concrete or physical breaches, such as
unauthorised entry into a person’s home, but also include those that are not concrete
or physical, such as noise, emissions, smells or other forms of interference.

The applicant was consequently entitled to the protection of Art 8 and the court found
that there had been a breach of the rights protected in view of the volume of noise,
which was at night and beyond permitted levels, and the fact that it continued over a
number of years. The ECtHR stated (at para 61) that:

Although the Valencia City Council has used its powers in this sphere to adopt
measures (such as the bylaw concerning noise and vibrations) which should in
principle have been adequate to secure respect for the guaranteed rights, it tolerated,
and thus contributed to, the repeated flouting of the rules which it itself had

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\(^97\) The applicant’s case was dismissed because she had failed to satisfy the test that ‘the level of
acoustic saturation to which a person is exposed as a result of an act or omission of a public
authority causes serious and immediate damage to his or her health’ and she was held not to
have established a direct link between the noise and the damage she had sustained – see
paras 20–40 of the court’s judgment.
established during the period concerned. Regulations to protect guaranteed rights serve little purpose if they are not duly enforced and the Court must reiterate that the Convention is intended to protect effective rights, not illusory ones. The facts show that the applicant suffered a serious infringement of her right to respect for her home as a result of the authorities’ failure to take action to deal with the night-time disturbances.

There was clearly protracted inaction on the part of the City Council in the Moreno Gómez case and a ‘serious breach’ that prevented the applicant from enjoying the amenities of her home. In many cases, the breach will be less substantial than in this case and it may be less easy to ascertain where a fair balance is to be struck.

### 3.9 ARTICLE 14: FREEDOM FROM DISCRIMINATION

Article 14 provides:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

It can be seen that Art 14 does not confer any right not to be discriminated against but rather that there should be no discrimination in respect of the enjoyment of other rights and freedoms under the Convention. It is not therefore an independent right under the Convention in respect of which any claim can be made and an alleged violation of Art 14 needs to be coupled with an interference with another Convention right. Discrimination can be on a wide range of grounds, which cover most, if not all, of the forms that discrimination might take.

One particular provision in the 2003 Act may give rise to difficulties in respect of its discriminatory nature. This is the exemption in para 9 of Sched 1 for the provision of 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. Concerns were expressed about this exemption by the JCHR in its Fourth, Seventh and Twelfth Reports on the Licensing Bill, with the JCHR stating in its last-mentioned report that:

> We take the view that there is a significant risk that the proposed system of exemptions from the licensing requirements ... set out in the Licensing Bill might:

– give rise to an incompatibility with the right to be free of discrimination in respect of the enjoyment of the right to freedom of conscience, religion and belief under ECHR Articles 9 and 14, in so far as the exemption is given to premises used principally for the purposes of religion, or occupied by people or organizations on account of their religious beliefs or practices, and is denied to premises used principally for secular purposes, or occupied by people or organizations without a religious affiliation ...

98 JCHR, Twelfth Report, para 3.4. See also JCHR, Fourth Report, para 18 ('exemptions from the need to obtain a licence for places of religious worship where secular entertainment takes place ... could engage other human rights issues by appearing to discriminate against occupiers and users of non-religious premises'), and JCHR, Seventh Report, para 35 ('exempting ... places of worship but not secular venues from the licensing regime might give rise to discrimination and threaten a violation of the right to be free from discrimination under ECHR Article 14 taken together with Article 9 (the right to freedom of thought, conscience and religion) and Article 10 (freedom of expression)').
The Government’s response to this was to emphasise that ‘attendance at entertainment held at such premises is in no way confined to, nor in any way distinguishes between, those of any religious belief’ and ‘there is no requirement for the entertainment to have any religious content’.\(^9\) Further, whilst it was acknowledged that the exemption is not afforded to secular venues:

the creation of this exemption was prompted by a recognition, after discussion with representatives from various faiths, of the distinct pastoral role in the community played by many of the faiths and the wider responsibility that, for example, the church has in bringing the community together. By way of contrast, secular venues are run solely for commercial purposes and have no equivalent pastoral role in our society. Further, churches have a central role to the development of music in this country, particularly because the premises are large enough to stage performances, particularly classical pieces. For these reasons, it would not appear to me as though either Article 9 or 14 are engaged. However, if I am wrong about this, it is my view that there is an objective and reasonable justification for this exemption and that its existence in no way calls into question the pressing social need for the general regulation of public entertainment.\(^10\)

It remains to be seen whether, on either count, this view is right.

### 3.10 CONCLUSION

The provisions in the 2003 Act are, in the Government’s view, compatible with the Convention rights, although, as has been seen, doubts remain in respect of some of the provisions. Prior to the Second Reading of the Bill, a ‘statement of compatibility’ was made by the Minister of the Crown in charge of the Bill in the House of Lords, Baroness Blackstone, in accordance with s 19(1)(a) of the 1998 Act.\(^11\) It remains to be seen whether this view will be shared by the courts when interpreting the legislation and how ‘creative’ the courts will need to be to comply with the requirement in s 3 of the 1998 Act that legislation ‘must be read and given effect to in a way which is compatible with the Convention rights’. Perhaps of greater practical importance will be the question of whether the licensing authorities themselves, when exercising their functions under the Act, will be acting in a way that is compatible with Convention rights. A licensing authority is a ‘public authority’ for the purposes of the 1998 Act\(^12\)

\(^9\) JCHR, Fifteenth Report, App 2 (letter to the Committee’s Chairman from Dr Kim Howells, Minister for Tourism, Film and Broadcasting, Department of Culture, Media and Sport).

\(^10\) Ibid.

\(^11\) Section 19 provides that:

‘(1) A Minister of the Crown in charge of a Bill in either House of Parliament must, before the Second Reading of the Bill–

(a) make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights (a “statement of compatibility”); or

(b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.’

‘(2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate.’

\(^12\) See s 6(3)(b), which provides that ‘public authority’ includes ‘any person certain of whose functions are functions of a public nature’.
and s 6 provides that it is ‘unlawful for a public authority to act in a way which is incompatible with a Convention right’. The possibility of acting in a way that is incompatible may arise at various stages when a licensing authority is exercising its functions under the Act, from drawing up a Statement of Licensing Policy prior to determining applications to reviewing premises licences and club premises certificates once they have been in force for a number of years. Authorities will need to be vigilant and alert to the possibilities of acting incompatibly with Convention rights at all stages when they are discharging their responsibilities under the Act.
CHAPTER 4

LICENSING OBJECTIVES, STATEMENTS OF POLICY
AND SECRETARY OF STATE’S GUIDANCE

4.1 INTRODUCTION

4.1.1 When discharging its functions under the Act, a licensing authority is required by s 4(1) to do so with a view to promoting the licensing objectives, which are:

(a) the prevention of crime and disorder;¹
(b) public safety;
(c) the prevention of public nuisance; and
(d) the protection of children from harm.

However, these are not the only criteria when carrying out licensing functions, for s 4(2) provides that the authority ‘in carrying out its licensing functions … must have regard to (a) its licensing statement published under section 5, and (b) any guidance issued by the Secretary of State under section 182’.

These provisions in s 4 represent an attempt to set the parameters for the discharge of licensing functions under the Act, by specifying what objectives or purposes licensing control is seeking to achieve and ensuring that decisions are directed towards achieving these ends. They also seek to ensure transparency in decision-making, by requiring a licensing authority to publish a Licensing Statement setting out its policy in respect of the discharge of licensing functions. Since each authority needs to draw up its own policy, this ensures that the discharge of licensing functions remains a matter determined at local level. However, there is the introduction of an element of central control through the issue of Guidance by the Secretary of State, to which a licensing authority must have regard when discharging licensing functions, and this will include the drawing up of and keeping under review its Licensing Statement.

4.1.2 The three factors – licensing objectives, Licensing Statements and Guidance – in principle provide an attractive formulation for the discharge of licensing functions under the Act. There are express criteria against which decision-making can be measured, decisions can be made at the local level to take account of local circumstances, and a measure of consistency can be achieved by requiring decision-makers to have regard to the Guidance. However, the interrelationship between these three factors is a complex one. Thus decisions may seek to promote one licensing objective whilst at the same time impeding the promotion of another;² having regard to a particular aspect of the Licensing Statement may promote one licensing objective, but at the expense of another, and, although both the Licensing Statement and the

¹ This objective is generally referred to throughout the Act as the ‘crime prevention objective’. Section 193 provides: “‘crime prevention objective’ means the licensing objective mentioned in section 4(2)(a) (prevention of crime and disorder).”

² An example would be restricting bright lighting (assuming the lighting would unreasonably affect a sufficient number of persons), which would assist in prevention of public nuisance to those living nearby, but might inhibit the prevention of crime and disorder by affording greater opportunities for their commission due to the areas being less well-lit.
Guidance may be seeking to promote the licensing objectives, having regard to the one may suggest a different decision from having regard to the other. In short, each of the licensing objectives themselves may prove to be competing criteria, as may the Licensing Statement and the Guidance, and the question of balancing these competing criteria will necessarily arise in a number of circumstances. Further, there will be the question of balancing promotion of the licensing objectives when discharging licensing functions with other objectives and considerations that may need to be taken into account in the decision-making process. The three factors, their interrelationship and their relationship with other objectives and considerations, are examined in further detail in the following sections.

4.2 LICENSING OBJECTIVES

4.2.1 Promoting the licensing objectives

The licensing authority is required to discharge its functions only ‘with a view to promoting the licensing objectives’ (original emphasis), so it is not necessary that the licensing authority achieves the licensing objectives or even that it discharges its functions with a view to achieving them. It is sufficient if the authority is acting with the purpose or intention of attaining the objectives. Although the licensing authority will presumably be seeking to achieve the licensing objectives as far as possible, the objectives seem to be more aspirational aims and criteria against which the actions and decisions of the authority will be judged when it is exercising its functions under the Act. It is unrealistic to expect attainment of the objectives, for if an authority grants a licence for a large-scale event at which alcohol is sold, some measure of crime and disorder is inevitable. When granting the licence the authority cannot prevent crime and disorder, but it can seek to do so by taking measures to minimise its occurrence.

4.2.2 Prevention of crime and disorder

The term ‘crime’ is reasonably precise and certain, encompassing conduct that comprises a criminal offence either by virtue of a statute or under the common law, but ‘disorder’ is less clear. The expression ‘crime and disorder’ is a commonly used one – indeed, it features as the title of a particular statute, the Crime and Disorder Act 1998 – but ‘disorder’ is not a clearly defined concept. It must be something that is not itself a criminal offence, otherwise it would have been sufficient simply to have referred to the ‘prevention of crime’. The ordinary meaning of ‘disorderly’, according to the Shorter Oxford English Dictionary, includes ‘contrary to public order or morality’ and it seems to have largely acquired this meaning at common law for the offence of keeping a disorderly house. Thus in R v Tan [1983] 1 QB 1053, the Court of Appeal held that a house was disorderly where provision of services by a prostitute in private premises open to the public was of such a character and was conducted in such a manner as to amount to an outrage of public decency or was otherwise calculated to injure the public interest to such an extent as to call for condemnation and punishment. However, in the licensing context, a focus on morality seems inappropriate and it is instructive to consider meanings that have been attributed to ‘disorderly’ in other jurisdictions. The meaning of the expression was considered in some detail by the New Zealand Court of Appeal in Mesler v Police [1967] NZLR 437, where the President of the court, North P, stated (at 443):
I agree that a person may be guilty of disorderly conduct which does not reach the stage that it is calculated to provoke a breach of the peace, but I am of opinion that not only must the behaviour seriously offend against those values which are recognised by right-thinking members of the public but it must at least be of a character which is likely to cause annoyance to others who are present.

Similar sentiments were expressed by Turner J (at 444):

Disorderly conduct is conduct which is disorderly; it is conduct which, while sufficiently ill-mannered, or in bad taste, to meet with the disapproval of well-conducted and reasonable men and women, is also something more – it must, in my opinion, tend to annoy or insult such persons as are faced with it – and sufficiently deeply or seriously to warrant the interference of the criminal law.

McCarthy J also expressed a similar view (at 446):

I agree that an offence against good manners, a failure of good taste, a breach of morality, even though these may be contrary to the general order of public opinion, is not enough … There must be conduct which not only can fairly be characterised as disorderly, but also is likely to cause a disturbance or to annoy others considerably.

The essential characteristic seems to be conduct that seriously offends against values generally recognised by society as being of a character likely to cause annoyance to others who are present, although not having reached the stage that it is calculated to provoke a breach of the peace (since, if it has reached this stage, it will constitute a criminal offence). This seems a more appropriate meaning for disorder in the licensing context.

The discharge of licensing functions will need to relate to the prevention of crime and disorder in the particular premises themselves or in the immediate neighbourhood of those premises. A contention that the premises will contribute in a general sense to crime and disorder will not suffice, nor will one that persons causing crime and disorder some distance away from the premises might have been at the particular premises. This is apparent from various statements in the Guidance, for example, para 5.74 states:

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.

On the other hand, para 7.23 provides:

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3 See also the New Zealand case of Wainright v Police [1968] NZLR 101, where it was held that what was disorderly behaviour was a matter of degree depending on the circumstance of the case and where the behaviour took place. Wild CJ stated (at 103) that: ‘judgment of the conduct in question is in every case a matter of degree depending upon the relevant time, place, and circumstances … Conduct that is acceptable at a football match or boxing may well be disorderly at a musical or dramatic performance. Behaviour that is permissible at a political meeting may deeply offend at a religious gathering.’

4 However, nuisance or disturbance caused by the sheer volume and density of premises operating in the neighbourhood, the so-called ‘cumulative effect’ of premises on the general amenity and quality of life in the neighbourhood, might be taken into account under the public nuisance objective – see 4.2.11 below.
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.

At what point the behaviour of customers is considered to be beyond the control of the licensee once they have left the premises will clearly depend on the circumstances, but the further the customers are away from the premises the less likely that the licensing authority, when discharging its licensing functions, will be regarded as acting for the prevention of crime and disorder.5

4.2.3 Public safety

The term ‘public’ will need to be read in a broad sense, since the licensing controls extend beyond circumstances when the public will be on the premises. In the case of premises operating under a club premises certificate (CPC), the premises will be open only to members of the club and their bona fide guests, and neither the members nor the guests will be members of the public.6 Similarly, where entertainment or entertainment facilities are provided other than for the public (or a section of it) or for club members and guests, this constitutes a licensable activity if done for consideration and with a view to profit (see Sched 1, para 1(2)(c) and 5.3.3 below). ‘Public safety’ will need to read as ‘safety of those on the premises’ if this objective is to have any proper application in such situations. It will surely be given this meaning, since it would be absurd if the objective of promotion of safety could be discounted simply because those on the premises happened not to be there as members of the public.

Safety will relate to the physical safety of the people using the relevant premises or place, as well as the safety of any performers appearing at the premises (Guidance, para 7.37), and will include both general safety and safety from fire.7 The public safety objective is not, however, concerned with public health, which is adequately dealt with in other legislation.8 Similarly, the public safety objective is not concerned with physical safety insofar as this might be covered by other legislative provisions. Thus para 7.33 of the Guidance provides:

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5 This matter is further considered at 4.2.8–4.2.10 below in the context of the licensing objective of prevention of public nuisance.
6 See Severn View Social Club and Institute Ltd v Chepstow (Monmouthshire) Licensing Justices [1968] 1 WLR 1512, where Lord Parker CJ, referring to guests, stated (at 1514): ‘In my judgment, they clearly were not members of the public as such’; and 5.3.8 below.
7 The Cinematograph (Safety) Regulations 1955, which contained a significant number of regulations in respect of fire safety provision at cinemas, will be repealed by an order made under the 2003 Act. Where the premises are used for film exhibitions, 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: Guidance, para 7.36.
8 Guidance, para 7.32. 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 under 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: Guidance, para 7.32.
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.9

The safety of persons using the premises or place will relate not only to safety in respect of the physical state of the premises, which will include their curtilage and means of entry and exit, but also safety in respect of activities taking place on them, for example foam parties or the use of pyrotechnics or other special effects. Further, safety may also relate to the numbers of persons attending activities on the premises. The question of capacity limits on the number of persons attending premises has proved controversial. Local authorities have traditionally imposed such limits on premises providing music and dancing, but licensing justices have not generally done so for premises selling alcohol. Arguably, overcrowded premises, such as nightclubs where music and dancing is provided, have a greater capacity for posing problems for public safety than public houses on which alcohol is consumed. Nevertheless, the view may be taken that any premises on which there is overcrowding pose a threat to public safety and that a capacity limit in respect of the premises might be justified. Such a capacity limit may well have been included as a condition in a fire certificate for the premises, in which case it would be unnecessary to reproduce the condition in a premises licence. 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.10 In considering the representations, licensing authorities should give particular weight to those made by the fire authority in such circumstances, although no indication is given in the Guidance as to the types of premises in respect of which capacity conditions should or should not be imposed.11

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9 Paragraph 7.33 goes on to provide that:

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 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 inspectors – 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.

10 Any capacity condition attached should specify whether the number includes or excludes staff and/or performers. The Modern National Standard Conditions for Places of Entertainment (2002, London: Entertainment Technology Press) provides for accommodation limits specified on the licence to include ‘the maximum number of people, not being staff or performers’ who are permitted to be on the premises or a designated area of the premises (see Conditions 2 and 25).

11 Guidance, para 7.34. Also, ibid: ‘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.’
4.2.4 Prevention of public nuisance

4.2.5 Meaning of public nuisance

4.2.6 Specifying this as a separate objective is in a sense unnecessary, since public nuisance is a criminal offence at common law and therefore this falls within the scope of the first licensing objective of prevention of crime and disorder. However, given the importance of the public nuisance aspect, no doubt the view was taken that this merited inclusion as an objective in its own right. The meaning of public nuisance was considered in Attorney-General v PYA Quarries Ltd, where Romer LJ stated:

Any nuisance is ‘public’ which materially affects the reasonable comfort and convenience of life of a class of Her Majesty’s subjects. The sphere of the nuisance may be described generally as ‘the neighbourhood’, but the question whether the local community within that sphere comprises a sufficient number of persons to constitute a class of the public is a question of fact in every case.

As to what materially affects the reasonable comfort and convenience of life, this will be an objective test of whether the interference is ‘unreasonable’ to the extent that persons cannot be expected to put up with it. Licensing authorities and responsible authorities will therefore need to make judgments about what constitutes nuisance and what is needed, in terms of conditions attached to premises licences and CPCs, to prevent it. As regards the impact of licensable activities at particular premises on people living, working and sleeping in the vicinity, excessive noise is probably the matter most likely to give rise to unreasonable interference, although (bright) light pollution, noxious smells and litter may also feature prominently. In relation to noise, authorities will normally seek to control this through conditions controlling its level, in some cases by simple mechanisms like ensuring that doors and windows are kept closed after a particular time in the evening and in other cases by more sophisticated mechanisms like sound level inhibitors on amplification equipment or sound proofing. Bright lighting outside premises that is considered necessary to prevent crime and disorder may itself give rise to light pollution for some neighbours and measures to control light pollution will therefore ‘require careful thought’ (Guidance, para 7.44). Noxious smells from a takeaway food outlet or a mobile burger bar, and the

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12 A civil action in tort can also be brought by any person who can show that he has suffered special or particular loss or damage over and above the general inconvenience or annoyance suffered by the public at large.

13 [1957] 2 QB 169, 184. His Lordship went on to state: ‘It is not necessary in my judgment to prove that every member of the class has been injuriously affected. It is sufficient to show that a representative cross-section of the class has been so affected for an injunction to issue.’

14 Guidance, para 7.41. It was common for a condition to be attached to public entertainment licences that the applicant must provide a detailed acoustics’ scheme to be agreed by the council prior to the operation of the premises. The issue of acoustics may well have been dealt with at planning level, although any failure to comply might more easily be enforced through attachment of a licence condition.
accumulation of litter, may similarly unreasonably interfere with the reasonable comfort and convenience of life of those living nearby.\footnote{15}

4.2.7 As to what will constitute a ‘class of Her Majesty’s subjects’, Denning LJ in the \textit{PYA Quarries} case stated:

\begin{quote}
I decline to answer the question how many people are necessary to make up Her Majesty’s subjects generally. I prefer to look to the reason of the thing and to say that a public nuisance is a nuisance which is so widespread in its range or so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own responsibility to put a stop to it, but that it should be taken on the responsibility of the community at large.\footnote{16}
\end{quote}

Accordingly, it seems that a significant number of persons will need to be affected for the nuisance to be public. In the \textit{PYA Quarries} case, vibration and dust from quarrying operations affected householders on two roads in the neighbourhood and it was held that there was sufficient evidence of a public nuisance. Similarly, in \textit{Ruffell},\footnote{17} there was a public nuisance where an acid house party, which was organised in unsuitable premises, was attended by a large number of people, resulting in a road leading to the site being blocked by traffic; local residents being disturbed by noise throughout the night; and litter and excrement being deposited in adjoining woodlands. Less clear is whether it will suffice if only a few people are affected. Paragraph 7.40 of the Guidance, perhaps optimistically, states that it might:

\begin{quote}
Public nuisance … 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.
\end{quote}

Courts have generally been reluctant to recognise a nuisance as public unless the nuisance has been quite widespread in its impact, so, if the expression ‘public nuisance’ is interpreted in a technical sense and given its normal legal meaning, acting to prevent disturbances affecting only a few persons may not suffice. Where a only few people are affected this might be a private nuisance or a statutory nuisance under s 79(1)(a) of the \\textit{Environmental Protection Act} 1990 (‘any premises in such a state as to be prejudicial to health or a nuisance’), for which an abatement notice can be served under s 80, but it is not a public nuisance. However, courts do not always interpret terms in their technical sense if this is not considered to accord with the intention of Parliament and it may be that the expression is given a wider and more flexible

\footnote{15} Guidance, para 7.46 provides:

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 11.00 pm 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.

\footnote{16} [1957] 2QB 169, 190–91. His Lordship felt that the question was ‘as difficult to answer as the question: when does a group of people become a crowd? Everyone has his own views’ (at 190).

\footnote{17} (1992) 13 Cr App R (S) 204. See also the Canadian case of \textit{Attorney General for Ontario v Orange Productions Ltd} (1971) 21 DLR (3d) 257, where a pop music festival that generated large-scale noise, traffic problems and apprehension was held to be a public nuisance.
meaning, with ‘prevention of public nuisance’ interpreted to mean ‘prevention of nuisance to members of the public’.

In deciding how widespread any impact has been or might be, and whether accordingly any nuisance might be public, it will be important to determine what conduct might be taken into account. Clearly, noise or disturbance (hereafter ‘disturbance’) emanating from particular licensed premises such as a nightclub or public house can be considered. Less clear, however, are, first, the parameters within which disturbance caused outside premises can be considered and, secondly, the extent to which regard can be had to disturbance through the cumulative effect of premises where there is a heavy concentration of licensed premises in the vicinity or immediate neighbourhood.

4.2.8 Disturbance outside premises

4.2.9 According to para 7.45 of the Guidance, the licensee will not have responsibility for disturbance taking place outside his premises, unless it takes place in the vicinity of the premises, and conditions should not seek to regulate conduct outside this area:

In the context of preventing public nuisance, it is ... essential that conditions are focused on measures within the direct control of the licence holder. 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.

The extent to which this view might represent any change from the previous law, set out in Lidster v Owen [1983] 1 WLR 516, is uncertain. The Court of Appeal in that case rejected a contention that only matters taking place internally within the premises could be taken into account when deciding whether to renew the music and dancing licence for the applicant’s discotheque premises and held that external considerations could be considered. The court in that case was concerned with whether the word ‘regulation’ at the beginning of s 51 of the Public Health Acts (Amendment) Act 1890 was ‘apt to cover both internal and external considerations’ (per Waller LJ at 521) and decided that it was. The external consideration in this case was public disorder taking place outside the premises and insofar as the case decides that disorder occurring outside premises can be taken into account it accords with the statement contained in the Guidance. However, as will be seen, the distance away from the premises where the disorder was occurring in that case, as will be seen, may well have been greater than that envisaged by the Guidance as sufficing for the licensee to have responsibility for it.

The premises in question in Lidster were located in the Stateside Centre, situated in the centre of Bournemouth, adjacent to Glen Fern Road, on which there were two other discotheque premises in close proximity. The justices were of the view that the number of persons leaving the three discotheque premises at 1.00 am nightly was the principal factor creating the public disorder, which occurred in the area of Glen Fern Road and Old Christchurch Road (where there were a large number of other licensed premises with terminal hours of between midnight and 2.00 am). The Chief Constable sought to secure an earlier closing time of midnight (instead of 1.00 am) for the discotheques,
which was accepted by the two other discotheques whose licences were renewed with this restriction, but the applicants refused to accept this and the justices accordingly refused to renew the licence. The Court of Appeal held that the justices were entitled to have regard to the character and location of the premises and to refuse renewal of the licence on account of the disorder occurring outside the premises, even though the premises were well managed. Slade LJ stated (at 524):

> the evidence before the justices showed that, throughout 1980, what the justices described as a ‘quite unacceptable degree of public disorder’ existed in the Glen Fern Road and Old Christchurch Road areas of Bournemouth, and that the principal factor creating this disorder there was the number of persons leaving the applicants’ premises at one o’clock in the morning. I have no doubt that the justices were entitled to take these factors into account when considering whether or not to renew the applicants’ licence.

4.2.10 It is debatable whether the disorder in this case can be regarded as occurring within the ‘vicinity’ of the premises, with the behaviour of customers still within the control of the premises management. Waller LJ referred to the evidence showing that there was a ‘very considerable amount of violence and crime in the immediate neighbourhood of these discotheques’, but it is not clear how far away from the premises this was occurring. According to Slade LJ, the disorder ‘existed in the Glen Fern Road and Old Christchurch Road areas’, so it seems to have been occurring some distance from the applicants’ premises, but his Lordship had ‘no doubt’ that this could be taken into account.18 If ‘immediate neighbourhood’ is equated with ‘vicinity’, then the statement in the Guidance will represent no more than confirmation of the application of the _Lidster_ decision under the 2003 Act; but if ‘immediate neighbourhood’, in the context of the factual situation in _Lidster_, is a wider area than the ‘vicinity’ of the premises, as envisaged by the Guidance, the Guidance may be proffering a narrower view of the licensee’s responsibilities than that indicated by this case. If this is the position, the question will arise as to whether the view expressed in the Guidance should prevail when an authority is discharging its functions under the 2003 Act, or whether the (arguably broader) view in _Lidster_ should continue to have application.

Authorities when discharging their licensing functions must promote the licensing objectives, including prevention of public nuisance, and (under s 4(3)(b)) have regard to the Guidance, so they might interpret ‘prevention of public nuisance’ as encompassing only disturbance within the vicinity of the premises so as to accord with the view expressed in the Guidance. Such an interpretation might not accord with the decision in _Lidster_, although that decision might be distinguished on the ground that it was concerned with interpreting another statutory provision with different wording and with no requirement to promote any licensing objectives. On the other hand, the principle in _Lidster_ was generally accepted as having application to later statutes on public entertainment licensing, such as the London Government Act 1963 and the Local Government (Miscellaneous Provisions) Act 1982, where the wording was also different from the statutory provision in _Lidster_. Further, there is nothing to indicate, either in the White Paper or in the Guidance, that any change in the law is envisaged

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18 His Lordship, in the quotation mentioned, refers to the justices being ‘entitled to take these factors into account’ (emphasis added) which, in the context of the quotation, must mean the disorder in the areas in question and the disorder being created by the number of persons leaving the applicants’ premises.
as far as disturbance outside premises is concerned. In the absence of any indication to the contrary in statutory provisions, the normal assumption is that existing principles of law remain unchanged and Lidster might therefore continue to apply without modification. It will be appreciated that ascertaining the scope of the Lidster principle under the 2003 Act permits no easy answer. If called upon to adjudicate on this matter, the approach of the courts may well be to regard Lidster as establishing only that, as a matter of law, external considerations such as disorder outside the premises can be taken into account as a relevant consideration. The view may be taken by the court that it will be a question of fact in all the circumstances whether the disorder, as regards its (geographical) extent, can be related to the prevention of public nuisance. This will leave each case to be determined on its own facts and in accordance with the evidence.

4.2.11 Disturbance through cumulative effect of premises

Whilst a public nuisance may be caused by disturbance from particular premises, whether it can be occasioned from disturbance resulting from the sheer volume and density of premises operating in the neighbourhood is less clear. This is the so-called ‘cumulative effect’ of premises on the general amenity and quality of life in the neighbourhood. One view is, to use the words of Lord Phillips during the Committee Stage of the Bill in the House of Lords, that ‘the threshold at which public nuisance bites is far higher than the amenity that we are all seeking to preserve’ (HL Deb, vol 642, col 555, 17 December 2002). Several members of the House of Lords were concerned that ‘prevention of public nuisance’ might not encompass ‘preservation of amenity’ and feeling was sufficiently strong for the matter to be pressed to a vote in favour of replacement of the ‘public nuisance’ objective with an ‘adverse amenity impact’ objective. Although successful, this amendment to the Bill was duly reversed by the Government in the House of Commons and the ‘public nuisance’ objective reinstated. Nevertheless, the Government appeared to concede that ‘public nuisance’ would encompass the ‘preservation of amenity’ activities falling within the scope of the House of Lords’ amendment, as can be seen from the following parliamentary exchange:

**Dr Howells**: ... In the debate in another place, an impression was given by some contributors that ‘public nuisance’ was a narrow concept that would not cover some of the problems that might be caused to residents living near licensed premises. That was because those contributors had regard to the narrow definition of ‘nuisance’ in the Environmental Protection Act 1990. That definition is misleading in the context of the Licensing Bill. The Bill does not define ‘public nuisance’ and it therefore retains the wide meaning it has under common law, rather than that in the 1990 Act or any other statutory definition. The term ‘public nuisance’ therefore retains the breadth and flexibility to take in all the concerns likely to arise from the operation of any premises conducting licensable activities, in terms of the impact of nuisance on people living or doing business nearby.

19 Although not designated ‘adverse amenity impact’, this was in substance the nature of the amendment. The actual amendment provided: ‘the prevention of unreasonable diminution of the living and working amenity and environment of interested parties in the vicinity of the premises balancing those matters against the benefits to be derived from the leisure amenity of such premises.’
Mr Field: Can the Minister confirm that according to his understanding of the term ‘public nuisance’, it covers everything in the House of Lords amendment – in other words, that in his view the amendment made in the other place is superfluous, and that ‘public nuisance’ covers all the concerns set out in subsection (2)(c)?

Dr Howells: Yes indeed, but I will modify my agreement with the hon Gentleman by saying that I do not expect licensees to have regard to the aesthetic qualities of surrounding buildings, for example. However, if behaviour is particularly rowdy, and antisocial behaviour can be proved to have been generated in the premises, what happens in licensed premises and in their vicinity may be said to have an effect on the aesthetics of the surrounding area, as the hon. Gentleman made clear. Apart from that, I would certainly agree with him …

Of course, ultimately it will be a matter for the courts to determine the meaning and scope of the phrase ‘prevention of public nuisance’ and whether it might encompass nuisance and disturbance occasioned by the cumulative impact of premises. Whilst the minister’s views may be taken into account as an indication of parliamentary intent, they will be by no means decisive and it will be a question of what view the courts take on this issue.

4.2.12 However, it should be borne in mind that, for the purposes of promotion of the licensing objectives, it is not necessary to decide whether or not conduct does amount to a public nuisance. An authority, when discharging its functions, is concerned only to promote the objective of prevention of public nuisance. There need be no certainty of a public nuisance occurring, although whether an authority can be said to be acting for the prevention of public nuisance will be affected, at least in part, by the likelihood of a public nuisance occurring. Clearly, if there was little chance of its occurrence, it would be difficult to justify actions seeking to promote the objective of preventing a public nuisance, whereas conversely, if one was very likely to occur, actions could easily be justified. Less clear is where the line should be drawn between these two extremes and

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20 HC Standing Committee D, cols 155–56, 1 April 2003. The Government, during the course of the legislation’s passage, was keen to stress that the number of licensed premises in an area was essentially a matter for planning control and not licensing law. With a view to strengthening planning control, it announced the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, would be amended to prevent premises like cinemas and bingo halls turning into nightclubs without planning permission. Article 3(1) of the Order provides: ‘where a building or other land is used for a purpose of any class specified in the Schedule, the use of that building or other land shall not be taken to involve development of the land [for which planning permission is required]’, but under Art 3(6) certain uses are excluded from the specified classes (and consequently they require planning permission) and nightclubs have been added to these excluded uses by Art 2(1) Town and Country Planning (Use Classes) (Amendment) (England) Order 2005, SI 2005/84. Article 2(2) of the 2005 Order has also split the former A3 use class (food and drink) into three separate classes: Class A3 (use as a restaurant or café), Class A4 (use as a public house, wine bar or other drinking establishment) and Class A5 (use as a hot food take-away). This, for instance, prevents a change of use without planning permission from a café to a wine bar, as these are now in different classes (A3 and A4), whereas previously they were in the same class (A3) and the change could be made without planning permission. In addition to these amendments, provision was made in the 2003 Act for planning officers to be included in the list of ‘responsible authorities’ who might make representations under the 2003 Act – see s 13(4)(d) and 6.4.18 below.

21 The views arguably meet the criteria laid down in Pepper v Hart [1993] AC 593, since there is an element of ambiguity as to whether ‘public nuisance’ will cover the type of conduct in question, the statement is made by a Government minister promoting the Bill and the statement seems to be clear. Certainly a wide application of the concept of public nuisance seems to have been envisaged by the minister: ‘the expression “public nuisance” has been chosen for the Bill as a well known concept that is flexible and capable of application in a huge range of circumstances’ (HC Standing Committee D, col 158, 1 April 2003).
what degree of likelihood of a public nuisance occurring should be required to justify action to promote this licensing objective. It is submitted that the appropriate threshold should be neither a probability nor a possibility of occurrence, but a real possibility of a public nuisance occurring.

4.2.13 Protection of children from harm

4.2.14 The expression ‘children’ is not defined in the Act, but it seems almost certain to mean persons under the age of 18. This accords not only with the position under the general law, but is apparent from references, used elsewhere in the 2003 Act, to ‘children’. Thus s 146(1) makes it an offence to sell alcohol to ‘an individual aged under 18’ (see 11.7.9 below) and the expression ‘Sale of alcohol to children’ is used in the marginal note to the section. Similarly, in respect of the mandatory condition for premises licences in s 20 that film exhibitions must require the admission of children to be restricted, s 20(4) provides that for the purposes of the section “children” means persons aged under 18’ (see 6.4.4 below). However, for the offence in s 145, of allowing unaccompanied children on certain premises, s 145(2)(a) provides that “child” means an individual aged under 16’ (see 11.7.3 below). As to protection from harm, it is clear that this will extend beyond physical harm, which will be covered by other licensing objectives. The physical safety of children will be protected by the public safety objective, whilst any infliction on children of physical harm may amount to a criminal offence (assault) and will thus be covered by the crime prevention objective. The objective of the protection of children from harm is intended to cover both moral and psychological harm as well as physical harm. Paragraph 7.48 of the Guidance provides:

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.

Whilst ‘children’ in the context of the objective might include anyone under the age of 18, there may be occasions when protection is required only for younger children. This seems to be recognised in the above statement, with its reference to protection ‘from too early an exposure’ to strong language and sexual expletives. The implication is that older children (and it cannot seriously be contended to the contrary) do not need such protection. The same may be true in respect of exposure to sexually explicit material in films and plays. Where there is a commercial element involved, as with adult entertainment provided in clubs that feature striptease and lap dancing performances, the view traditionally taken has been that children of all ages need protection. A common condition attached to public entertainment licences authorising lap dancing has been that persons under the age of 18 should not be admitted. If a justification were to be advanced for this, it might be that exposure to the practices of commercial sex might inhibit the emotional development of children and convey a distorted view of sexuality, in which sex is seen as a recreational activity divorced from notions such as love, commitment and mutual respect.22

22 It is naturally more difficult to justify protection of persons over the age of 16 since such persons are likely to have passed the difficult stage of adolescence and can themselves engage in sexual activity under the law.
4.2.15 There is not seen to be a general need to protect children from harm when they are on premises where licensable activities are taking place and only where cogent reasons are evident should their access be restricted. Paragraph 7.49 of the Guidance provides:

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 … 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.

Instances of where there may be good reasons to restrict or exclude entry might include premises:

- where adult entertainment is provided;
- where there have been convictions of the current management for serving alcohol to minors or where there is 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 [see s 150(4) and 11.7.25 below];
- 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); and
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises (Guidance, para 7.50).

In some cases, such as the first two mentioned above, it may be necessary to exclude children altogether in order to protect them from harm, although in other instances, as where adult entertainment or films with restricted classifications are shown only in part of the premises, it may be sufficient to exclude them from that part at times when such licensable activities are taking place. A further way in which children might be protected is not to exclude them, but to require them to be accompanied by an adult. This has application in respect of the showing of films classified as 12A (although there is no reason for it to be confined to the case of films). For such films, children under the age of 12 can be admitted if accompanied by an adult, in addition to the admission of unaccompanied children over the age of 12.

4.2.16 Competing and additional objectives

According to the Guidance, none of the licensing objectives is to be regarded as having greater importance than the other objectives: ‘Each objective is of equal importance.’

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23 See also Guidance, para 7.51, which gives the following two examples: ‘premises may operate as café bar during the day providing meals for families but also provide entertainment with a sexual content after 8.00 pm … Similarly, gambling may take place in part of a leisure centre but not in other parts of those premises.’

24 Paragraph 2.6. This is not easy to reconcile with the fact that on a number of occasions, eg, for temporary event notices (TENs) (see 9.5.4 below) and personal licences (see 10.1 below) only the crime prevention objective is relevant and the other licensing objectives are excluded from consideration.
Whilst this is fine in principle, in practice situations are going to arise where there are competing objectives and action that will promote one licensing objective will impede promotion of another (see 4.1.2 above). In such cases, the competing objectives cannot be accorded equal importance or weight and it will be a question of striking a balance between the competing objectives. This will inevitably involve an assessment of their relative importance and the weight to be given to them in the circumstances of the particular case. Where the balance is a fine one, decisions are likely to be subject to appeal and this may in due course lead to a body of case law affording guidance as to relative weight. Thus, although in terms of importance each objective is equal, some may prove to be more equal than others.

It seems inconceivable that licensing objectives are the only objectives to which a licensing authority must have regard when discharging licensing functions and that there cannot be additional objectives and considerations that can be taken into account. Section 4(1) provides only that a licensing authority ‘must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives’ and it does not expressly exclude other objectives or considerations. If an authority, when exercising its discretion, is to make a decision on the merits of the case, as it must (and there are frequent references in the Guidance to this, for example, paras 3.9, 3.27 and 3.35), it cannot ignore other objectives and considerations. It must seek to strike a balance between promoting the licensing objectives and promoting the wider, social, cultural and economic benefits for the community that are derived from licensable activities taking place. There are several references in the Guidance to strategies and schemes that promote these wider benefits, for example tourism and transport, and these are likely to impact indirectly on the licensing objectives. Where the balance is struck will depend on the extent to which there may be harm to the licensing objectives when weighed against the community benefits. If there is a limited amount of harm to the licensing objectives from some licensable activity, for example some minor annoyance and disturbance is likely to be caused, but there are significant community benefits, for example provision of some facility not previously available, the balance is weighted in favour of authorisation for the activity to go ahead. Notwithstanding the harm, in the context of the application and on the merits, the authority can be said to be promoting the licensing objectives. If, on the other hand, a greater degree of harm was likely and the community benefit was more marginal, the balance may be weighted against authorisation for the activity.

4.3 LICENSING STATEMENTS

4.3.1 Introduction

Statements of Licensing Policy (SOPs), described in the Act as ‘Licensing Statements’, are statements of the position or view that the licensing authority wishes to take on particular matters in connection with the discharge of its licensing functions. Under the previous law, licensing authorities may have had such policy statements, either as separate documents or contained within their Application Particulars or Guidance.

25 Where there are competing objectives, a possible argument might be made that, *prima facie*, the crime and disorder objective should be regarded as of paramount importance on the basis that it has greater application under the Act than the other objectives.
Notes for Applicants. It was not common for local authorities to have policy statements as separate documents for the licensing of public entertainments, although such documents were commonplace in the case of justices licensing the sale of alcohol.

Licensing authorities, indeed public bodies in general that are exercising discretionary powers, are not entitled to adopt a policy that allows them to dispose of cases before them without any consideration of the merits of the individual applications. A general policy is permissible, but due consideration must be given to the merits of the particular case. As Lord Reid stated in the House of Lords in *British Oxygen Co Ltd v Board of Trade* [1971] AC 610 (at 625):

> The general rule is that anyone who has to exercise a statutory discretion must not ‘shut his ears to an application’ … I do not think there is any great difference between a policy and a rule. There may be cases where an officer or authority ought to listen to a substantial argument reasonably presented urging a change of policy. What the authority must not do is to refuse to listen at all. But a Ministry or large authority may have had to deal already with a multitude of similar applications and then they will almost certainly have evolved a policy so precise it could well be called a rule. There can be no objection to that, provided the authority is always willing to listen to anyone with something new to say.

SOPs, in short, are simply formal documents setting out the policy of the licensing authority on particular matters. As documents containing statements of policy, there is nothing novel about them, but the requirement in the Act to draw up a SOP is new. There was no obligation to do so previously. Similarly, the requirement to have regard to the SOP is not new. If an SOP was drawn up previously, regard would need to be had to it when reading decisions. If there was a failure to have regard to it, this would be failing to take into account a relevant consideration.

### 4.3.2 Requirement for Statements of Licensing Policy

Section 5 requires each licensing authority to determine its policy with regard to the exercise of its licensing functions for a three year period beginning with a day appointed by the Secretary of State. The SOP must be published before the beginning of the period and a policy must be drawn up for each subsequent three year period. Section 5(1) and (2) provides as follows:

1. Each licensing authority must in respect of each three year period—
   - determine its policy with respect to the exercise of its licensing functions, and
   - publish a statement of that policy (a ‘licensing statement’) before the beginning of the period.

2. In this section ‘three year period’ means—
   - the period of three years beginning with such day as the Secretary of State may by order appoint, and
   - each subsequent period of three years.

The licensing authority must consult various interested parties before it determines its policy. These include the police, the fire authority, representatives of licence and certificate holders (premises licences, personal licences and club premises certificates), and representatives of businesses and residents in its area. Section 5(3) provides:
Before determining its policy for a three year period, a licensing authority must consult—

(a) the chief officer of police for the licensing authority’s area,
(b) the fire authority for that area,
(c) such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
(d) such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
(e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
(f) such other persons as the licensing authority considers to be representative of businesses and residents in its area.

When an authority is drawing up the first policy it will, of course, be impossible to consult with persons in categories (d), (e) and (f), as there will be no such licence or certificate holders in existence. In this instance, by virtue of Sched 8, which makes provision for transitional arrangements, consultation will be with representatives of the holders of the various existing licences (justices’, public entertainment, late night refreshment, etc) and those holding club registration certificates. Paragraph 29 of Sched 8 provides:

Until such time as section 59 of the 1964 Act (prohibition of sale, etc of alcohol except during permitted hours and in accordance with justices’ licence etc) ceases to have effect in accordance with this Act, section 5(3) of this Act (licensing authority’s duty to consult before determining licensing policy) has effect as if for paragraphs (c) to (e) there were substituted—

‘(c) such persons as the licensing authority considers to be representative of holders of existing licences (within the meaning of Part 1 of Schedule 8) in respect of premises situated in the authority’s area,
(d) such persons as the licensing authority considers to be representative of clubs registered (within the meaning of the Licensing Act 1964 (c.26)) in respect of any premises situated in the authority’s area’.26

It will be for the authority to decide who are representative of the persons described in the above provisions. Persons representative of businesses and residents might include, respectively, the local Chamber of Commerce and residents’ associations or tenants’ associations. Persons representative of licence holders for nightclubs and public houses might include the local Club Watch or Pub Watch and persons representative of off-licence holders might include the Association of Convenience Stores. Holders of licences for film exhibitions might be represented by the Cinema Exhibitors’ Association and holders of theatre licences might be represented by various bodies, for there are several organisations of theatre managers. These include, in the West End, the Society of London Theatres; in regional areas, the Theatrical Management Association; the Independent Theatre Council, for fringe and small-scale theatrical performances; and the National Operatic & Dramatic Association, for

26 There is no requirement to consult with representatives of persons who will need a licence under the 2003 Act, but whose activities were not licensable under the previous law, eg, owners of take-away premises outside London. An authority might consult representatives of such persons, but is not obliged to do so.
amateur dramatics.\textsuperscript{27} Holders of club premises certificates might be represented by the Club and Institute Union, although it is less clearly obvious who might represent holders of licences covering late night refreshment services. Personal licence holders may perhaps be represented locally by trade unions, professional bodies or by trade associations.

4.3.4 Paragraph 3.4 of the Guidance states: ‘the views of all these persons/bodies listed [in s 5(3)] should be given appropriate weight when the policy is determined.’ What will constitute ‘appropriate weight’ will be a matter for the licensing authority itself to decide. It will not be possible to give equal weight to the views of all these bodies, for there may be competing or different views put forward by them. The licensing authority will then need to decide whether to give greater weight to the views of some consultees than others. Which consultees’ views are given greater weight may well depend on the particular licensing objective that is being addressed. With regard to the crime prevention objective, for example, greater weight may be given to the views of the police. Similarly, with regard to the public safety objective, greater weight may be given to the views of the fire authority. Unless the decision of the licensing authority is irrational or wholly unreasonable in the \textit{Wednesbury} sense,\textsuperscript{28} however, it seems unlikely that the courts would interfere. The views of the consultees are relevant considerations to which the authority must have regard and the weight to be attached to these is a matter for the decision-making body and not the courts.

Whilst the authority is required to consult those mentioned in s 5(3), it is not precluded from consulting other persons or bodies. Paragraph 3.6 of the Guidance, however, pointedly states:

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 these costs themselves.

Others that authorities might want to consult, as mentioned in the Guidance, include Crime and Disorder Reduction Partnerships,\textsuperscript{29} British Transport Police, local accident and emergency departments, bodies representing consumers or those charged locally with the promotion of tourism.\textsuperscript{30} Examples not mentioned might include the area child protection committee, any area Licensing Officers Group or Liaison Committee, and representatives of any persons whose activities will require a licence under the 2003 Act, but which were not previously licensable (eg, take-away owners outside London).

4.3.5 Once an initial policy has been drawn up, each subsequent policy is likely to be a repetition of earlier ones, with modifications in the light of the experience of

\textsuperscript{27} We are grateful to David Adams for supplying us with this information.
\textsuperscript{28} See 3.5.13 above.
\textsuperscript{29} CDRPs (or Community Safety Partnerships in Wales) were established by the Crime and Disorder Act 1998 and require responsible authorities to work with other local agencies and organisations to develop and implement strategies to tackle crime and disorder and misuse of drugs in their area. The responsible authorities are the police, local authorities, fire authorities, police authorities, health authorities in Wales, and primary care trusts in England.
\textsuperscript{30} Paragraph 3.5, which goes on to state that: ‘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.’
application of the earlier policy. Authorities must keep their policies under review and provision is made for revisions to policies part way through the three year period, for consultation with the various interested parties mentioned in s 5(3) in respect of any revisions, and for revisions or a revised licensing statement to be published. Section 5(4)–(6) provides:

(4) During each three year period, a licensing authority must keep its policy under review and make such revisions to it, at such times, as it considers appropriate.

(5) Subsection (3) applies in relation to any revision of an authority’s policy as it applies in relation to the original determination of that policy.

(6) Where revisions are made, the licensing authority must publish a statement of the revisions or the revised licensing statement.31

### 4.3.6 Content of Statements of Licensing Policy

There are some general matters which the Guidance recommends should be incorporated in the SOP. These include statements of the following:

- the licensing objectives (para 3.8);
- licensing is concerned with the regulation of licensable activities, so conditions will focus on matters within the control of operators, centring on the premises and their vicinity (para 3.11);
- as regards vicinity, the focus is on the direct impact of activities at the premises on members of public living, working or engaged in normal activity in the area (para 3.11); and
- licensing law is not the primary mechanism for controlling of nuisance and anti-social behaviour by individuals once they are away from the premises (para 3.11).

More specifically, there are a number of matters that the Guidance considers in some detail and they are set out below.

### 4.3.7 Cumulative impact of premises

4.3.8 Although not mentioned specifically in the 2003 Act, a concentration of licensed premises in one area may have a potential impact on the promotion of licensing objectives, for example public nuisance and crime and disorder, and ‘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’ (Guidance, para 3.13). Paragraph 3.14 goes on to provide that it is ‘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’.

31 Section 5(7) provides that: ‘Regulations may make provision about the determination and revision of policies, and the preparation and publication of licensing statements, under this section.’
If the authority considers this to be the case, it might adopt ‘a special policy of refusing new licences’, although it will be necessary for there to be an evidentiary basis for inclusion of such a policy within the SOP (para 3.17). Various steps (specified in para 3.18) will need to be taken in order to include the special policy. They are as follows:

- identification of significant 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) the 2003 Act as part of the general consultation required in respect of the whole statement of licensing policy;
- inclusion, subject to that consultation, 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; and
- publication of the special policy as part of the statement of licensing policy required by the 2003 Act.

Whilst acknowledging that cumulative impact might be considered, the Guidance nevertheless sets parameters for the adoption of the policy and within which it might operate and be applied. First, the policy should normally be adopted only in respect of on-licensed premises and be applied only to premises likely to add to the cumulative effect on licensing objectives. Paragraphs 3.22 and 3.23 of the Guidance provide:

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 … 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.

Secondly, special policies should not be used as a ground for revoking an existing licence or certificate when relevant representations are received about problems with
those premises, nor for rejecting applications to vary except where variation is directly relevant to the special policy, for example where the variation sought is a significant increase in the capacity limits of the premises (Guidance, paras 3.24 and 3.25). Thirdly, special policies cannot justify, and should not include, provisions for a terminal hour in a particular area nor must they 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 (Guidance, paras 3.26 and 3.27).

4.3.9 Further, even where special policies of refusing licences have been adopted, they ‘should be reviewed regularly to assess whether they are needed any longer or need expanding’ (Guidance, para 3.20) and the SOP should set out other mechanisms that are available for dealing with problems arising from a concentration of premises, ‘to enable the general public to appreciate the breadth of the strategy for addressing these problems’ (Guidance, para 3.28). These other mechanisms include:

- 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 antisocial behaviour, including the issuing of fixed penalty notices;
- prosecution of any personal licence holder or member of staff at such premises who is selling alcohol to people who are drunk;
- 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 events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises; and
- power for the police, other responsible authority or a local resident or business to seek a review of the licence or certificate in question.

The Guidance, by focusing on limitations in respect of a special policy, the need for regular review following adoption and by highlighting other mechanisms for resolving problems arising from a concentration of premises, appears to envisage

34 This is because ‘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’ (Guidance, para 3.24).

35 Quotas 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’ (Guidance, para 3.27).
special policies having relatively limited scope. The conclusion seems to be that, whilst such policies are possible, the Guidance does not overly encourage their use. It remains to be seen how much regard authorities have to this section in the Guidance when considering a ‘special policy’ on cumulative effect for inclusion in their SOP.

4.3.10 Licensing hours

The SOP should contain something about licensing hours, at least in relation to the provision of alcohol. It may also contain something about hours relating to entertainment and late night refreshment, although there is nothing in the Guidance about hours for these activities. As to alcohol (where this is consumed on premises), the Guidance:

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 Guidance goes on, in para 3.30, to make it clear that these should be set on an individual basis, without recourse to the setting of fixed trading hours within a designated area; that is zoning should not be used:

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 for to the individual merits of any application.

As to alcohol sold in retail outlets for consumption off the premises, para 3.31 of the Guidance indicates that such outlets should be free to sell alcohol at any time when they are open for shopping, unless there are good reasons for limiting hours (for example, because of persons congregating outside and causing disorder or disturbance):

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.

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36 Statements elsewhere in the Guidance might lend further support to this view, eg, para 3.15 states that: ‘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’ (emphasis added).

37 Paragraph 3.29. Quaere whether the SOP should contain some statement about recognising that longer hours for certain types of premises, such as community public houses with function rooms, will be needed only on a periodic and irregular basis when particular functions are held. Such premises may require late night drinking only on these occasions, but not on a regular, ongoing basis. This might perhaps be accommodated by specification in a condition of the ‘general’ hours for opening, with provision for later opening to a specified time on occasions when particular functions take place.
4.3.11 Children

4.3.12 Admission generally

The SOP might contain a statement that children are generally to have access to licensed premises, subject to their exclusion where it is necessary for the prevention of harm to them, although para 3.36 of the Guidance states that it is unlikely any general rules (that is, policies) can be laid down in this respect:

A statement of licensing policy must not ... 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.

The reference to general rules being avoided seems to relate to rules concerning the prevention of harm rather than to rules generally permitting access for children. This is reinforced by the fact that the Guidance recommends that the SOP should merely ‘highlight areas that will give rise to particular concern in respect of children’ (para 3.37) and ‘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’ (para 3.39).

The types of premises envisaged for restricted access are mentioned in para 3.37 of the Guidance and include premises:

- where entertainment or services of an adult or sexual nature are commonly provided;38
- 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 dealing;
- 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.39

The options for restricting access range from full exclusion of persons under 18 when any licensable activities are taking place (for example, for lap dancing clubs, gaming clubs) to qualified admission for children, which might 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;

38 Paragraph 3.38 provides: ‘it is not possible to give an exhaustive list of what amounts to entertainment or services of an adult or sexual nature ... 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.’

39 With regard to the sale of alcohol, the Secretary of State recommends that licensing authorities commend in their SOPs the Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks, which 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. ‘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’ (Guidance, para 3.42).
• limitations on the parts of premises to which children might be given access;
• age limitations (below 18); and
• 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).40

The implementation of any such restrictions may well follow from representations made by the ‘responsible authority’ recognised by the licensing authority as being competent to advise it on matters relating to the protection of children from harm (see s 13(4)(f) and 6.4.18 below). Paragraph 3.41 of the Guidance indicates that the SOP should specify which body the authority recognises for these purposes.

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.

4.3.13 Admission to film exhibitions

A SOP should make clear that in the case of premises giving film exhibitions the licensing authority will expect licensees 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 local authority intends to adopt its own system of classification, para 3.43 of the Guidance states that its SOP should indicate where the information regarding such classifications will be published and made available to licensees, clubs and the general public.

4.3.14 Integration with other strategies

Licensing is seen as only one means of promoting the delivery of the licensing objectives specified in the 2003 Act and delivery should involve working in partnership with licensing authorities, planning authorities, environmental health and safety authorities, the police, the fire authority, Crime and Disorder Reduction Partnerships,41 town centre managers, local business, performers and their representatives, local people, local transport authorities, transport operators and those involved in child protection working together towards the promotion of these

40 Guidance, para 3.39. The SOP should also make it clear that conditions requiring the admission of children to any premises cannot be attached to licences or certificates. Where no licensing restriction is necessary, admission should be a matter for the discretion of the individual licensee or club or person who has given a TEN (Guidance, para 3.40).
41 See 4.3.4 above.
objectives. The Government is seeking, through this working in partnership, a more co-ordinated approach to promotion of the licensing objectives and this will require the integration of licensing with various other strategies that are directed towards promotion of the objectives. Accordingly, the Guidance, para 3.45, provides that the SOP ‘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’. These will include the following:

- an indication that conditions attached to premises licences and club premises certificates will, so far as possible, reflect local crime prevention strategies, for example provision of CCTV cameras in certain premises (para 3.46);
- an undertaking that the impact of licensing on regulated entertainment, and particularly live music and dancing, will be monitored to ensure that events are not being deterred by licensing requirements (para 3.47);
- a description of any protocols agreed between the local police and other licensing enforcement officers and the arrangements made for reporting 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 (para 3.50);
- the arrangements for licensing committees to receive, when appropriate, reports on the needs of the local tourist economy and the cultural strategy for the area to ensure that these are reflected in their considerations (para 3.51);
- an indication that licensing committees will be kept appraised of the employment situation in the area and the need for new investment and employment where appropriate, and that planning, building control and licensing regimes will be properly separated to avoid duplication and inefficiency (para 3.51); and
- a reference to legislative requirements to eliminate unlawful discrimination and to promote racial equality (para 3.52).

As part of the integration with and implementation of cultural strategies, the SOP should also recognise that ‘proper account should be taken of the need to encourage and promote a broad range of entertainment, particularly live music, dancing and theatre … for the wider cultural benefit of communities’:

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

42 Guidance, para 2.7. ‘Co-operation and partnership remain the best means of promoting the licensing objectives’ (Guidance, para 2.8).
43 These will include the Government’s Alcohol Harm Reduction Strategy for England (AHRSE), which was published by the Cabinet Office (Prime Minister’s Strategy Unit) in March 2004 and which seeks to forge new partnerships with the health and police services, the drinks industry and communities, to combat the range of problems caused by alcohol misuse. The AHRSE puts joint action at the heart of a series of measures that will tackle alcohol-related disorder in town and city centres, improve treatment and support for people with alcohol problems, clamp down on irresponsible promotions by the industry and provide better information to consumers about the dangers of alcohol misuse. Details of the AHRSE can be found at www.strategy.gov.uk.
44 Quaere whether this will be promoting the delivery of any licensing objective.
45 Ibid.
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. (Guidance, para 3.58)

Indeed, the Guidance goes on to suggest that local authorities should consider establishing a policy of seeking premises licences, in their own name from the licensing authority, for public spaces within the community, for example village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas. It would then not be necessary for performers and entertainers to obtain a licence (or give a temporary event notice) themselves to give a performance in these places, although, as para 3.59 makes clear, they would still require the local authority’s permission, as the premises licence holder, for any regulated entertainment that it was proposed should take place in these areas. Whilst it is perhaps an attractive solution in principle, there may be practical difficulties with this approach. It will not be easy, for instance, to draw up an operating schedule that can accommodate the diverse activities that may take place and variation applications may have to be made on each occasion when a different type of use of the land or premises is proposed. Further, local authorities may be reluctant to put themselves at risk of incurring criminal liability for the offence, in s 136, of carrying on an unauthorised licensable activity in relation to the activities of the premises user.  

4.3.15 Duplication of regulatory control

Paragraph 3.53 of the Guidance states that the SOP ‘should include a firm commitment to avoid duplication with other regulatory regimes so far as possible’ and should indicate that conditions will not be attached covering matters dealt with by other regulatory regimes, for example health and safety at work and fire safety. These regimes place a range of general duties on employers and operators of venues both in respect of employees and of the general public when on the premises in question:

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. (Paragraph 3.53)

Such regulations will not, however, always cover the unique circumstances that arise in connection with entertainment at specific premises. Indeed, certain safety legislation includes exemptions because it is assumed that licensing controls will provide the necessary coverage. In these situations, conditions may well be attached.

4.3.16 Standardised conditions

The Guidance states, in para 3.55, that the SOP ‘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’. The same paragraph goes on to say that this is essential to avoid the imposition of ‘disproportionate and overly burdensome conditions’ on premises where there is no need for such conditions and emphasises the need to avoid standardised conditions, which ‘indeed, may be unlawful where they cannot be shown to be necessary for the promotion of the licensing objectives in any individual case’.

However, certain conditions might be thought necessary in virtually all cases if the licensing objectives are to be promoted, for example a condition that access for emergency vehicles shall be kept clear and free from obstruction (which would promote the public safety objective). The Guidance perhaps goes some way to recognising the need for ‘common’ conditions, for it goes on to state in para 3.55:

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.

4.3.17 Enforcement

The SOP should say something about enforcement and inspection strategies. Paragraph 3.56 of the Guidance ‘strongly recommends’ establishing protocols with the local police on enforcement issues, with the emphasis on ‘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’ (para 3.57). The SOP might indicate the approach taken to transgressions of licensing law, for example warning for (minor) first transgression, or prosecution for certain more serious first transgressions.

Inspections are not required at periodic intervals under the Act and their frequency is left to the licensing authority’s discretion. The SOP should indicate what policy the licensing authority is adopting on inspections and para 3.57 of the Guidance envisages there being more inspections for ‘problem’ premises:

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.

Notwithstanding the targeting of premises, the view may be taken that annual inspections are required for certain types of premises, for example nightclubs, and, if so, this should be indicated in the SOP. Equally, it may be felt that evidence of inspection of particular matters, such as electrical and lighting installations, should be forwarded to the authority on an annual or other periodic basis and, again, if so, this should be indicated in the SOP.

47 This is Condition 30 from the Model National Standard Conditions for Places of Public Entertainment (2002, London: Entertainment Technology Press). Obviously this will not be applicable in all cases, eg, where licensable activities take place on vehicles, but it might in most cases where premises in the form of buildings or other places is concerned.

48 It should be noted that the Guidance does not preclude inspections annually or at any other intervals.
4.3.18 Administration, exercise and delegation of functions

The Act provides that licensing functions, which will include the taking of decisions, may be carried out by licensing committees or delegated to subcommittees or, in appropriate (uncontested) cases, to licensing officers (see 2.4.5 above). The Guidance contains recommendations as to delegation in particular cases (see 2.4.12 above) and, in para 3.63, states that the SOP should indicate how the licensing authority intends to approach its various functions. It is envisaged that many of the decisions and functions will be purely administrative in nature and the SOP ‘should underline the principle of delegation in the interests of speed, efficiency and cost-effectiveness’ (para 3.61). In cases where there are no relevant representations made, para 3.62 states, ‘these matters should be dealt with by officers in order to speed matters through the system’, although licensing committees ‘should receive regular reports on decisions made by officers so that they maintain an overview of the general situation’.

4.3.19 Other matters

There may be a range of other matters that could be included in the SOP, some of which might relate to matters already considered above, for example as regards the impact of activities on persons living and working in the vicinity of premises (see 4.3.6 above), adoption a guide distance for ‘vicinity’ of 100 metres from the premises. Others might include an indication of whether there are certain types of application that the authority wishes to encourage, both in general and in particular areas, or to discourage, especially if there is likely to be a conflict with the licensing objectives. There may be certain types of conditions that authorities may wish in general to attach to particular types of premises. There may be various procedural matters that authorities may wish to include. There is a wide range of matters that licensing authorities might or might not choose to include in their SOP, and SOPs drawn up by licensing authorities have varied considerably, both in terms of their detail and scope.

4.3.20 Challenging Statements of Licensing Policy

4.3.21 The SOP itself, or aspects of it, might be challenged either by judicial review or under the Human Rights Act 1998. Two matters require consideration, the grounds for challenge and the persons having standing or locus standi who are able to make a challenge.

The SOP might be challenged by judicial review on the ground that it is unlawful as regards either process or content. The procedure for establishing the SOP may not have been followed because there may have been a failure in the statutory consultation, for example, one of the persons mentioned in s 5(3) whom the authority ‘must consult’ has not been consulted. If the courts consider this to be a mandatory requirement, the SOP itself may be unlawful. Section 5(3) is certainly worded in mandatory terms, but this does not necessarily mean that the courts will regard it as a mandatory requirement such that failure to comply will invalidate the policy (although they might do). It could be regarded as directory (that is, directing the authority to do this), in which case a failure to comply will not invalidate the policy. The SOP might equally be challenged on the ground that its content contains material that is irrelevant, which will be the case, for example, if the material does not relate to
the licensing objectives and their promotion. In such a case, only that particular part of
the SOP, rather than the SOP itself, is likely to be invalid.

Persons who are able to make a challenge by way of judicial review are persons
with a ‘sufficient interest’. Section 31(3) Supreme Court Act 1981 provides:

the court shall not grant leave to make ... an application unless it considers that the
applicant has a sufficient interest in the matter to which the application relates.

Whether there is a sufficient interest depends on whether the applicant’s rights, in an
individual sense, have been affected in some way by the decision complained of,
although whether a person has been affected sufficiently is not easy to determine. As
Craig, P, Administrative Law, 4th edn, 1999, Oxford: OUP, pp 698–99, points out, whether an applicant has standing will include ‘the strength of the applicant’s interest, the
nature of the statutory power or duty in issue, the subject-matter of the claim and
the type of illegality which is being asserted ... The application of these criteria may,
however, be unclear or uncertain’.

4.3.22 The SOP might be challenged under the Human Rights Act 1998 on the ground
it contravenes s 6(1), which provides: ‘It is unlawful for a public authority to act in a
way which is incompatible with a Convention right.’ Persons who are able to make a
challenge for contravention of s 6(1) of the Human Rights Act 1998 are those who are a
‘victim’ of the unlawful act.49 The challenge can be made either by bringing
proceedings or by relying on the Convention right(s) concerned in any legal
proceedings involving the victim.50 A challenge might be made, for example, if the
content of the SOP, as applied to premises licence or CPC applications, in some way
violates Convention rights, for example protection of property under Protocol 1 of
Art 1 or freedom of expression under Art 10 (see 3.6 and 3.7 above respectively). It
seems unlikely, however, that any challenge could be made under Art 6(1) since
formulation of the policy will not involve the ‘determination of civil rights and
obligations’ (see 3.5.3–3.5.6 above). The High Court has taken this view in respect of
development plans in planning in R (on the application of Aggregate Industries UK Ltd) v
English Nature [2002] EWHC 908, where Forbes J stated:

the development plan and its policies do not dictate the answer absolutely, because
other material considerations (which must also be taken into account by the decision-
maker) may point to a different conclusion. Thus the development plan gives
important guidance, but it does not of itself provide a decisive answer ... therefore, the
development plan and its statements of policy are not, in the ordinary way, directly
decisive of the civil rights and obligations in relation to land that falls within its ambit.

The same can be said of a SOP and Art 6(1) therefore seems to be inapplicable.

49 The meaning of ‘victim’ is considered at 3.2.1 above. Passing the ‘victim’ test, however, only
establishes a right of standing, enabling a person to bring the case. It does not mean that the
case will succeed. Whether or not it does will depend on legal arguments concerning the
interference with the particular convention right in question.

50 Where, in the latter instance, the proceedings are an application for judicial review, the
applicant will be taken to have a ‘sufficient interest’ only if he is a victim: s 7(3) of the Human
4.4 GUIDANCE

4.4.1 Not only must licensing authorities, by s 4(3)(b), have regard to any Guidance issued by the Secretary of State, but the Secretary of State is obliged, by s 182(1), to issue Guidance to licensing authorities on the discharge of their functions under the Act. Statutory Guidance issued by the Secretary State, although a novel feature in the field of licensing control in the areas covered by the 2003 Act, is not a new concept and has operated for some years in other areas. The Guidance was prepared following widespread consultation with interested parties – see paras 1.2 and 1.3 for details – and it is intended to have an extensive remit, as is apparent from the following statement in para 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 Licensing Act 2003 in the promotion of the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.

4.4.2 The Guidance will be a ‘living’ document that will be updated from time to time in the light of developments and experience. The method of updating, and indeed for issuing of the Guidance, will be a matter for the Secretary of State, for s 182(7) provides: ‘The Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as he considers appropriate.’ Nevertheless, there are various constraints on the issuing and revision of the Guidance to ensure that it is properly scrutinised before it has effect. These are set out in s 182(2)–(6), which requires a draft of the Guidance to be laid before and approved by each House of Parliament and for revised versions not to have effect until laid before Parliament. Where a resolution disapproving the Guidance is passed by either House, the Secretary of State must make further revisions as appear to him to be required and lay the further revised version before Parliament before it takes effect. Section 182(2)–(6) provides:

(2) But the Secretary of State may not issue the licensing guidance unless a draft of it has been laid before, and approved by resolution of, each House of Parliament.

(3) The Secretary of State may, from time to time, revise the licensing guidance.

(4) A revised version of the licensing guidance does not come into force until the Secretary of State lays it before Parliament.

51 Section 182(1) provides: ‘The Secretary of State must issue guidance (“the licensing guidance”) to licensing authorities on the discharge of their functions under this Act.’

52 See, eg, in the field of education, s 68 of the School Standards and Framework Act 1998 requires Appeal Panels hearing appeals against the exclusion of pupils from school to have regard to any guidance issued by the Secretary of State.
(5) Where either House, before the end of the period of 40 days beginning with the
day on which a revised version of the licensing guidance is laid before it, by
resolution disapproves that version—
(a) the Secretary of State must, under subsection (3), make such further revisions to
the licensing guidance as appear to him to be required in the circumstances, and
(b) before the end of the period of 40 days beginning with the date on which the
resolution is made, lay a further revised version of the licensing guidance
before Parliament.

(6) In reckoning any period of 40 days for the purposes of subsection (5), no account
is to be taken of any time during which—
(a) Parliament is dissolved or prorogued, or
(b) both Houses are adjourned for more than four days.

It is envisaged that the Guidance will be kept under constant review in consultation
with interested parties. Paragraph 1.6 provides:

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.

The Guidance under the Act is detailed and not confined to specific areas of the
legislation. If not all-encompassing, it certainly covers a wide range of areas and, at the
very least, touches on most, if not all, aspects of the legislation.

4.5 DISCHARGING LICENSING FUNCTIONS: LICENSING
OBJECTIVES, THE LICENSING STATEMENT AND THE
GUIDANCE

4.5.1 The licensing functions of authorities under the Act are, as the Guidance makes
clear, only one means by which the licensing objectives are to be promoted. There is a
range of other ways in which it is envisaged that this will be done and the licensing
functions of authorities are, in context, only part of the wider picture. Paragraph 2.7
provides:

Licensing functions under the 2003 Act are only one means of promoting 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,53 town centre managers, local
business, performers and their representatives, local people, local transport
authorities, transport operators and those involved in child protection working
together towards the promotion of the common objectives described.

Promotion of the licensing objectives is of paramount importance when a licensing
authority is discharging its licensing functions under the Act. Section 4(1) provides that
the authority ‘must carry out its functions with a view to promoting the licensing

53 See 4.3.4 above.
objectives’. This is a mandatory requirement.54 An authority has no discretion to depart from promoting the objectives, except in respect of additional objectives or where there are competing licensing objectives (see 4.2.16 above). If it can be shown that, when carrying out any particular function, an authority is not doing so with a view to promoting any of the licensing objectives, the decision will be unlawful. The four licensing objectives will, to use the words of Lord McIntosh during the Committee Stage of the Bill in the House of Lords, be ‘the bedrock on which the activities of licensing authorities will be based’ (HL Deb, vol 542, col 629, 17 December 2002).

4.5.2 Provision of express criteria or objectives against which the discharge of functions must be measured is a feature not previously contained in licensing legislation regulating alcohol, entertainment and late night refreshment services. Nevertheless, the rationale of legal control through licensing in these areas was to a greater or lesser extent focused on the first three licensing objectives (see Chapter 1) and there could well have been an element of the fourth objective present in particular circumstances.55 A licensing authority, when making decisions, might well have had the objectives mentioned in mind, even though not expressly directed by statute to do so. However, now it is expressly required to do so when discharging its licensing functions.

Drawing up and publishing a ‘Licensing Statement’, that is a SOP, is one of the licensing functions of an authority and this function must therefore be discharged with a view to promoting the licensing objectives. The SOP sets out the way in which the licensing authority will interpret the four licensing objectives in the context of its own area, over a three year period. When discharging other functions under the Act, such as determination of applications and the addition of conditions to licences, the authority is required to ‘have regard to’ the SOP. A requirement to ‘have regard to’ a particular matter means only that it needs to be considered as a relevant factor in the decision-making process. It may be taken into account and applied or it may be considered and then discounted altogether.

4.5.3 The SOP will set out the authority’s general approach to its interpretation of the licensing objectives in its own area and its policy on particular matters. The expectation will be that the policy will be followed in the vast majority of cases, since policies, by definition, set out the general rule to be adopted. In these cases, ‘have regard to’ will mean ‘apply’.56 However, the SOP can only set out the authority’s

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54 Referring to this provision during the Committee Stage of the Bill in the House of Lords, Lord McIntosh, a Government spokesman, stated: ‘That means that it has no choice. It is not a weak provision; it is a strong requirement’ (HL Deb, vol 642, col 629, 17 December 2002).

55 This might include, eg, conditions attached to a public entertainment licence preventing persons under the age of 18 from being present at certain types of entertainment, such as striptease performances or lap dancing, and conditions attached to cinema licences restricting the entry of children to films in accordance with age-related certificates issued by the British Board of Film Classification.

56 There would not seem to be much scope here for the application of the principle that, where a relevant factor is to be considered, the weight to be attached to it is a matter for the decision-making body. Traditionally, courts have taken the view that whether a body gives great weight to a particular factor, or regards it as being of marginal significance, is entirely a matter for the body itself, subject only to the decision not being Wednesbury unreasonable (see 3.5.13 above). In the case of having regard to a SOP, however, it is more a question of whether the policy was applied or not. It is difficult to see therefore how a little weight might be given to the Statement in its application.
interpretation of the licensing objectives in its area at a general level. It cannot cater for
every eventuality or for the wide variety of circumstances that might exist.
Accordingly, there may be cases where the SOP is silent on the matter in question and
where the licensing authority may ‘have regard to’ it, but where it offers no assistance
when the matter in question is being determined. The extent to which this is the case
will clearly depend on the degree of detail that is contained in the SOP. Nor can it cater
for cases where, in an individual instance, application of the policy might work
injustice or where the licensing objectives might be met by way of an exception to the
policy rather than by application of it. In such circumstances it will not be necessary to
apply it in the particular case and the authority will ‘have regard to’ it, but discount it.
These cases of discounting the SOP will, however, be exceptional ones and it will only
be possible to depart from it where doing so will promote the licensing objectives. This
is because of the mandatory requirement in s 4(1) that an authority must discharge its
licensing functions with a view to promoting the licensing objectives. The requirement,
in s 4(3)(a), to have regard to the SOP will thus be a ‘strong’ one. There will be
discretion to depart from the SOP, but this will have limited application and cogent
reasons will be needed for doing so.

4.5.4 The Guidance is the second matter that an authority must ‘have regard to’
when discharging its functions. With a similarly expressed statutory requirement, this
seems to put it on an equal footing with the SOP and again it will be necessary for the
Guidance to be followed unless there are good reasons for departing from it. The
Guidance itself provides:

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.57

That the Guidance is issued by the Secretary of State and there is a statutory
requirement to ‘have regard to’ it does not seem to give the Guidance any enhanced
status as a factor to be taken into account in the decision-making process. There is no
indication of any such status in the Court of Appeal’s judgment in R (on the application
of S (A Child)) v Brent London Borough Council [2002] EWCA Civ 693, where three
schoolchildren sought to challenge the decisions of Local Education Authority Appeal
Panels to uphold their exclusion from school on the grounds, inter alia, that the
Appeals Panels, which are required by s 68 of the School Standards and Framework
Act 1998 to have regard to any guidance issued by the Secretary of State, had treated

57 Paragraph 2.3. See also HL Deb, vol 642, col 630, 17 December 2002: ‘The phrase … is quite
deliberately “have regard to”‘; in other words, when we are talking about guidance, which is
neither legislation nor an instruction, the words “have regard to” are appropriate because the
authority retains an ultimate discretion to depart from the guidance’ (Lord McIntosh).
their discretion as being fettered by paragraphs in the Guidance.\textsuperscript{58} The challenges were unsuccessful, but the court sought to emphasise the importance of the Appeal Panels not being directed by the Guidance when reaching their decisions. Schiemann LJ stated (at para 15):

Appeal Panels, and schools too, must keep in mind that guidance is no more than that: it is not direction, and certainly not rules. Any Appeal Panel which, albeit on legal advice, treats the Secretary of State’s Guidance as something to be strictly adhered to or simply follows it because it is there will be breaking its statutory remit in at least three ways: it will be failing to exercise its own independent judgment; it will be treating guidance as if it were rules; and it will, in lawyers’ terms, be fettering its own discretion. Equally, however, it will be breaking its remit if it neglects the guidance. The task is not an easy one.

The statutory requirement, in s 4(3)(b) of the 2003 Act, to have regard to the Guidance is expressed in similar terms to s 4(3)(a) in respect of the SOP and in principle will apply when a licensing authority is discharging any of its licensing functions. The Guidance, however, seems to be aimed in large measure at ensuring a degree of consistency between SOPs of different authorities. It was described by a Government spokesman in the House of Lords as follows:

a document produced by the Secretary of State that is designed to secure that no unnecessary conflicts exist between the licensing policies set out by different licensing authorities. It also sets out the kind of issues that licensing authorities must consider when they are producing such a policy.\textsuperscript{59}

On this view, the Guidance is focused, in the main, on the particular licensing function of formulation of an SOP and it may be less likely to have application in respect of other licensing functions, in particular, the making of licensing decisions under the Act. Whilst the Guidance may be particularly important when drawing up and revising the SOP, and cogent reasons will need to be given for departing from it when doing so, it may be of less importance thereafter. It may be only of secondary importance once the SOP has been formulated in accordance with the Guidance, for the SOP will then become the guiding factor for the licensing authority in its decision-making (except to the extent that revisions may be needed to the SOP to reflect

\textsuperscript{58} The relevant paragraphs, contained in Circular 10/99, provided that, where a pupil was excluded in accordance with clearly stated provisions in the school’s discipline policy, ‘the appeal panel should not normally direct re-instatement’ (para 17) and, where a pupil had been permanently excluded for any of a number of specified reasons (eg, serious violence or sexual abuse), the Secretary of State ‘would normally regard it as inappropriate to re-instate’ (para 18).

\textsuperscript{59} HL Deb, vol 642, col 630, 17 December 2002 (Lord McIntosh). Promotion of consistency was recognised as a necessary purpose of Guidance in the Brent case, but the Court of Appeal did not accept that it was sufficient in itself: ‘guidance must not only stay within and promote the statutory purposes but … must be Convention-compliant, since [the Secretary of State] … is a public authority within s.6 [Human Rights Act 1998] … Parliament has not authorised the Secretary of State to promote practice which is consistent and wrong’ (para 16). Further, a preference was expressed by the court for Guidance to be ‘neutrally’ expressed: ‘One way – perhaps the safest – in which to formulate guidance under s 68 [of the School Standards and Framework Act 1998] is to list the factors to which Appeal Panels ought in general to have regard without indicating any preferred outcome. To do so comes closest to achieving consistency about the right matters without trying to influence individual decisions’ (para 19). It might be questioned whether the Guidance issued under the 2003 Act accords, in parts, with this preference – see, in particular, paras 3.13–3.28 on the cumulative impact of premises, considered at 4.3.7–4.3.9 above.
changes made to the Guidance). Whilst provisions in the SOP may be applied in the vast majority of cases when determining applications made or considering TENs given under the Act, provisions in the Guidance (having been considered at the earlier stage of formulation of the SOP) may not have such widespread application. The effect of this may be to promote the SOP ahead of the Guidance in terms of the scope of its application. In the decision-making process, a licensing authority will in all cases be seeking to promote the licensing objectives and, in doing so, is perhaps more likely to ‘have regard to’ its SOP than to the Guidance. This seems to indicate the following hierarchical structure, as far as decision-making is concerned:

- licensing objectives, which must be promoted in all cases;
- the SOP, the provisions of which (if relevant to the particular case) are to be followed in the vast majority of cases; and
- the Guidance, the provisions of which (if relevant to the particular case) may well require consideration in some instances, but not in others on account of the provisions already having been considered when formulating the SOP.

If this structure is correct, there may be a lack of parity in the requirement in s 4(3) for an authority to ‘have regard to’ the SOP and the Guidance when discharging its licensing functions. The former may assume a more prominent position than the latter in decision-making and the SOP will justify Lord McIntosh’s description of it as ‘enormously important’ (HL Deb, vol 642, col 630, 17 December 2002). The SOP will not rank ahead of the licensing objectives, but, as the means through which the licensing objectives are to be achieved or delivered at the local level, it could be that it will not be far behind the objectives in terms of importance.
CHAPTER 5

LICENSEABLE ACTIVITIES: THE SCOPE OF CONTROL

5.1 INTRODUCTION

5.1.1 Licensable activities and qualifying club activities

5.1.2 Section 1 of the 2003 Act sets out the various licensable activities for which some form of authorisation under the Act (a premises licence, a club premises certificate (CPC) or a temporary event notice (TEN)) is required. Licensable activities encompass all three areas covered by the Act, the sale or supply of alcohol (for which a personal licence is needed and, in the case of a premises licence, there needs to be a designated premises supervisor), the provision of entertainment and the provision of late night refreshment (LNR). Section 1(1) provides:

For the purposes of this Act the following are licensable activities–
(a) the sale by retail of alcohol,
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club,
(c) the provision of regulated entertainment, and
(d) the provision of late night refreshment.

5.1.3 Some, but not all, of these licensable activities comprise ‘qualifying club activities’ under the Act (for which a CPC might be obtained). Qualifying club activities extend to the sale or supply of alcohol (although there is no requirement for a personal licence or a designated premises supervisor) and the provision of entertainment, but, as far as LNR is concerned, its provision in qualifying clubs is an ‘exempt supply’ and no authorisation is needed. Section 1(2) provides:

For those purposes the following licensable activities are also qualifying club activities–
(a) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club,
(b) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place, and
(c) the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests.

Whilst the above licensable activities generally require an authorisation under the Act in order for them to take place, there are various exemptions in ss 173–75, under

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1 Authorisation is required where these licensable activities take place on ‘premises’, which is widely defined in s 193 to include ‘any place’, and, for the purposes of the Act, ‘premises are “used” for a licensable activity if that activity is carried on or from them’ (s 1(6)).

2 The exemption for LNR is contained in Sched 2, para 3 – see 5.4.6 below.
which, in certain circumstances, activities are excluded from the definition of licensable activities.\(^3\)

### 5.1.4 Authorisation for licensable activities and qualifying club activities

Authorisation for qualifying club activities can only take the form of a CPC, whilst authorisation for licensable activities can take the form of a premises licence or a permitted temporary activity under a TEN. Section 2(1) and (2) provides:

1. A licensable activity may be carried on—
   a. under and in accordance with a premises licence (see Part 3), or
   b. in circumstances where the activity is a permitted temporary activity by virtue of Part 5.

2. A qualifying club activity may be carried on under and in accordance with a club premises certificate (see Part 4).

Not all clubs will be a ‘qualifying club’ with a CPC, however, and those that are not will be able to carry out licensable activities under the authorisation of a premises licence or a TEN. Nor, if a club is a qualifying club and has obtained a CPC, does this prevent a premises licence or a TEN being obtained and having effect concurrently in respect of the premises. The legislation makes provision for two or more authorisations in respect of the same premises or in respect of the same person. Section 2(3) and (4) provides:

3. Nothing in this Act prevents two or more authorisations having effect concurrently in respect of the whole or a part of the same premises or in respect of the same person.

4. For the purposes of subsection (3) ‘authorisation’ means—
   a. a premises licence;
   b. a club premises certificate;
   c. a temporary event notice.

This enables, for example, a qualifying club that wishes to provide entertainment to members of the public on certain days to hold both a CPC, to cover its normal operation, and a premises licence, to authorise the provision of entertainment, in respect of the same premises (Explanatory Note 31). Equally, a person with a premises licence and a personal licence authorising him to sell alcohol there may wish to sell alcohol under a TEN at some unlicensed premises elsewhere.

### 5.1.5 Licensing authorities

By s 3(1), authorisation for licensable activities and qualifying club activities in the form of premises licences, CPCs and TENs is granted in England by district or county councils, except in London where they are granted by borough councils or the

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\(^3\) Section 1(7) provides: ‘This section is subject to sections 173 to 175 (which exclude activities from the definition of licensable activity in certain circumstances).’ The exclusions relate to activities in certain locations, which are not licensable, and raffles and tombolas in which prizes consist of alcohol – for details, see 6.1.8–6.1.14 below.
Common Council of the City of London, and in Wales where they are granted by county or county borough councils.\textsuperscript{4}

5.2 SALE BY RETAIL OR SUPPLY OF ALCOHOL

Section 1(1) specifies two types of licensable activities in relation to alcohol: (a) the sale by retail of alcohol; and (b) the supply of alcohol by or on behalf of a club to or to the order of a member of the club otherwise than by way of sale.

5.2.1 Sale by retail of alcohol

5.2.2 ‘Sale by retail’ is defined in s 192, which provides:

(1) For the purposes of this Act ‘sale by retail’, in relation to any alcohol, means a sale of alcohol to any person, other than a sale of alcohol that–
(a) is within subsection (2),
(b) is made from premises owned by the person making the sale, or occupied by him under a lease to which the provisions of Part 2 of the Landlord and Tenant Act 1954 (c.56) (security of tenure) apply, and
(c) if made for consumption off the premises.

(2) A sale of alcohol is within this subsection if it is–
(a) to a trader for the purposes of his trade,
(b) to a club, which holds a club premises certificate, for the purposes of that club,
(c) to the holder of a personal licence for the purpose of making sales authorised by a premises licence,
(d) to the holder of a premises licence for the purpose of making sales authorised by that licence, or
(e) to the premises user in relation to a temporary event notice for the purpose of making sales authorised by that notice.

This substantially reproduces, with modifications, the definition of ‘sale by retail’ previously contained in s 20 of the Licensing Act 1964. All sales are included except those specifically excepted by s 192(2) and these exceptions are ones where the sale is made to persons who will be buying wholesale and then going on to make a sale by retail to their customers (or in the case of clubs, a supply to their members). Perhaps the most significant change is that a sale by retail is no longer defined by reference to the quantity of alcohol sold. Section 201 of the 1964 Act provided that a sale by retail did not include a sale below a certain quantity, which for spirits or wine was not less than nine litres or one case and for beer or cider, was not less than 20 litres or two cases, but there is no comparable provision in s 192 of the 2003 Act. This meant that a licence under the 1964 Act was not required for the wholesale of alcohol in these quantities, whether to a trader or a member of the public, but now under s 192 the sale to a member of the public in wholesale quantities is a licensable activity (Guidance, para 5.8).

\textsuperscript{4} Section 3(1)(a)–(e). Licensing authorities, in addition, include three other bodies, the Sub-Treasurer of the Inner Temple, the Under-Treasurer of the Middle Temple, and the Council of the Isles of Scilly: s 3(1)(f)–(h). The provision in s 3(1) is set out in full in 2.3.1 above.
5.2.3 ‘Alcohol’ is defined in s 191 which provides:

(1) In this Act, ‘alcohol’ means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but does not include—

(a) alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question,
(b) perfume,
(c) flavouring essences recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor,
(d) the aromatic flavouring essence commonly known as Angostura bitters,
(e) alcohol which is, or is included in, a medicinal product,
(f) denatured alcohol,
(g) methyl alcohol,
(h) naphtha, or
(i) alcohol contained in liqueur confectionery.

(2) In this section—

‘denatured alcohol’ has the same meaning as in section 5 of the Finance Act 1995 (c.4);
‘dutiable alcoholic liquor’ has the same meaning as in the Alcoholic Liquor Duties Act 1979 (c.4);
‘liqueur confectionery’ means confectionery which—

(a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogram of the confectionery, and
(b) either consists of separate pieces weighing not more than 42g or is designed to be broken into such pieces for the purpose of consumption;
‘medicinal product’ has the same meaning as in section 130 of the Medicines Act 1968 (c.67); and

5 These terms are more fully defined in s 1 of the Alcoholic Liquor Duties Act 1979. ‘Spirits’ essentially means spirits of any description, or preparations or liquors made with spirits, which are of a strength exceeding 1.2% (s 1(2)). ‘Beer’ includes ale, porter, stout and any other description of beer, and any liquor which is made or sold as a description of beer or as a substitute for beer and which is of a strength exceeding 0.5% (s 1(3)). ‘Wine’ means any liquor of a strength exceeding 1.2% obtained from the alcoholic fermentation of fresh grapes or of the must of fresh grapes, whether or not the liquor is fortified with spirits or flavoured with aromatic extracts (s 1(4)). ‘Cider’ means cider or perry of a strength exceeding 1.2%, but less than 8.5%, obtained from the fermentation of apple or pear juice (s 1(6)).

6 ‘Denatured alcohol’ is the term which, from the commencement of s 5(1) of the Finance Act 1995, is to be used to refer to what is currently described as ‘methylated spirits’. Pending commencement of that provision (which is not in force at the time of writing), s 191 has effect as if it referred to ‘methylated spirits’, by virtue of Sched 8, para 30, which provides:

Until such time as an order is made under subsection (6) of section 5 of the Finance Act 1995 (c.4) (denatured alcohol) bringing that section into force, section 191 of this Act (meaning of ‘alcohol’) has effect as if—

(a) for subsection (1)(f) there were substituted—
(f) methylated spirits’, and
(b) in subsection (2), the definition of ‘denatured alcohol’ were omitted and at the appropriate place there were inserted—
‘“methylated spirits” has the same meaning as in the Alcoholic Liquor Duties Act 1979 (c.4).’
‘strength’ is to be construed in accordance with section 2 of the Alcoholic Liquor Duties Act 1979 (c.4).

This, in essence, reproduces the previous definition of ‘intoxicating liquor’ contained in s 201 of the Licensing Act 1964.

5.2.4 Supply of alcohol by or on behalf of a club or to the order of a member of the club otherwise than by way of sale

5.2.5 It is necessary for the Act to make provision for the supply of alcohol to members of clubs otherwise than by way of sale, as a separate licensable activity from sale by retail. This is because in law, depending on the type of club, a purchase made by a club member may not be regarded in law as a ‘sale’ but as a ‘supply’.7 There are two types of clubs, ‘proprietary clubs’ and ‘members’ clubs’.

Proprietary clubs are clubs run as businesses, where club property (that is, premises, furniture and stores of food and drink) belongs to and is owned by the club proprietor. Where persons are members of such clubs, there is a contractual relationship between them and the proprietor under which they pay a membership subscription in return for which they have a licence (permission) to use the club. The proprietor may run the club himself or may entrust the management of it to a committee (nominated by himself or partly so nominated and partly elected by the members), but in either instance the club is being run as a business. In the case of a proprietary club, whether run by the proprietor or by a committee, there will be a retail sale of alcohol, not a supply of alcohol, when a purchase is made by a club member. In law, this is no different from a sale of alcohol in a public house to a member of the public and a premises licence will be needed for making such sales.

5.2.6 Members’ clubs are clubs where there is not a club proprietor who owns the property. In a members’ club, all of the property belongs to all of the members jointly (usually being vested in trustees for convenience) and this includes the club’s stock of alcohol. The members’ right to use the club is founded on their joint ownership of club property and not a contractual relationship with the club proprietor. The stock of alcohol is regarded as being owned in equal shares by the club’s members and, when a member purchases alcohol from the stock of alcohol, there is a release to him of the proprietary rights of his co-owners. There is not in law a ‘sale’ of alcohol to the member but a ‘supply’ to him from the stock of liquor; the making of payment merely ensures that club funds are reimbursed fairly as between one member and another (see 8.1.1 below). The inclusion of the supply of alcohol as a licensable activity in s 1(1) thus reflects the fact that in members’ clubs no sale of alcohol takes place.

However, not all members’ clubs that supply alcohol will do so as a licensable activity under a premises licence. Members’ clubs can supply alcohol without a premises licence if they hold a CPC under Part 4 of the Act. This can be granted if certain qualifications are met, which, broadly speaking, are designed to demonstrate

7 A supply to a member of a club is a supply other than by a retail sale. Section 1(3) provides that: ‘In this Act references to the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club do not include a reference to any supply which is a sale by retail of alcohol.’
that the club is a bona fide one, run by the members for the members, and is not simply a ‘front’ for a particular individual or individuals to make a profit (see 8.2.5–8.2.15 below). Where the qualifications are not met for some reason (for example, the club has less than 25 members (s 62(5)), the club cannot obtain a CPC and a premises licence will be needed for the supply of alcohol.

5.3 PROVISION OF REGULATED ENTERTAINMENT

5.3.1 Introduction

What constitutes regulated entertainment as a licensable activity is covered in Sched 1. Section 1(4) provides:

Schedule 1 makes provision about what constitutes the provision of regulated entertainment for the purposes of this Act.

What constitutes the ‘provision’ of regulated entertainment is covered by para 1 of Sched 1, and what constitutes ‘regulated entertainment’ is covered by paras 2 and 3. ‘Provision’ is for:

- the public or any section of it; or
- exclusively for members of a qualifying club and their guests; or
- in any other case for consideration and with a view to profit.

‘Regulated entertainment’ is:

- entertainment of various types (plays, films, indoor sporting events, boxing or wrestling, or music or dancing or entertainment of a similar description, where the entertainment is for an audience);8 or
- entertainment facilities for certain forms of entertainment (facilities for enabling persons to take part in making music, dancing or entertainment of a similar description).

5.3.2 Meaning of ‘provision’ of regulated entertainment

5.3.3 Paragraph 1(1)–(3) of Sched 1 provides:

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8 Public exhibitions and entertainment booking offices, included within Sched 12 to the London Government Act 1963 (which covered public entertainments of various descriptions within London), are not included within ‘regulated entertainment’ under the 2003 Act, but will continue to be licensed under the 1963 Act. Sched 8, para 31 to the 2003 Act provides:

Notwithstanding the repeal by this Act of Schedule 12 to the London Government Act 1963 (c.33) (licensing of public exhibitions in Greater London), or of any enactment amending that Schedule, that Schedule shall continue to apply in relation to–

(a) licences granted under section 21 of the Greater London Council (General Powers) Act 1966 (c.xxviii) (licensing of public exhibitions in London), and
(b) licences granted under section 5 of the Greater London Council (General Powers) Act 1978 (c.xiii) (licensing of entertainments booking offices in London), as it applied before that repeal.

(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 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 or entertainment facilities are provided are made available for the purpose, or for purposes which include the purpose, of enabling the entertainment concerned 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.

5.3.4 It can be seen that ‘provision’ of regulated entertainment is comprised of two elements. One is making entertainment or entertainment facilities available to certain categories of persons (first condition), each of which is considered below, and the other is making premises available for a purpose that includes enabling the entertainment concerned to take place (second condition). Premises being ‘made available’ suggests the need for some purposive intent on the part a person. The mere fact that particular types of entertainment actually take place on premises may not in itself suffice. If entertainment were to take place spontaneously, it could not be said that the premises were made available to those who participated in the spontaneous entertainment. The Guidance, para 5.19, provides:

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 Sched 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.

This would seem to be the case whether or not there is an awareness or foresight that such entertainment may take place. Awareness or foresight is not purposive intent and in itself ought not to suffice, although it may be evidence from which such intent can be inferred.
5.3.5 Members of the public or a section of the public

5.3.6 The 2003 Act, like its predecessors, does not define ‘public’ and recourse must be had to case law decided under earlier legislative provisions to ascertain the meaning and scope of the term. There is, however, no single authoritative definition emerging from the decided cases.

For entertainment to be open to members of the public, it needs to be open to the public without discrimination, that is, anyone can obtain entry, whether or not any admission charge is made. In *Allen v Emmerson*, where the High Court had to decide, *inter alia*, whether a licence under a local Act of Parliament was required for fun fair premises, entry to which did not involve the payment of any admission charge, the court was of the opinion that:

a satisfactory working definition of ‘public entertainment’ was one suggested by Mr Turner [counsel for the appellant] in argument, namely, ‘a place open to members of the public without discrimination who desire to be entertained and where means of entertainment are provided’. Judged by this test, or indeed, by the ordinary use of language, these fun fairs were, in our view, ‘places of public entertainment’, and none the less so because no fee was charged for admission to the premises.9

5.3.7 However, it is likely in many cases that there will be an admission charge, in which case the test will be whether the place is open to members of the public on payment for admission. It is the place being open for admission which is important and not whether members of the public are in fact present at the place where the entertainment is being provided. As Lord Parker CJ remarked in *Gardner v Morris* (1961) 59 LGR 187 (at 189):

the test ... is not whether one, two, or three or any particular number of members of the public were present, but whether, on the evidence, the proper inference is that the entertainment was open to the public in the sense that any reputable member of the public on paying the necessary admission fee could come into and take part in the entertainment.

Whilst provision of regulated entertainment under para 1(2)(a) may be for members of the public at large, where anyone can obtain entry, it need not be and it will suffice it is for a ‘section of the public’. This expression, which is not defined by the Act, seems to envisage entry by anyone falling within a particular category or description, for example anyone over the age of 18 or under the age of 30. However, what comprises a

9 [1944] KB 362, 368, *per* Asquith J. The principle that payment for admission is immaterial in deciding whether an entertainment is public or not is a long established one, supported by authorities decided under the Disorderly Houses Act 1751. In *Archer v Willingrice* (1802) 4 Esp 186, the court held the defendant, a publican, liable for allowing dancing to take place on his premises where an admission fee was paid, not to the defendant himself, but to a person who professed to teach the dancing. Lord Ellenborough stated: ‘It is not necessary, in order to subject a party to a penalty given by this Act of Parliament, that he should take money for admission. The taking of money is only evidence that the defendant is the owner of the house where the dancing has been carried on.’ Similarly, in *Gregory v Tuffs* (1833) 6 C & P 271, where another publican permitted singing and dancing to take place on his premises, it was held that the defendant was liable even though no payment was made at all. Lord Lyndhurst CB, summing up to the jury, stated (at 272–73): ‘it was not essential that the room should be used exclusively for this purpose; nor is it necessary that money should be taken for admission.’ (The decision in *Archer*, although cited by counsel, was not referred to by the court in support of this point.)
section of the public may not always be easy to ascertain. Persons falling within a
particular category or description might be described as a section of the public,
although they might equally be described as a private class of persons. As Lord Cross
observed in *Dingle v Turner* [1972] AC 601 (at 616):

The phrase a ‘section of the public’ is in truth a vague phrase which may mean
different things to different people … No doubt some classes are more naturally
describable as sections of the public whilst other classes are more naturally describable
as private classes than as sections of the public.

His Lordship went on to give examples of blind persons as more naturally describable
as sections of the public and employees in ‘some fairly small firm’ being more
naturally describable as a private class, so the matter seems to be one of degree. The
larger the category or descriptions of persons, the more likely it is to be regarded as a
section of the public.

5.3.8 Exclusively for members of a qualifying club and their guests

Where regulated entertainment is provided exclusively for members of a qualifying
club10 and their guests, this will not constitute public entertainment. Here the
entertainment is not open to the public because only members and their *bona fide*
guests are able to obtain admission. The guests will not be considered to be members
of the public because they cannot obtain entry in their own right independent of the
member introducing them. The Divisional Court, in *Severn View Social Club and
Institute Ltd v Chepstow (Monmouthshire) Licensing Justices*,11 held that it was wrong to
take the view that the admission of *bona fide* guests of members of a club to functions
involving music and dancing made those functions public, so that a licence for this
entertainment was required. Nevertheless, where regulated entertainment is provided
exclusively for members of a qualifying club and their guests, this constitutes a
‘provision of regulated entertainment’ by virtue of para 1(2)(b) of Sched 1 and this will
constitute a licensable activity for which authorisation is required.

However, para 1(2)(b) of Sched 1 applies only in respect of qualifying clubs and
does not apply to regulated entertainment provided exclusively for members of other
clubs and their guests. Other clubs may well be *bona fide* members’ clubs to which the
public are not admitted, but not meet the conditions for a qualifying club, for example
because they do not have 25 members. There will be not be a ‘provision of regulated
entertainment’ by such a club under either para 1(2)(a) of Sched 1, as regulated
entertainment is not provided to any extent for members of the public or a section of
the public, or under para 1(2)(b) of Sched 1, as regulated entertainment is not provided
exclusively for members of a qualifying club and their guests, although there might be
under para 1(2)(c) of Sched 1, which is considered below, if the regulated
entertainment is provided for consideration and with a view to profit; but if such clubs
operate on a non-profit making basis, it seems that they fall outside the scope of
regulatory control.

10 A ‘qualifying club’, in relation to the provision of regulated entertainment, is one that satisfies
the general conditions in s 62 (s 61(3)) – see 8.2.6–8.2.15 below.
11 [1968] 1 WLR 1512. ‘In my judgment’, Lord Parker CJ stated (at 1514), ‘they clearly were not
members of the public as such.’
5.3.9 For consideration and with a view to profit

5.3.10 This applies to the provision of any regulated entertainment not falling within the two preceding paragraphs and will thus include entertainment for private persons. This significantly extends the scope of the previous law, under which a licence was required for private entertainment by virtue of the Private Places of Entertainment (Licensing) Act 1967 only where this comprised music, dancing or other entertainment of a like kind and only where local authorities adopted the legislation by passing a resolution bringing it into force in their area. Under para 1(2)(c), a licence is required for the provision of all types of regulated entertainment. This extends licensing control to plays, films, indoor sporting events, and boxing or wrestling, as well as to facilities for enabling persons to take part in music, dancing or other entertainment of a like kind.

Given that regulated entertainment encompasses provision for private persons, the distinction between persons who are members of the public and those who are not is less critical than under the previous law. However, private entertainment will only constitute the provision of regulated entertainment if it is ‘for consideration and with a view to profit’.

5.3.11 For consideration

5.3.12 Regulated entertainment will be provided for consideration only if a charge is made by those organising or managing the entertainment and is paid by some or all of the persons for whom the entertainment is provided. The charge will most probably be the payment of money, but need not be and anything of value, which is requested and given, will suffice. Paragraph 1(4) and (5) provides:

(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.

As far as the making of a charge is concerned, persons concerned in the organisation or management of regulated entertainment will comprise those responsible for putting on, arranging or promoting the entertainment, whilst those concerned in the management will be those who exercise some control over the entertainment and the venue at which it takes place during its performance. The phrase ‘concerned in the

12 If no charge is made, what is provided will fall outside the definition of regulated entertainment. Explanatory Note 299 gives the example of a company or firm providing entertainment for its clients, for which no charge is made, but which is connected with stimulating general goodwill which might be advantageous for the business.
organisation or management’ of an entertainment would not seem to extend beyond such persons (or those acting on their behalf) in this context, given the requirement that a charge is made by them. It is true that the Divisional Court, in *Chichester District Council v Ware* (1992) 157 JP 574, in the context of the offence of providing unlicensed public entertainment under the Local Government (Miscellaneous Provisions) Act 1982, gave a much wider interpretation to this phrase, taking the view that it covered anyone who took part in the running of the entertainment and whose part could be said to contribute significantly to the whole unlicensed entertainment; but, whilst a broader view may be appropriate in the context of liability, it can hardly have application in the present context when the making of a charge is required.

5.3.13 It is not sufficient that a charge is made unless it is made by those concerned in the organisation or management of the entertainment. Thus, for example, a wedding reception for invited guests (and for 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 the entertainment is not a licensable activity (Guidance, para 5.16). Thus if the bride and groom, or their parents, arranged for the band to play, whilst there will be a charge by the band, there will not be by those organising the entertainment (bride, groom, or parents) at the wedding reception.13 Nor will the fact that those performing or playing music do no more than select the music, determine how it shall be performed or played, or facilitate its performance or playing (by providing facilities such as musical instruments to perform or play the music) mean that they are concerned in the organisation or management of the entertainment. Paragraph 1(6) makes the following specific provision to this effect:

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.

Where persons are concerned in the organisation or management of entertainment facilities, they will only be regarded as providing entertainment facilities for consideration, under para 1(4)(a)(ii), if they are also concerned in the organisation or management of the entertainment. This is to ensure that an individual who simply makes facilities available, but is not involved with the organisation or management of the entertainment for which the facilities are used, is not to be considered as doing so

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13 Quaere if the band is booked not by those organising the wedding reception, but by a professional entertainment agency that makes a charge. In this case, the agency arguably is concerned in the organisation or management of the entertainment, it makes a charge which is paid by some or all of the persons being entertained, and the activity may therefore be licensable.
for a charge. In practical terms, that means that an individual – perhaps someone who owns or manages a historic house or other suitable venue – will not be subject to the licensing regime simply because he hires out the venue to a third party (see HL Deb, vol 645, col 10, 25 February 2003).

5.3.14 With a view to profit

Regulated entertainment will be provided with a view to profit if the purpose, or one of the purposes, of it is financial gain and a financial benefit is obtained by some individual or a private (or public) body. There are, however, some instances where a financial gain may be made where a regulated entertainment would not ordinarily be thought of as having been provided ‘with a view to profit’. One such case is where a genuine members’ club provides regulated entertainment with a view to raising funds to be used for the benefit of its members. Such an activity is not regarded as being undertaken with a view to profit for, as Lord Denning MR stated, in the Court of Appeal in Tehrani v Rostron [1971] 3 All ER 790, 793, ‘in a members’ club, the members … conduct it for their own benefit, not with a view to profit’ (see 8.1.1 below). Another such case may be where money is raised for charity from a regulated entertainment. It was perhaps because the ordinary meaning of the words ‘with a view to profit’ would not encompass money raised for charity that the Bill originally included a provision that regulated entertainment was to be regarded as provided with a view to profit where it was with a view to raising money for charity. This was deleted during the course of the legislation’s passage and, without such a provision, it might be assumed that such entertainment is not to be so regarded. Nevertheless, according to the Explanatory Notes to the Act, entertainment provided to raise money for charity is entertainment provided with a view to profit. If this was the intention, a provision to this effect should have remained in the Act. As this was deleted, this should be taken to indicate that money raised for charity falls outside the scope of regulated entertainment. Notwithstanding the statements in the Explanatory Notes (which do not form part of the Act and have not been endorsed by Parliament), it is submitted that ‘with a view to profit’ should be interpreted so as to exclude money raised for charity through private provision of entertainment. The requirements of ‘consideration’ and ‘profit’ seem to be more in keeping with ‘commercial’ provision rather than ‘charitable’ provision and ought to be confined to the former instances. Where there is ‘charitable’ provision and members of the public are admitted, this is a licensable activity irrespective of the ‘profit’ issue, but extending it beyond this to encompass private provision seems to take regulatory control too far.

If any charge made is merely to cover costs, it will not be with a view to profit and the entertainment will not be licensable. As the Guidance, para 5.16, states:

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.

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14 See Explanatory Notes 298 (‘This Schedule defines the provision of regulated entertainment as covering entertainment … for which a charge is made, which is provided for profit (which will include to raise money for charity …’) and 299 (‘The definition would cover entertainment staged by a charity for the purposes of fundraising …’).
As para 1(2)(c) of Sched 1 to the 2003 Act requires that provision of regulated entertainment is ‘with a view’ to profit, it would appear to be the intention to make a profit from the activity that is important rather than the fact that a profit might be made. If the intention is merely to cover costs, but the actual costs turn out to be less than anticipated so that a profit is in fact made, this would seem not to make the activity licensable and would not constitute provision of an unlicensed activity if no authorisation had been obtained. This is apparent from the Guidance, which provides: ‘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’ (para 5.16). Of course, the greater the profit made and the more consistently a profit is made, the harder it may be to rebut any inference that the intention was to make a profit.

5.3.15 Exemptions

The provision of regulated entertainment is subject to a number of exemptions set out in Pt 2 of Sched 1 and these are covered below.\(^{15}\)

5.3.16 Meaning of ‘regulated entertainment’

Regulated entertainment as defined in Sched 1 includes both entertainment and entertainment facilities. The former is covered by para 2 and the latter by para 3. The categories of entertainment and entertainment facilities are capable of being amended, for para 4 provides that the Secretary of State can modify the descriptions by adding, varying or removing any of them.\(^{16}\)

5.3.17 Entertainment as ‘regulated entertainment’

5.3.18 Types of entertainment

5.3.19 These are set out in para 2(1), which provides:

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.

The term ‘audience’ might be more customarily employed for some of these forms of entertainment (for example plays and films) than for others (for example, sporting events and boxing and wrestling), where the term ‘spectators’ might more normally be used. However, the term ‘audience’ in sub-para (1) will include a reference to spectators, as para 2(2) makes clear.17

It is only where the above activities take place before an audience or spectators that there will be a licensable entertainment. Since the ‘provision’ of regulated entertainment includes provision not only for the public or a section of it, but also for qualifying club members and guests and in other cases where it is for consideration and with a view to profit, it is clear that the audience or spectators need not comprise or consist of any members of the public. Any audience or spectators privately invited will suffice. Activities which do not, however, involve entertaining an audience or spectators are not licensable under the Act. Paragraph 5.12 of the Guidance provides the following illustrations:

- 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 – for example, 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.18

5.3.20 A licensing authority will thus, first and foremost, need to consider the word ‘entertainment’ and focus on whether what takes place can be said to constitute an entertainment. It is only when satisfied that activities amount to entertainment that a licensing authority should go on to consider the qualifying conditions, exemptions and other definitions in Sched 1.

Except in the case of indoor sporting events, there is no requirement that the regulated entertainment takes place indoors or that the audience is accommodated indoors. For the most part, this does not represent any change in the previous law, since a licence was required for all of the other activities mentioned above, whether they took place outside or indoors, except in the case of film exhibitions. A licence probably was not required for outdoor film exhibitions,19 but it is now clear that these will constitute regulated entertainment and be licensable as such. The fact that

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17 Paragraph 2(2) provides: ‘Any reference in sub-paragraph (1) to an audience includes a reference to spectators.’

18 This illustration should not be confined to rehearsals to which the public are not admitted and should include rehearsals to which any audience, even a privately invited one, are not admitted.

19 See *op cit*, Manchester, fn 8, para 13.04. Under the Cinemas Act 1985, a licence was required for film exhibitions that took place on ‘premises’, but this term was not defined in the Act to include ‘any place’. The term ‘any place’ was generally recognised to include places outdoors, such as parks or other open spaces, whereas the ordinary and natural meaning of ‘premises’ is buildings and their adjuncts. It was therefore considered doubtful that a licence was required for films exhibited outdoors.
entertainment can take place before an audience that is outdoors will obviously include open air music concerts within the definition of ‘regulated entertainment’ and might, less obviously, include buskers. Buskers provide one of the types of entertainment set out in para 2(1), the performance of live music; this takes place in the presence of an ‘audience’, if passers-by are considered to comprise an audience, and the music is clearly for the purposes of entertaining the ‘audience’. If buskers are included, then authorisation in the form of a premises licence or a TEN will be needed.

The various types of entertainment set out in para 2(1) are themselves defined in Pt 3 of Sched 1 and their meaning is considered immediately below.

5.3.21 Performance of a play

Paragraph 14 provides:

(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).

Paragraph 14(1) replicates the definition of ‘play’ previously contained in s 18(1)(a) of the Theatres Act 1968, although there is no comparable provision to that in s 18(1)(b), which provided that ‘play’ included ‘any ballet given wholly or in part by one or more persons actually present and performing, whether or not it falls within paragraph (a) of this definition’. The definition in s 18(1)(a), now contained in para 14, seems in fact to be wide enough to cover any ballet given, so the exclusion of any reference to ballet would not appear to effect any substantive change as far as the meaning of ‘play’ is concerned. Paragraph 14(2) extends performance of a play to rehearsals, which previously did not fall within the scope of licensing control. However, rehearsals of plays will only constitute regulated entertainment if they take place in the presence of an audience and if one of the purposes for which they are provided is entertaining that audience.

20 It is arguable whether passers-by do comprise an ‘audience’. Passers-by will obviously comprise an ‘audience’ if they stop to watch. However, even if they do no more than simply exercise rights of passage, it may be said that entertainment is taking place in the presence of a ‘travelling’ audience.

21 Since ‘premises’ means, inter alia, ‘any place’ – see s 193 and 6.1.1 below – a premises licence can be granted for outdoor spaces as well as for buildings.

22 Paragraph 2(3) provides that: ‘This paragraph is subject to Part 3 of this Schedule (interpretation).

23 See Guidance, para 5.12: ‘A rehearsal of a play or a rehearsal of a performance of music to which the public are not admitted is not an entertainment.’ It would more correct to say ‘to which an audience are not admitted’, since whether entertainment is regulated entertainment is dependent on the presence of an audience (which might be privately invited) and not the public. The rationale for including rehearsals is to ensure that events, such as press performances and dress rehearsals, are licensed because ‘people attending would expect to be protected as they would for a proper performance’ (Lord McIntosh) – see HL Deb, vol 643, col 401, 12 December 2002.
5.3.22 Exhibition of a film

Paragraph 15 provides:

An ‘exhibition of a film’ means any exhibition of moving pictures.

This replicates the definition of ‘film exhibition’ previously contained in s 21(1) of the Cinemas Act 1985, except that it does not contain any exclusion in respect of the broadcasting of a programme service. An ‘exhibition’ of moving pictures means the showing of moving pictures to an audience rather than a display of moving objects on a screen. The House of Lords so held, in British Amusement Catering Trades Association v Westminster City Council [1989] AC 147, when deciding that a licence was not required for an amusement arcade where coin-operated video games were played. Lord Griffiths, with whom other members of the House agreed, stated (at 157):

Mervyn Davies J and the majority of the Court of Appeal accepted the argument that because the screen of a video game displays moving objects there was therefore an exhibition of moving pictures within the meaning of the Act ... This approach fails in my opinion to take into account the different shades of meaning attached in the English language to the use of the word ‘exhibition’ according to the context in which it is used and, in particular, fails to give sufficient weight to the primary dictionary meaning of ‘exhibit’ – ‘especially to show publicly for the purpose of amusement or instruction’.

... reading the Act as a whole and the Regulations made thereunder, I have no doubt that exhibition is used in the sense of a show to an audience and not in the sense of a display of moving objects on the screen of a video game.

It seems implicit in the concept of a film shown to an audience that the audience is there wholly or mainly for the purpose of viewing the show whilst it is taking place. If persons are present for other purposes, and any viewing of moving pictures on a screen is incidental or a secondary activity, then there would not seem to be any ‘film exhibition’ and the activity would not be licensable. This might be the case with video juke boxes, which have moving images displayed on a screen whilst music is playing, the video presenting a visual representation of the music. It is not uncommon to have video juke boxes in public houses, but their presence there would not appear to involve any film show to an audience as the public are not at the premises for the purpose of viewing a film show. Even if a number of persons were to go to the premises specifically or primarily to watch the video juke box, rather than for a drink, this should make no difference. The test of primary purpose is likely to be objectively determined, by reference to what the reasonable person would regard as the primary purpose for which the premises are used, rather than subjectively by reference to the intent of those going there.

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24 Section 21(1) provided: “‘film exhibition’ means any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of programmes included in a programme service (within the meaning of the Broadcasting Act 1990)”. The broadcasting of a programme service is subject to a separate exemption in Sched 1, para 8 of the 2003 Act, which applies generally in respect of the provision of any entertainment or entertainment facilities – see 5.3.38 below.
5.3.23 **Indoor sporting event**

5.3.24 Paragraph 16(1) provides:

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.

This re-enacts in substance the provisions previously contained in para 2 of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982, and para 3A of Sched 12 to the London Government Act 1963. As under the previous law, outdoor sporting events and sports stadia fall outside the scope of licensing control as they are the subject of separate legislation with regard to health and safety and fire safety.25 Such stadia may, of course, have several bars and restaurants selling alcohol and have a premises licence providing authorisation for this licensable activity, but the sporting events themselves will not be ones for which authorisation under the 2003 Act is required. This will similarly be the case where sporting events are held at major sports grounds with roofs that open and close, such as the Millennium Stadium in Cardiff. These are treated as outdoor premises and sports taking place there are not categorised as ‘indoor sports’.26

Paragraph 16(2) provides:

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.

Where a building has a fixed, rather than a sliding, roof structure, sporting events taking place within it will be indoor sports. No indication is given in the definition as to the nature of the roofed structure or the building itself, unlike under the previous law where reference was made to ‘any permanent or temporary building and any tent or inflatable structure’.27 Nor is any indication given as to the nature of a moveable structure, although the expression seems wide enough to include both structures that can be moved in their completed state and ones that need dismantling before being moved. Temporary buildings, marquees, tents and inflatable structures should all fall within the definition of ‘building’ in para 16, either as roofed structures or as moveable structures.

5.3.25 The definitions of ‘sporting event’ and ‘sport’ remain unchanged from under the previous legislation. Paragraph 16(2) provides:

‘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.

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25 This is except in the case of boxing and wrestling matches – see 5.3.27 below.

26 This is to avoid such a stadium being made ‘subject to duplicate licensing regimes merely because “indoor sport”, when the roof is closed, could cover football or rugby played in the stadium’ (Lord Davies) – see HL Deb, vol 643, col 414, 12 December 2002.

For activities to constitute a ‘sport’, one of two characteristics will be needed. One is that physical skill will need to be the main factor, which will be the case for a wide range of activities, such as football, badminton, squash, and water polo (to mention but a few examples), that might take place indoors in sports centres and similar premises. If physical skill is not the main factor, as with activities such as chess, dominoes or poker, this will not constitute a ‘sporting event’ and will not be licensable even if attended by the public as spectators. The other is where recreational physical activity is undertaken for the purposes of competition or display, as with gymnastics or artistic skating. This will constitute a ‘sport’ and an indoor sporting event for which authorisation will be required. Whether any activity of dancing similarly undertaken, such as artistic dancing, will be licensable as an indoor sporting event is less clear. Dancing is a form of regulated entertainment and is licensable as such, but when undertaken competitively or for display for an audience it may additionally be an indoor sporting event for which authorisation is also needed. There is no exclusion of dancing from the definition of ‘sport’, as there was under the previous law.\textsuperscript{28} Presumably, this exclusion was deliberate rather than inadvertent and, if this was the case, it would seem that activities, such as artistic dancing, will be licensable as indoor sporting events.

5.3.26 Where sporting events take place indoors and are observed by spectators, but are not primarily taking place for their entertainment, this will not constitute regulated entertainment. The Guidance states:

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 ... 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.\textsuperscript{29}

This again illustrates the importance of focusing on whether what is provided constitutes ‘entertainment’. If it does, it seems that the activity will be licensable even if the sporting event is not the principal purpose for which the building is being used on that occasion. Under the previous law, no licence would have been required in such a case, except where the activity took place in a sports centre.\textsuperscript{30} Paragraph 16, however, contains no equivalent provision and it is no longer necessary to consider any other uses to which the building might be put in addition to the sporting event.

\textsuperscript{28} See para 2(6) of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982 and para 3A(8) of Sched 12 to the London Government Act 1963.

\textsuperscript{29} Guidance, para 5.15. See also \textit{op cit}, Manchester, fn 8, para 2.17, where the darts example was used to illustrate the position under the previous law.

\textsuperscript{30} See para 2(6) of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982 and para 3A(8) of Sched 12 to the London Government Act 1963. Had the ‘principal purpose’ provision applied to sports centres, in which a multitude of different sports take place, it would never have been possible to say in respect of any particular sport that this was the principal purpose for which the premises were being used on that occasion. It was for this reason that an exception was made for sports centres.
5.3.27 Boxing or wrestling entertainment

Paragraph 17 provides:

A ‘boxing or wrestling entertainment’ is any contest, exhibition or display of boxing or wrestling.

Where boxing and wrestling entertainments take place indoors, this will constitute an indoor sporting event under the preceding paragraph, but para 17 makes it a licensable activity wherever such an entertainment takes place. Effectively, therefore, para 17 will apply to boxing and wrestling entertainments held wholly or partially outdoors. Under the previous law, a licence was required for such entertainments in London, but not in provincial areas, but para 17 now extends licensing control to all areas.

Attempts to extend licensing control beyond boxing and wrestling to include other ‘martial arts’ sports, such as kick-boxing and karate, in cases where these are provided for the entertainment of an audience, were resisted by the Government during the course of the legislation’s passage. This was on the grounds that they were less likely to give rise to public safety concerns. During the committee stage of the Bill in the House of Lords, Lord Davies stated:

we know that boxing and wrestling and their audiences present a significant issue with regard to public safety ... the relationship between wrestling and its audience is particularly engaging, and its showmanship can engage the audience very directly. But, as has been known for many decades, boxing also engages passions ... but I do not believe that martial arts normally set out to engage the audience in quite the same way as do boxing and wrestling.

5.3.28 Performance of live music

Paragraph 18 provides:

‘Music’ includes vocal or instrumental music or any combination of the two.

Under the previous law, the term ‘music’ was not defined, but its ordinary meaning encompassed both vocal and instrumental sounds, either produced alone or in combination, and this is the meaning adopted in para 18. Thus, live music concerts, whether instrumental only or a combination of instrumental and singing, will be regulated entertainment. So also will events involving singing, even without any instrumental accompaniment, as in the case of karaoke, where there is singing to the accompaniment of recorded rather than live music. Here the singing element will constitute ‘music’ that is being performed live.

33 The only departure from the dictionary definition seems to be the absence of any reference to melodic or harmonious sounds. (The Shorter Oxford English Dictionary defines ‘music’ to include ‘sounds in melodic or harmonious combination, whether produced by voice or instruments’.) Perhaps because of this exclusion it has not been felt necessary to incorporate a reference to music as including ‘sounds wholly or predominantly characterised by the emission of a succession of repetitive beats’, as appears in s 63(1)(b) of the Criminal Justice and Public Order Act 1994 (which deals with powers in relation to raves).
The term ‘performance’, as far as live music is concerned, is not defined, unlike in the case of the performance of a play. Paragraph 14(2) specifically provides that the performance of a play includes a rehearsal (see 5.3.21 above), but there is no provision to this effect for live music. It would seem therefore that a live music concert rehearsal, to which an audience was invited, would not constitute a licensable activity under this provision.

5.3.29 Any playing of recorded music

Recorded music is played in many premises, but this will be a licensable activity only where it is done for the entertainment of an audience, as where karaoke is provided. Otherwise it will not be licensable and, further, there are exemptions provided where this is incidental to other activities (see 5.3.36–5.3.37 below). No definition is provided as to what constitutes ‘recorded’ music. In *Toye v Southwark London Borough Council* (2002) 49 Licensing Review 13, the Administrative Court, when considering the meaning of ‘reproduction of recorded sound’ in s 182 of the Licensing Act 1964, took a broad view of what could constitute ‘recorded sound’. Holding that sound could be ‘recorded’ where it was produced by means of written instructions to a computer or synthesizer, Forbes J stated (at 16): ‘the expression recorded sound is capable of wide meaning and application.’ It is likely that a similar meaning will be adopted in relation to the ‘playing of recorded music’ and that music recorded by any means will suffice.

5.3.30 Performance of dance

The term ‘dancing’ is not defined and, if given its ordinary meaning, might, traditionally at least, be understood to encompass rhythmical movements of the body with measured steps regulated by a musical tune. The *Shorter Oxford English Dictionary* defines ‘dancing’ to include ‘a rhythmical skipping and stepping, with regular turnings and movements, usually to a musical accompaniment’. This emphasis on rhythm as a characteristic of dancing is apparent from earlier case law where the meaning of ‘dancing’ was considered, as can be seen in the remarks of Cave J in *Fay v Bignell* (1883) Cab & El 112, 113: ‘It is not every movement of the legs and feet which constitutes dancing. It must be a graceful and rhythmical motion.’ However, it is clear that this is no longer a defining characteristic, for, as Roch LJ observed in the Court of Appeal in *Willowcell Ltd v Westminster City Council* (1995) 160 JP 101, 111, ‘the concept of dancing has changed fundamentally between Victorian times and the present day’. Consequently it would seem that the present day concept of dancing does encompass body movements that may not be rhythmical. Nor would it seem to be necessary that movements are regulated by a musical tune. Indeed, this appeared to be recognised by the Divisional Court in *Sammut v Westminster City Council*, where Smith J stated: ‘the word “dancing” must be construed in its modern sense, which includes (as it seems to me that it does nowadays) a wide variety of human movements, not necessarily rhythmical and not necessarily related to music.’

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34 (12 July 1994, unreported.) See also *Willowcell Ltd v Westminster City Council* (1995) 160 JP 101, 115, where Roch LJ observed that ‘dancing’ was ‘a word as capable of as wide an interpretation as the infinite range of bodily movements which may be said to constitute the dance’.
A ‘performance of dance’ will be one where the dancing is provided for the entertainment of an audience. ‘Performance’ is not defined, however, to include a rehearsal, so a rehearsal of dancing to which an audience has been invited will not constitute a licensable activity. Where the entertainment consists of persons meeting up for the purposes of entertaining themselves by taking part in dancing, as at dance halls and dancing schools, this will not be regulated entertainment under paragraph 2(1)(g), as the entertainment is not provided for an audience. It will, nevertheless, be licensable, since it constitutes the provision of entertainment facilities (see 5.3.32 below).

5.3.31 Entertainment of a similar description to that falling within paragraph (e), (f) or (g)

This will be entertainment of a like kind to (live or recorded) music or the performance of dance. It might include, for example, a skating performance to music, which could be considered an entertainment of a similar description to music and dancing. Similarly, a striptease performance, a form of erotic entertainment in which performers gradually remove items of clothing or apparel in a slow and seductive manner, if not considered to be dancing itself, might be regarded as entertainment of a similar description to dancing. So also might the more recent phenomenon of lap dancing (or table dancing), where performers, in return for a payment of money by a customer seated at a table, take off clothing whilst gyrating their bodies in close proximity to the customer. Such entertainment, if not dancing itself, will certainly be entertainment of a similar description to dancing (and the playing of music if there is musical accompaniment for such a performance, as well there might be).

5.3.32 Entertainment facilities as ‘regulated entertainment’

The types of entertainment for which the provision of facilities becomes licensable are set out in para 3, which provides:

(1) In this Schedule, ‘entertainment facilities’ means facilities for enabling persons to take part in entertainment of a description falling within subparagraph (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).

35 The position here is the same as for the performance of live music – see 5.3.28 above.
36 Such an activity was considered to be ‘public entertainment of a like kind to music and dancing’ in R v Tucker (1877) 2 QBD 417.
37 See the remarks, obiter, of Ward LJ in Willowcell Ltd v Westminster City Council (1995) 160 JP 101, 115, that it is ‘easy to categorise a striptease as being a form of dancing where the exotic is beginning to shade into the erotic’. 
This is a more limited list than the forms of entertainment set out above and, in essence, re-enacts the existing law in this respect. It had long been established that a licence for public entertainment was required not only where the public attended a performance of some person or persons, but also where the public participated in some event or activity that comprised the entertainment, such as dancing at a nightclub or discotheque.\footnote{See 5.3.6 above.} This continues to be the case under para 3. Thus, as para 5.11 of the Guidance states, the provision of entertainment facilities ‘includes, 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’. In these two instances, there will be other persons present on the premises who may be watching the activities in question, but this would not seem to be necessary to constitute the provision of entertainment facilities. Where such facilities are provided, there is no requirement for anyone other than those who are taking part in the particular forms of entertainment to be present. No audience or spectators are needed, nor the presence of anyone else. Thus, for example, a person who makes available a music recording studio to enable recording artists to practice or to record music there might be providing ‘entertainment facilities’. This could amount to providing facilities for enabling those persons to take part in making music for purposes which include their entertainment.\footnote{There may well be other purposes for which persons are taking part in making music in such cases, such as employment or commercial purposes (if, for example, under contract to make a recording for a record producer); but one of the purposes would arguably be for their entertainment, even if this might not be the primary purpose. Paragraph 3(1) simply requires that the facilities are for persons to take part ‘for purposes which include the purpose of being entertained’ and there is no indication that a purpose which is subsidiary or very much a secondary one will not suffice.}

### 5.3.33 Exemptions

Part 2 of Sched 1 contains a number of exemptions where the provision of regulated entertainment in certain instances does not constitute a licensable activity. One or two exemptions relate only to certain types of regulated entertainment, notably film exhibitions and music, although the majority apply to regulated entertainment generally in the particular circumstances. The exemptions are set out in paras 5–12.

#### 5.3.34 Film exhibitions for demonstration, advertisement or information

Paragraph 5 provides:

> 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.

The exhibition of films for these purposes did not require a licence under the previous law, provided the exhibition took place in a private dwelling house to which the public...
were not admitted.\footnote{\textsuperscript{40}} Paragraph 5 preserves this position, whilst at the same time extending the scope of the exemption by not incorporating any requirements as to where the exhibition takes place or as to who attends it. Thus, the provision would exempt, for example, educational films shown in schools, or special advertisements shown at product display stands in shopping centres (Explanatory Note \textsuperscript{302}).

If such an exhibition were to take place on premises holding a premises licence, which included authorisation for the exhibition of films, it would seem that conditions relating to the exhibition of films on the premises would not have application in the case of an exhibition falling within para 5. The conditions would have application only where the exhibition of films constituted ‘regulated entertainment’ and this would not be the case here.\footnote{\textsuperscript{41}}

\subsection*{5.3.35 Film exhibitions in museums and art galleries}

Paragraph 6 provides:

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.

It is not uncommon for museums and art galleries to include, as part of their attractions, film exhibitions relating to aspects of the contents on display and this will not constitute ‘regulated entertainment’. The Act contains no definition of ‘museum’ or ‘art gallery’, although, if the terms are given their ordinary and natural meaning, they would seem to encompass institutions or repositories for the collection, exhibition or study of, in the case of museums, objects of artistic, scientific, historic or educational interest and, in the case of art galleries, objects of artistic interest.

\subsection*{5.3.36 Music incidental to certain other activities}

\subsection*{5.3.37} Paragraph 7 provides:

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.

The Act contains no definition of ‘incidental’, so the ordinary dictionary meaning of this term would be likely to apply. The \textit{Shorter Oxford English Dictionary} defines the
term to include ‘occurring or liable to occur in fortuitous or subordinate conjunction with something else; casual’, and whether this is the position will depend on the circumstances of the individual case. It might be expected that the volume at which the music is played could be regarded as a particularly significant factor. Paragraph 5.18 of the Guidance states:

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. The same might apply in the case of a juggler, a clown or magician. But there are likely to be some circumstances which occupy a greyer area.

Paragraph 7 preserves the position under the previous law under which no licence was required where music was incidental (or subsidiary) to some other activity taking place on the premises. The other activity might have been some other form of entertainment provided, as where music is played at events such as fashion shows or firework displays, or it may have been unconnected with entertainment, as where (background) music is played in supermarkets, restaurants, or hairdressers. This position is preserved under para 7. As the Minister for Tourism, Film and Broadcasting, Dr Kim Howells, observed during the Committee Stage of the Bill in the House of Commons:

Incidental live music is music that does not form part of the main attraction for visitors to a premises. Examples might include a piano played in the background in a restaurant, or carol singers in a shopping centre.

However, the exemption is qualified in that it will not apply if the music is incidental to a form of entertainment falling within para 2 or incidental to the provision of entertainment facilities within para 3. This means that, where music takes place at

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42 Quaere whether recorded music played at high volume in clothes shops would fall within this exemption as being incidental.

43 Paragraph 7.76 goes on to provide: ‘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.’ It might be questioned whether music and dancing are likely to be main attractions themselves in a circus. A circus ordinarily involves a travelling show of horses, riders, acrobats, clowns, performing animals and similar acts and any music, if not dancing, would seem to be incidental to these activities. This statement in para 7.66 sits rather uneasily with the statement in para 5.18 that musical accompaniment to the activities of a juggler, clown or magician is incidental to the main performance.


45 A further example, mentioned in Explanatory Note 302, is music played in lifts.

46 HC Standing Committee D, cols 67–68, 1 April 2003. The example in respect of the piano is mentioned by the Minister again at cols 69–70: ‘I occasionally get invited to some posh restaurants ... and there is a restaurant nearby where a good pianist plays jazz standards through the course of the evening. That music is incidental; it is tucked away in the corner.’
entertainment events such as those mentioned above (fashion shows or firework displays), the exemption will apply, for these are not forms of entertainment falling within para 2. However, where music is played, for example, as an accompaniment to a film exhibition or performance of a play, which are forms of entertainment falling within para 2, the exemption will not apply. It seems therefore that cinemas and theatres will need not only authorisation under their premises licences for, respectively, film exhibitions and the performance of plays, but also for any playing of music.47 Further, music (instrumental or vocal) may feature in films or plays and, since this takes place in the presence of an audience and one of the purposes for which the music is provided is the audience’s entertainment, this would seem to make the provision of the music a licensable activity. Again, this will not fall within the exemption and authorisation for it will be needed under the premises licence.48

The position will be the same where the music is incidental to an entertainment facility within para 3. An entertainment facility includes the provision of facilities for the making of music for the purpose of being entertained (para 3(2)(a)) and, accordingly, it may be that, where there is the provision of facilities for live music and music that can be described only as incidental takes place, the incidental music will fall outside the exemption. It would not seem in this instance to be ‘incidental to some other activity which is not itself … the provision of entertainment facilities’ within para 7, but in fact to be incidental to the provision of such facilities. If this is correct, it will mean that the exemption will not apply where instruments such as pianos are made available in public houses or similar premises. It is perhaps doubtful that this was intended and it certainly seems to sit uneasily with the statement of Dr Howells, mentioned above, that a piano played in the background in a restaurant will be incidental music within the exemption. Perhaps in instances such as pianos in public houses or restaurants, the music should be regarded as incidental to the sale of alcohol or the provision of food rather than incidental to the provision of entertainment facilities by making the piano available for the making of music, in which case it can then be regarded as falling within the exemption.

In the preceding instances, the music takes place at the same time as the other activity in question, but is incidental to it. However, it also appeared to be the case under the previous law that no licence was required where the music was not taking place simultaneously, provided it was for a period of limited duration relative to the length of the other activity in question. If this was the case, the music would be incidental, even though, when performed, it would be the principal part of the performance. This is because it would be incidental to the other activity taken as a

47 Under the previous law, no licence was needed for the playing of music in cinemas or theatres where there was musical accompaniment. Section 19(1)(b) of the Cinemas Act 1985 provided that no licence was required ‘by reason only of the giving of a film exhibition … which … is accompanied by music’ and s 12(3) of the Theatres Act 1968 contained an exemption from the need to obtain a licence for music where music was played before, during an interval or after the performance of a play, provided that on any given day the total time taken by the music was less than a quarter of the time taken by the performance(s).

48 The same may also be true where films and plays contain representations of persons dancing and authorisation for this may be needed under the premises licence. Under the previous law, there was an exemption in s 19(1)(a) of the Cinemas Act 1985 and s 12(2) of the Theatres Act 1968 from the need to obtain a public entertainment licence for music and dancing where films or plays contained representations of persons playing music, dancing or singing.
Whether in such circumstances music would be regarded as ‘incidental to some other activity’ under para 7 is unclear and will depend on how that expression is interpreted. If music is a principal part in itself, although it is of limited duration and incidental when judged by reference to an activity taken as a whole, it might nevertheless still be seen an independent attraction in itself. Certainly, if music is advertised as an entertainment with a view to attracting customers it may not ordinarily be thought of as incidental, as can be seen from the following remarks of Dr Howells when the exemption was being considered in Committee in the House of Commons:

If the entertainment is advertised and the purpose of the music is to draw in customers and to make a profit for the business, that has a direct bearing on the business and it would be difficult to describe it as incidental … There might be a clear attempt by the holder of a licence to draw people into his premises by advertising the music that will be played.50

Ultimately, it may be a question of the extent to which music can be regarded as independent from or subsumed within any other activities taking place on the premises and this will inevitably depend on the facts and circumstances of the individual case.

5.3.38 Use of television or radio receivers

Paragraph 8 provides:

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

49 The supporting authority for this point is Fay v Bignell (1883) Cab & El 112, where the incidental activity was dancing rather than music (although the principle will equally have application to music). In this case, the defendant only had a licence for music and not dancing. The entertainment in question consisted for the most part of music and singing, but the act of one of the 20 artistes performing comprised dancing, involving changes of national costume with the execution of a national dance. Some of the other artistes also accompanied their songs with slight dancing or rhythmical movements of the feet. The whole entertainment took four to five hours, about half an hour of which was taken up by dancing spread over the whole performance. Cave J directed the jury as follows:

In this entertainment 20 performers take part, and suppose dancing be a principal part of one performance, still the question remains, is that performance a principal part of the entertainment? Because if the performance is merely subsidiary, and not a principal part of the entertainment, the dancing would still be subsidiary.

The jury found for the defendant and must therefore have regarded the dancing as subsidiary and not requiring a licence. Although not itself a strong precedent, the decision has been subsequently approved by the Court of Appeal in Willowell Ltd v Westminster City Council(1995) 160 JP 101.

50 HC Standing Committee D, col 69, 1 April 2003. See, also, Dr Howells’ earlier remarks at cols 67–68: ‘if a band in a pub was advertised to draw in customers, or live music was played so loud that it could not possibly be regarded as incidental to another activity, it would be unlikely to benefit from the exemption.’
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).  

This provides an exemption for all regulated entertainment that is broadcast on televisions and radios. Similar exemptions for various types of entertainment existed under the previous law, for example, for film exhibitions and for public entertainment taking place in licensed premises, and para 8 contains a provision which has general effect as regards any form of entertainment or entertainment facilities.

5.3.39 Religious meetings or services and places of worship

Paragraph 9 provides:

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,

Section 201 Broadcasting Act 1990 provides:

(1) In this Act ‘programme service’ means any of the following services (whether or not it is, or is required to be, licensed under this Act), namely—

(a) any television broadcasting service or other television programme service (within the meaning of Part I of this Act);

(b) any sound broadcasting service or licensable sound programme service (within the meaning of Part III of this Act);

(bb) any digital sound programme service (within the meaning of Part II of the Broadcasting Act 1996);

(c) any other service which consists in the sending, by means of a telecommunications system, of sounds or visual images or both either—

(i) for the reception at two or more places in the United Kingdom (whether they are so sent for simultaneous reception or at different times in response to requests made by different users of the service); or

(ii) for reception at a place in the United Kingdom for the purpose of being presented there to members of the public or to any group of persons.

(2) Subsection (1)(c) does not apply to—

(a) a local delivery service (within the meaning of Part II of this Act);

(b) a service where the running of the telecommunication system does not require to be licensed under Part II of the Telecommunications Act 1984; or

(c) a two-way service (as defined by section 46(2)(c)) [ie, ‘a service of which it is an essential feature that while visual images or sounds (or both) are being conveyed by the person providing the service there will be or may be sent from each place of reception, by means of the same telecommunication system or (as the case may be) the part of it by means of which they are conveyed, visual images or sounds (or both) for reception by the person providing the service or other persons receiving it (other than signals sent for the operation or control of the service)’].

A ‘film exhibition’ was defined in s 21(1) of the Cinemas Act 1985 to mean ‘any exhibition of moving pictures which is produced otherwise than by the simultaneous reception and exhibition of programmes included in a programme service (within the meaning of the Broadcasting Act 1990)’.

Section 182 of the Licensing Act 1964 provided: ‘No statutory regulations for music and dancing shall apply to licensed premises so as to require any licence for the provision in the premises of public entertainment by the reproduction of wireless (including television) broadcasts or of programmes included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service …’
is not to be regarded as the provision of regulated entertainment for the purposes of this Act.

This exemption was previously contained in para 1(3)(a) of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982, but applied only in respect of music, and para 9 extends it to the provision generally of any entertainment or entertainment facilities (hereafter ‘entertainment’).

The exemption in para 9(a), where entertainment is provided as part of any religious meeting or service, will most obviously apply in respect of activities such as the singing of hymns during church services or singing during nativity plays. It might also include wedding ceremonies held in church or in a register office.\textsuperscript{54} The exemption will, however, apply irrespective of where this takes place, for there is no requirement that it is at a place of worship.

For a place to be one of public religious worship under para 9(b), it will be necessary for the place to be consecrated and it must be available not only to the public for religious worship, but it must be apparent that it is so available (HL Deb, vol 645, col 37, 25 February 2003). Paragraph 9(b) requires only that the entertainment is held at a place of public religious worship and it is not necessary that the entertainment is in any way connected with or forms part of any ceremony of religious worship in such a place.\textsuperscript{55} This represents no change from the previous law, except that this now applies to entertainment generally and not just music. This is, however, a significant extension in the scope of the exemption. Previously it would only have covered events, such as music concerts held on church premises, but will now cover church premises being used for discotheques with music and dancing, for the performance of plays or the exhibition of films.\textsuperscript{56} As previously, this will extend to church premises being hired out to some outside body to hold such events as well as where these events are held by the church authorities themselves. Further, the exemption in respect of places of public religious worship is all-embracing under para 9, unlike under the previous law where ‘public religious worship’ was given a more restricted definition.\textsuperscript{57} In all instances, therefore, no authorisation will be required.

\textsuperscript{54} HL Deb, vol 643, col 350, 12 December 2002. It would seem not to include, however, civil wedding ceremonies.

\textsuperscript{55} The exemption ‘will include instances in which the entertainment provided is secular’ (Baroness Blackstone) – see HL Deb, vol 645, col 32, 25 February 2003. The exemption may give rise to an incompatibility with Convention rights under Arts 9, 10 and 14 – see 3.9 above.

\textsuperscript{56} \textit{Quaere} whether a licence would be needed if these activities were held not in the church itself, but in some adjacent building such as a church annex. Presumably this will depend on how ‘place’ is construed. If it means the place in which public worship actually takes place, and the annex is not in fact used for worship, then it would seem that exemption will not apply. If, on the other hand, ‘place’ is more generally construed and means the whole of the land or property on which worship takes place, then the exemption may apply.

\textsuperscript{57} See Sched 1, para 22 of the Local Government (Miscellaneous Provisions) Act 1982, which defined a place of ‘public religious worship’ to be one ‘which belongs to the Church of England or to the Church of Wales (within the meaning of the Welsh Church Act 1914) or which is for the time being certified as required by law as a place of religious worship’. Any places of meeting for religious worship of any body or denomination could be certified by the Registrar-General of Births, Deaths and Marriages as a place of worship under s 2 of the Places of Worship Registration Act 1855 and there were certain advantages in registration, such as exemption from liability to pay rates on the building, but registration was not compulsory.
5.3.40 Garden fêtes and similar events

Paragraph 10 provides:

(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).

There was a broadly similar exemption under the previous law, contained in para 3(3)(a) of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982, which provided that no licence (for open air musical entertainments on private land) was needed for music that was incidental to ‘a garden fête, bazaar, sale of work, sporting or athletic event, exhibition, display or other function or event of a similar character, whether limited to one day or extending over two or more days’. As under the previous law, there is no definition of ‘garden fête’, although the expression seems to encompass events of an outdoor nature at which there is a range of amusements provided and items of a domestic nature for sale.

The exemption in para 10 is in some respects wider in scope, and in other respects narrower, than the previous exemption. It is wider in that it is not confined to music, but extends to any entertainment or entertainment facilities (entertainment), and there is no requirement that the entertainment is incidental to the fête or other event, so the exemption will apply even if it is the primary or predominant feature.

It is perhaps narrower in that para 10 refers only to provision of entertainment ‘at a garden fête, or at a function or event of a similar character’. It is a moot point whether the other type of events referred to in para 3(3)(a) – bazaar, sale of work, sporting or athletic event, exhibition, and display – could be considered to be ‘a function or event of a similar character’ to a garden fête. Certainly some of them, such as a bazaar, might easily be considered akin to a garden fête, but others, such as a sporting or athletic event, seem to be less so. It is also narrower in that the previous exemption applied irrespective of whether or not there was any private gain from the event, but para 10 will not apply if the event ‘is promoted with a view to applying the whole or part of its proceeds for purposes of private gain’. How ‘private gain’ is interpreted will be important in determining the scope of the exemption.

Events such as garden fêtes are likely to be promoted by some body or society (for example, a village hall or church fête committee, or a school parent–teachers association), rather than by an individual, and are normally organised in order to raise funds for the benefit of the body or society in question. It is important, therefore, if the exemption is not to be significantly restricted in scope, that applying the proceeds in whole or in part for the benefit of the body or society as a whole is not interpreted as ‘private gain’. In this respect, para 10(3) provides “‘private gain’ ... is to be construed in accordance with section 22 of the Lotteries and Amusements Act 1976’. Section 22 provides:

(1) For the purposes of this Act proceeds of any entertainment, lottery or gaming promoted on behalf of a society to which this subsection extends which are
applied for any purpose calculated to benefit the society as a whole shall not be held to be applied for purposes of private gain by reason only that their application for that purpose results in benefit to any person as an individual.

(2) Subsection (1) above extends to any society which is established and conducted either—

(a) wholly for purposes other than purposes of any commercial undertaking; or

(b) wholly or mainly for the purpose of participation in or support of athletic sports or athletic games.

In *Avais v Hartford, Shankhouse and District Workingmen’s Social Club and Institute Ltd* [1969] 2 AC 1, the House of Lords, considering an earlier legislative enactment of the above provision in s 54 of the Betting, Gaming and Lotteries Act 1963, held that the application of the earnings from a gaming machine for the general purposes of the club so as to benefit its members would, by virtue of s 54, ‘not be reckoned as application for purposes of private gain’ (per Lord Pearson at 9). The hirer of the gaming machine in this case had guaranteed to make earnings from it up to a certain level if the earnings failed to reach this level and, in an action for breach of contract by the club in not taking delivery of the machine on an agreed date, the club by way of defence maintained that the agreement was illegal since the earnings from the machine were for private gain. This argument was rejected on account of the provision in s 54:

If the money was applied for some purpose at the moment of being taken out of the machines, what would the purpose be? I think the answer must be that … the money would be proceeds of the gaming being applied as earnings of the respondents, and therefore, for a purpose calculated to benefit the respondents’ club as a whole. Then s 54(1) would operate. The proceeds so applied should not be held to be applied for purposes of private gain by reason only that their application for that purpose resulted in benefit to any person as an individual. Accordingly, the fact that the appellant would derive some benefit, by way of reduction or extinction of his liability under the guarantee, from the application of the proceeds of the gaming as earnings of the respondents and, therefore, for a purpose calculated to benefit the respondents’ club as a whole would not cause a non-compliance with condition (c) [of s 33(2)] and would not render the gaming illegal.

Since this interpretation will have application to s 22 of the Lotteries and Amusements Act 1976, it seems that bodies or societies organising fund-raising events will fall within the scope of the exemption provided the proceeds are for a purpose calculated to benefit the body or society as a whole, even if this happens to benefit some

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58 This was alleged to contravene s 33(2)(c), which required: ‘all stakes hazarded are applied either in payment of winnings to a player of the game or for purposes other than private gain.’ The club’s defence essentially was that money received from the machines, although for the benefit of the club as a whole, was nevertheless for the purpose of private gain, since club members benefited from it, and so the contract was illegal under this provision.

59 [1969] 2 AC 1, 9, per Lord Pearson. In reaching this decision, the House distinguished its earlier decision in *Payne v Bradley* [1962] AC 343, where it had been held that there was an application of proceeds from entertainment for private gain where these were used to finance the activities and amenities of a club (because members would benefit as it would be unnecessary to increase subscriptions). The ground for distinguishing was that there was no provision equivalent to s 54 in the statute in question in *Payne* (s 3 of the Small Lotteries and Gaming Act 1956): ‘The position, however, is different under the Act of 1963, because it includes section 54(1) and there was no similar provision in the Act of 1956’, per Lord Pearson in *Avais* (at 8).
individual. This will not amount to the event being promoted with a view to applying the proceeds for the purposes of private gain.

Less clear is the position where garden fêtes are promoted by individuals, rather than by societies, to raise money, for example for a wheelchair for a local person. The event cannot be regarded as promoted for private gain (and so within the exemption) if ‘private gain’ is construed in accordance with s 22, since this relates only to events organised by a society. Nevertheless, the view may be taken that s 22 is not definitive of the meaning of ‘private gain’, but applies only where events are organised by societies with a view to their benefit. This would allow for cases falling outside s 22 to be regarded as not promoted for private gain in accordance with the ordinary meaning of ‘private gain’. Since a fête organised by an individual to raise money for a deserving cause would not ordinarily be thought of as promoted for private gain, it may be that the exemption will apply here. This would seem to be in accordance with the legislative purpose behind the exemption and it is submitted that it should have application in such cases.

5.3.41 Morris dancing

Paragraph 11 provides:

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).

The term ‘morris dancing’ is not defined in the Act, but its ordinary meaning is well understood, the Shorter Oxford English Dictionary defining it as ‘traditional dance performed by persons in fancy costume, usually representing characters from the Robin Hood legend’. Although the Government ‘would have preferred not to introduce such an amendment’, which was incorporated at a late stage in the legislation’s passage, believing ‘that there would have been few circumstances in which traditional morris dancing would have been licensable under the Bill’, the amendment ‘does no significant damage to the structure and scheme of the Bill, and if it offers reassurance, there is nothing wrong with that’.60 Since it appears that there are 14,000 morris men in the country, who take part in 11,000 events annually that could have been licensable, the exemption may prove not to be an insignificant one.61

60 HC Deb, vol 408, col 1117, 8 July 2003 (Mr Richard Caborn, Minister for Sport).
61 See HL Deb, vol 650, col 1055, 3 July 2003, where Lord Redesdale, who disclosed this information on the number of morris dancers, observed: ‘Some people have expressed the view that that is quite a scary thought.’
5.3.42 Vehicles in motion

Paragraph 12 provides:

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.

The purpose of this exemption seems to be to ensure that no licence is required where
entertainment, such as music or video shows, is provided for those travelling on
coaches or other vehicles. In the case of music, this might fall within the exemption in
para 7, as the music is incidental to some other activity (travel), which is not itself
entertainment, or the provision of entertainment facilities, but it will also fall within
this paragraph. More particularly, video shows would not otherwise be exempt were it
not for the provision in this paragraph.

5.3.43 Small premises providing music and dancing

Section 177 provides an ‘exemption’ for such premises by restricting the range of
conditions that might be imposed with the licensing of these forms of entertainment in
such premises. This is not an exemption from licensing – the music and dancing
remain licensable activities for which a premises licence or CPC is needed – and it is
not therefore considered here, but in Chapter 7, which covers conditions attached to
premises licences and CPCs (see 7.5 below).

5.4 PROVISION OF LATE NIGHT REFRESHMENT

5.4.1 Introduction

What constitutes late night refreshment (LNR) as a licensable activity, and what is
excluded for the purposes of the Act, is covered in Sched 2. Section 1(5) provides:

Schedule 2 makes provision about what constitutes the provision of late night
refreshment for those purposes (including provision that certain activities carried on
in relation to certain clubs or hotels etc, or certain employees, do not constitute
provision of late night refreshment and are, accordingly, not licensable activities).

5.4.2 Meaning of ‘late night refreshment’

5.4.3 LNR means the supply of hot food or hot drink to the members of the public,
or a section of the public, for consumption on or off the premises, between 11.00 pm
and 5.00 am. It also includes cases where a person supplies or holds himself out as
supplying such refreshment to any person on any premises to which members of the
public, or a section of the public, have access. Paragraph 1 of Sched 2 provides:

(1) For the purposes of this Act, a person “provides late night refreshment” if—
(a) at any time between the hours of 11.00 pm and 5.00 am, 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).

This restriction to supply of hot food or hot drink accords with the Government’s intention to refocus licensing in this area on the prevention of disorder and unreasonable disturbance to residents in the neighbourhood of premises (see 1.4.5 above). The possibility of disorder and disturbance is likely to occur whether the food or drink is for consumption on or off the premises and accordingly both night cafés and takeaway food outlets are brought within the scope of Sched 2. This represents a change from the previous law in provincial areas, where licensing of LNR houses extended only to premises where refreshment was provided for consumption on the premises. In London, a licence was required for take-away premises, although only when open between the hours of midnight and 5.00 am, whereas now the earlier time of 11.00 pm will operate.

5.4.4 With regard to whether food or drink is ‘hot’, a definition of this term is provided by para 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.

Whilst night cafés and take-aways will fall within para (a), para (b), on its wording, seems wide enough to encompass premises, such as shops and supermarkets, which stay open late and provide a microwave facility in which food purchased at the store may be heated. If so, this extends the scope of control considerably (although it may be that such premises in any event will have a premises licence for other licensable activities such as the sale of alcohol). It is not clear whether the intention is for such premises to be included. Paragraph 5.20 of the Guidance states:

shops, stores and supermarkets selling food that is immediately consumable after 11.00 pm will not be licensable unless they are selling hot food or hot drink. The legislation will impact on those premises such as night cafes and take away food outlets where people may gather at any time from 11.00 pm and until 5.00 am giving rise to the possibility of disorder and disturbance. The licensing regime will not catch

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62 See 1.4.3 above. It was, however, possible for closing orders to be made against take-away premises under s 6 of the Local Government (Miscellaneous Provisions) Act 1982.
premises selling only immediately consumable food, such as bread, milk or cold sandwiches in all night grocers’ shops and which do not attract these problems.

Shops and supermarkets providing a microwave facility are, in one sense, selling ‘hot food’, in that it is food that can be heated after purchase, although they are not doing so in the more conventional sense of selling food that is purchased hot. Whether the Guidance’s reference to such premises selling hot food is intended to include only sale in the conventional sense is uncertain. If reference is made to aim and purpose, as it is, it may be that it should include only this. There are unlikely to be problems of disorder and disturbance where a microwave facility is provided and the position would seem to be more akin to shops selling bread, milk or sandwiches (which will not require licensing) than premises, such as takeaways, which are providing hot food for purchase (which will).

LNR is provided in two instances under para 1(1) of Sched 2. One is under para 1(1)(a) where there is a supply of hot food or drink to members of the public or a section of the public. The other is under para 1(1)(b) where it is sufficient if a person ‘holds himself out as willing to supply’ hot food or drink and no actual supply need take place. Further, any supply or willingness to supply can be to any person and need not be to members of the public or a section of the public, although the premises have to be open to members of the public or a section of the public. Thus, even if there is a supply or willingness to supply only to private individuals, provided members or a section of the public are admitted to the premises, this constitutes the provision of LNR.

5.4.5 Exempt supplies

Certain supplies are exempted from the definition of LNR and are not licensable activities for which authorisation is required. These fall under three categories: where hot food or hot drink is supplied to persons of certain descriptions, where it is supplied in premises already licensed under other legislative provisions, and where it is supplied in certain ways.

5.4.6 Supply to persons of certain descriptions

The first category concerns supply to members of certain clubs; supply to persons staying in hotels and similar premises which supply accommodation as their main purpose, such as guest houses, lodging houses, caravan or camping sites; supply to employees of a particular employer (as where refreshment is made available to employees whose shift patterns require them to be present at the workplace between 11.00 pm and 5.00 am); supply to persons in particular trades, professions or vocations; and guests of any of the above. Paragraph 3(1)–(3) provides:

(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

63 As to what constitutes the public or a section of the public, see 5.3.7 above.
(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.

Supply to club members is exempt under para 3(2)(a) in the case of a ‘recognised club’, which is a genuine members’ club and one that meets the general qualifying conditions for obtaining a club premises certificate under Pt 4 of the Act. Section 193 defines a ‘recognised club’ as ‘a club which satisfies conditions 1 to 3 of the general conditions in section 62’ (see 8.2.7–8.2.15 below). Where a club is not a recognised club, supply of hot food or hot drink to a club member or his guest will not be exempt. Although this will not be a supply to them as members of the public, such a supply is to be treated as a supply to a member of the public for the purposes of Sched 2, thus making the activity licensable and necessitating authorisation for it. Paragraph 6 provides:

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.

5.4.7 Supply in premises already licensed under other legislative provisions

The second category of exempt supply is where supply takes place in premises which are being used in accordance with a public exhibition licence or a near-beer licence.

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64 It is well established that activities taking place in bona fide clubs, which admit only members and their guests, are not public. The guests will not be considered to be members of the public because they cannot obtain entry in their own right independent of the member introducing them. The Divisional Court, in Severn View Social Club and Institute Ltd v Chepstow (Monmouthshire) Licensing Justices [1968] 1 WLR 1512, held that it was wrong to take the view that the admission of bona fide guests of members of a reputable club to functions involving music and dancing made those functions public, so that a licence for this entertainment was required. ‘In my judgment’, Lord Parker CJ stated (at 1514), ‘they clearly were not members of the public as such’.
These licences are required only in London, so this category will have limited application. The former licence is needed for various exhibition centres in the capital, whilst the latter applies to premises consisting to a significant degree of the sale for consumption on the premises of drinks such as non-alcoholic lagers and beers, accompanied by live entertainment and/or companions for customers. Paragraph 4 provides:

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.

Since the exemption applies only where supply takes place during a period for which the premises may be used under licence for public exhibitions or as near beer premises, supply of LNR outside that period will not be covered by the exemption and will be a licensable activity requiring authorisation.

5.4.8 Supply in certain ways

The third category of exempt supply extends to hot food and hot drink supplied in various ways. It includes the provision of hot drinks with an alcoholic content or by vending machines (where the money is inserted by members of the public rather than by the staff at the premises), or hot food or hot drink supplied free of charge, or by a registered charity, or on a moving vehicle. Paragraph 5 provides:

(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.

The supply of hot drink that consists of or contains alcohol is exempt under the 2003 Act as LNR because it is caught by the provisions relating to the sale or supply of alcohol (Guidance, para 5.23). Where hot drinks are supplied by vending machines, the rationale for exclusion seems to be that such machines are commonplace in premises to which the public have access and are widely used, with little likelihood of disorder or disturbance occurring. However, the exemption applies only if 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. Further, the exemption does not apply to hot food. Thus premises supplying for a charge hot food 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 (Guidance, para 5.24).

The supply of hot food and hot drink free of charge or by or on behalf of a charity is no doubt exempt because the work of charities is unlikely to be enhanced if, when making provision for those such as the homeless, they are required to obtain a licence. 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’ (Guidance, para 5.24). The rationale for exclusion of supply of hot food and hot drink on a moving vehicle would seem to be similar to that of hot drinks supplied by vending machines – a commonplace occurrence with little likelihood of disorder or disturbance occurring. Accordingly, none of the above-mentioned supplies are licensable activities.
CHAPTER 6

PREMISES LICENCES

6.1 MEANING AND SCOPE OF PREMISES LICENCES

6.1.1 Premises licences are defined by s 11, which provides:

In this Act ‘premises licence’ means a licence granted under this Part, in respect of any premises, which authorises the premises to be used for one or more licensable activities.

The term ‘premises’ is further defined in s 193 to mean ‘any place and includes a vehicle, vessel or moveable structure’. This is a broad definition of premises for which a licence, authorising one or more of the licensable activities, can be obtained. This provision, however, needs to be read subject to s 176, which prohibits the sale or supply of alcohol, one of the licensable activities, at certain premises (designated as ‘excluded premises’). Further, not all premises providing activities for which a licence is required will need to obtain one, for there are a number of exemptions where activities can be provided without a licence. Each of these matters is considered below.

6.1.2 Premises for which a licence can be obtained

6.1.3 ‘Any place’

The reference to ‘any place’ makes it clear that a premises licence is not confined in its application to licensable activities that take place within a building and its adjuncts. It can equally extend to activities that take place outdoors, such as pop concerts and theatre productions or film exhibitions held in the open air.1

Where the place does constitute a building, a premises licence will need to be obtained for the building where the licensable activities take place. This is self-evident, except that difficulties may arise where the licensable activity is the sale of alcohol and the contract of sale is made at a different place from that where the alcohol is assigned to the particular purchaser. This will most obviously arise in connection with mail order or internet sales of alcohol. For the purposes of the Act, a sale of alcohol is not to be regarded as having been made where the contract of sale is made (for example, on the internet or at a call centre handling sales), but the sale is treated as being made at the premises from which the alcohol is assigned to the purchaser (for example, the warehouse from which delivery is made).2 Section 190 provides:

(1) This section applies 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.

(2) For the purposes of this Act the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract.

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1 It seems that it can also extend to partly constructed premises or premises that are to be constructed, without the need for any provisional statement under ss 29–32 to be obtained – see 6.8.2 below.

2 Guidance, para 5.9.
The Act makes no provision for a single premises licence to cover more than one site or premises. This is justified on the basis that each premises will give rise to different issues relating to the four licensing objectives, all of which are central to the public interest: ‘Accordingly, businesses such as circuses, fairs, those operating at farmers’ markets and others must obtain an authorisation for each premises that they use to carry on licensable activities.3

6.1.4 ‘Vehicle, vessel or moveable structure’

6.1.5 ‘Vehicle’ is defined in s 193 to mean ‘a vehicle intended or adapted for use on roads’. No indication is given that a vehicle needs to be mechanically propelled or capable of self-propulsion, so vehicles which can only be towed, such as caravans and trailers (which are often used by fast food operators), will be covered. ‘Vessel’, also defined in s 193, ‘includes a ship, boat, raft or other apparatus constructed or adapted for floating on water’. No definition of ‘moveable structure’ is provided, but the term would seem to encompass structures such as marquees, tents, portakabins and inflatable buildings.

Section 189 makes further provision in respect of vehicles, vessels and moveable structures, primarily in respect of their location when they are not permanently located in one place, for this will be important in determining the relevant licensing authority to which an application will be made.4 As regards vessels, these will only be regarded as having one location, which is the place where they are usually moored or berthed.

Section 189(1) provides:

This Act applies in relation to a vessel which is not permanently moored or berthed as if it were premises situated in the place where it is usually moored or berthed.

6.1.6 As regards vehicles and moveable structures, they can have more than one location and will be treated as premises located at any place where they are situated. If they are positioned (parked or set) at only one particular place, they are to be treated as situated at that place; but if they are positioned at more than one place, they are to be treated as separate premises for each place. Section 189(2)–(4) provides:

(2) Where a vehicle which is not permanently situated in the same place is, or is proposed to be, used for one or more licensable activities while parked at a particular place, the vehicle is to be treated for the purposes of this Act as if it were premises situated at that place.

(3) Where a moveable structure which is not permanently situated in the same place is, or is proposed to be, used for one or more licensable activities while set in a particular place, the structure is to be treated for the purposes of this Act as if it were premises situated at that place.

(4) Where subsection (2) applies in relation to the same vehicle, or subsection (3) applies in relation to the same structure, in respect of more than one place, the premises which by virtue of that subsection are situated at each such place are to be treated as separate premises.

3 Consultation on Draft Regulations and Order to be Made under the Licensing Act 2003, App F, para 4.10.3.

4 For the meaning of ‘relevant licensing authority’, see s 12 and 6.3.1 below.
This will mean that, for example, travelling fast food (burger) vans providing late night refreshment in several different locations will need, in respect of each location, a separate premises licence from the licensing authority or licensing authorities if the locations fall within different licensing authority areas.

Where application is made in respect of a vessel, vehicle or moveable structure, it is not possible to obtain a provisional statement, which is a statement indicating the likely prospects of the grant of a premises licence, where premises are ‘being or about to be constructed, altered or extended’, if the premises are completed as indicated.\(^5\) Such statements are restricted to premises other than buildings, for s 189(5) provides:

Sections 29 to 31 (which make provision in respect of provisional statements relating to premises licences) do not apply in relation to a vessel, vehicle or structure to which this section applies.

### 6.1.7 Excluded premises

There is a general prohibition, contained in s 176, on the sale or supply of alcohol from certain premises. These premises are service areas on motorways or similar roads and garage forecourts, where a premises licence cannot authorise this particular licensable activity.\(^6\) Although these are the only two premises specified in the section, the Secretary of State may make regulations including or excluding any premises from the scope of the prohibition.\(^7\) Section 176(1)–(3) provides:

1. No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.
2. In this section “excluded premises” means—
   a. premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I (with or without other classes);\(^8\) or
   b. premises used primarily as a garage or which form part of premises which are primarily so used.

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5 For provisional statements, see 6.8.1–6.8.13 below.
6 The same applies in respect of other authorisations, ie a club premises certificate (CPC) or temporary event notice (TEN): s 176(1).
7 The power to make an order is, however, subject to the ‘affirmative resolution procedure’, ie, a draft of the statutory instrument has to be laid before and approved by a resolution of each House of Parliament: s 197(3)(4).
8 The premises referred to here are, as stated above, service areas on motorways or similar roads, which are provided at intervals and comprise petrol filling stations and refreshment facilities. These are provided by persons holding the land on lease from the special road authority. Section 176(4) provides:

   ‘special road’ and ‘special road authority’ have the same meaning as in the Highways Act 1980 (c.66), except that ‘special road’ includes a trunk road to which (by virtue of paragraph 3 of Schedule 23 to that Act) the provisions of that Act apply as if the road were a special road, (b) ‘class I’ means class I in Schedule 4 to the Highways Act 1980 as varied from time to time by an order under section 17 of that Act, but if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in subsection (2)(a) to traffic of class I so as to take account of the additional class.
(3) The Secretary of State may by order amend the definition of excluded premises in subsection (2) so as to include or exclude premises of such description as may be specified in the order.

The prohibition in s 176, in essence, re-enacts the provisions previously contained in s 9 of the Licensing Act 1964, under which service areas and garages were disqualified from holding a justices’ licence. Premises are used as a garage for the purposes of s 176 if they are used for selling petrol or diesel or selling or maintaining motor vehicles and need to be primarily so used or to form part of premises which are primarily so used. The question of primary use is particularly likely to arise in cases where premises are a mixture of a filling station and a food or convenience store and, when considering this question, it seems that the matter should be determined by reference to the intensity of use by customers at the premises. In R v Liverpool Crown Court ex p Goodwin [2002] LLR 698, 699, Laws J stated: ‘The question must be, what is the intensity of use by customers at the premises? So that evidence such as that of customer lists, to take an example, might be highly material.’ The court held that there had been an ‘erroneous approach’ by the Crown Court in regarding ‘the appearance of the premises and how it is known in the locality’ as material to the question of primary use. It seems that a comparison of the ‘garage use’ net turnover (rather than gross turnover, which includes fuel tax and duties) with the net turnover from the other activities may be taken into account, as well as a consideration of the purposes for which customers visited the site. This was the approach taken by justices in Green v Inner London Licensing Justices (1994) 19 Licensing Review 13, and no adverse comment was made on this by the High Court.

6.1.8 Exemptions

6.1.9 Certain types of premises are exempt and a premises licence is not required for activities, which otherwise would be licensable, when these take place at such premises. The exemptions broadly relate to activities taking place on various forms of transport whilst engaged on journeys, and at certain airports and seaports, royal palaces, premises used by the armed forces, and premises exempt on national security grounds. The specified exemptions are not exhaustive, for they may be extended by regulations made by the Secretary of State. Section 173(1) provides:

An activity is not a licensable activity if it is carried on—

(a) aboard an aircraft, hovercraft or railway vehicle engaged on a journey,

9 See s 9(3)(4) in respect of service areas and s 9(4A)(4B) in respect of garages.
10 Section 176(4)(c) provides:

Premises are used as a garage if they are used for one or more of the following—

(i) the retailing of petrol,
(ii) the retailing of derv,
(iii) the sale of motor vehicles,
(iv) the maintenance of motor vehicles.
11 See also Guidance, para 5.28, which provides: ‘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.’ Primary use, it seems, should not therefore be based on an examination of the gross or net turnover or income from non-qualifying products and other products.
(b) aboard a vessel engaged on an international journey,
(c) at an approved wharf at a designated port or hoverport,
(d) at an examination station at a designated airport,
(e) at a royal palace,
(f) at premises which, at the time when the activity is carried on, are permanently or temporarily occupied for the purposes of the armed forces of the Crown,
(g) at premises in respect of which a certificate issued under section 174 (exemption for national security) has effect, or
(h) at such other place as may be prescribed.

6.1.10 Transport journeys: s 173(1)(a) and (b)

The period during which an aircraft, hovercraft, railway vehicle or vessel is engaged on a journey extends beyond the journey time itself to include preparations ahead of departure and continued occupation after arrival, pending disembarking. Section 173(2) provides:

For the purposes of subsection (1) the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged on a journey includes–

(a) any period ending with its departure when preparations are being made for the journey, and
(b) any period after its arrival at its destination when it continues to be occupied by those (or any of those) who made the journey (or any part of it).

6.1.11 Airports and seaports: s 173(1)(c) and (d)

The exemption relates to particular areas of designated airports and seaports. At an airport, this is the examination station, which is that part of the airport beyond the security check-in (Explanatory Note 265), known colloquially as ‘airside’, and at a seaport, this is an approved wharf. Both of these areas are ones to which the non-travelling public do not have access and they are subject to stringent byelaws. The purpose of the exemption is to enable the provision of refreshment of all kinds to travellers at all times of the day and night (Guidance, para 5.61). The exemption is restricted to these areas and other parts of designated airports and seaports are subject to the normal licensing controls.

As to designation of ports, all existing ports are to be treated as designated (unless provision to the contrary is made by the Secretary of State by order for any port) and the criterion for designation by the Secretary of State of any future ports is whether there appears to be a substantial amount of international passenger traffic. Section 173(3)–(5) provides:

(3) The Secretary of State may by order designate a port, hoverport or airport for the purposes of subsection (1), if it appears to him to be one at which there is a substantial amount of international passenger traffic.

(4) Any port, airport or hoverport where section 86A or 87 of the Licensing Act 1964 (c.26) is in operation immediately before the commencement of this section is, on and after that commencement, to be treated for the purposes of subsection (1) as if it were designated.
(5) But provision may by order be made for subsection (4) to cease to have effect in relation to any port, airport or hoverport.

### 6.1.12 Royal Palaces: s 173(1)(e)

There are numerous Royal Palaces that are exempt from obtaining a premises licence, including Buckingham Palace and its garden and mews, St James’ Palace, Clarence House and Marlborough House Mews, Kensington Palace, Hampton Court Mews and Paddocks, the Tower of London, Windsor Castle, Windsor Castle Mews and the Windsor Home and Great Parks.

### 6.1.13 Premises used by the armed forces or exempt on national security grounds: s 173(1)(f) and (g)

Premises used by the armed forces will include not only those permanently occupied by any of the forces (for example, the British Army’s Royal Military Academy at Sandhurst), but also any premises temporarily occupied by the forces.

Premises, to be exempt on national security grounds, require a Minister of the Crown to issue a certificate ‘if he considers that it is appropriate to do so for the purposes of safeguarding national security’ (s 174(1)). No details are provided in s 174 as to what the certificate should contain, except that ‘it may identify the premises in question by means of a general description’ (s 174(2)). Section 174(5) states that certificates issued by a minister can subsequently be cancelled by him or any other Minister of the Crown. It is envisaged that the power will be used where the inspection of a particular premises, for the purposes of the licensing regime, will give rise to a security risk (Explanatory Note 266).

### 6.1.14 Lotteries with alcohol as a prize: s 175

Section 175 provides an exemption in the case of lotteries where one or more of the prizes consist of alcohol. The giving of a sealed container of alcohol, for example a bottle of wine as a prize in a lottery, will not count as a licensable activity under the Act provided certain requirements are met. These are that the lottery is promoted as incidental to a bazaar, sale of work, dinner, dance, sporting or athletic events or other entertainment of a similar character; after deduction of all relevant expenses, none of the proceeds are used for private gain; none of the prizes are money prizes; tickets or chances are sold or issued; and the result of the draw is announced at the time of, and in the same place as, the entertainment; and the lottery or draw is not the main

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12 Section 174(7) provides: ‘In this section “Minister of the Crown” has the meaning given by the Ministers of the Crown Act 1975’. Section 8 of that Act: ““Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom, and includes the Treasury, the Board of Trade and the Defence Council.’ Further, s 174(6) provides: ‘The powers conferred by this section on a Minister of the Crown may be exercised only by a Minister who is a member of the Cabinet or by the Attorney General.’

13 A document purporting to be a certificate ‘is to be received in evidence and treated as being a certificate under this section unless the contrary is proved’ (s 174(3)) and a document purporting to be certified as a true copy of a ministerial certificate ‘is evidence of that certificate’ (s 174(4)).
inducement to attend the entertainment (Explanatory Note 267). Section 175(1) and (2) provides:

(1) The conduct of a lottery which, but for this subsection, would to any extent constitute a licensable activity by reason of one or more of the prizes in the lottery consisting of alcohol, is not (for that reason alone) to be treated as constituting a licensable activity if—

(a) the lottery is promoted as an incident of an exempt entertainment,

(b) after the deduction of all relevant expenses, the whole proceeds of the entertainment (including those of the lottery) are applied for purposes other than private gain, and

(c) subsection (2) does not apply.

(2) This subsection applies if—

(a) the alcohol consists of or includes alcohol not in a sealed container,

(b) any prize in the lottery is a money prize, or

(c) a ticket or chance in the lottery is sold or issued, or the result of the lottery is declared, other than at the premises where the entertainment takes place and during the entertainment, or

(d) the opportunity to participate in a lottery or in gaming is the only or main inducement to attend the entertainment.

This provision finally brings to an end the illegality, under the Licensing Act 1964, of bottles of wine or spirits offered as raffle prizes at the Women’s Institute, school concerts and similar gatherings. It is, however, unlikely to make any practical difference since, perhaps not surprisingly, few authorities were inclined to take any action against such illegal sales.

6.2 APPLICANTS FOR PREMISES LIENCES

6.2.1 Section 16 lists the categories of persons or bodies who may apply for a premises licence in respect of any premises and, where the applicant is an individual, he must be aged at least 18. Section 16(1) and (2) provides:

(1) The following persons may apply for a premises licence in respect of any premises—

(a) a person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates,

(b) any person who makes the application pursuant to—

(i) any statutory function discharged by that person which relates to those licensable activities, or

(ii) any function discharged by that person by virtue of Her Majesty’s prerogative,

14 ‘Relevant expenses’ are ‘(a) the expenses of the entertainment, excluding expenses incurred in connection with the lottery, (b) the expenses incurred in printing tickets in the lottery, (c) such reasonable and proper expenses as the promoters of the lottery appropriate on account of any expenses they incur in buying prizes in the lottery’ (s 175(3)). Various terms used in subsections (1) and (2) – ‘exempt entertainment’, ‘money’, ‘ticket’ and ‘private gain’ – have the same meaning as in the Lotteries and Amusements Act 1976 (see ss 3(1), 23, 23 and 22 respectively) and ‘gaming’ has the same meaning as in s 52 of the Gaming Act 1968: s 172(4).
(c) a recognised club,
(d) a charity,
(e) the proprietor of an educational institution,
(f) a health service body,
(g) a person who is registered under Part 2 of the Care Standards Act 2000 (c.14) in respect of an independent hospital,
(h) a chief officer of police of a police force in England and Wales,
(i) a person of such other description as may be prescribed.

(2) But an individual may not apply for a premises licence unless he is aged 18 or over.

6.2.2 Persons carrying on a business

6.2.3 The most common category will be paragraph (a), persons whose business involves the use of the premises for licensable activities. There is no requirement for a person to have any legal or equitable interest in the premises or even any contractual right to use them. This may be so, even if a person is merely proposing to carry on a business at the premises. Persons proposing to carry on a business might include those interested in purchasing or constructing premises with a view to carrying out licensable activities there. As para 5.85 of the Guidance indicates, it is possible to make an application where premises are not constructed provided ‘clear plans of the proposed structure exist and an operating schedule is capable of being completed about the activities to take place there’. Less clear is whether a person developing a site for use for licensable activities can make an application. It seems unlikely that such a person can be regarded as someone who ‘carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates’, since there is not a sufficient nexus between his involvement in the use of premises and the licensable activities. Such a person might, however, apply for a provisional statement (see 6.8.4 below).

Since application can be made by ‘a person’, this will include a company as well as an individual.15 Under the previous law, most licensing justices and some local authorities had a policy of not granting licences in the name of companies and requiring licences to be held in the name of some specified individual within the company. This course would now not seem to be open to licensing authorities in the light of para 5.40 of the Guidance:

Licensing authorities should not require the nomination of an individual to hold the licence. It is not for the licensing authority to decide who the most appropriate person to hold the licence should be. 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 operating 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.

This is well established in case law – see, eg, the remarks of Lord Reading CJ in *Bruce v McManus* [1915] 3 KB 1, 7 (‘I see no difficulty, as a matter of law, in a licence being granted directly to a company; a company is a person’) – and there is express provision to this effect in the Guidance, para 5.40 of which provides: ‘“A person” in this context includes, for example, a business or a partnership.’
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.

6.2.4 Although para (a) is expressed in the singular (‘a person’), it nevertheless seems possible for more than one person to hold a premises licence in respect of the same premises. If, for instance, one person were to use the premises for one licensable activity, showing films, and another for a different licensable activity, the provision of late night refreshment services, each might be entitled to make an application under para (a). If each were to make an application for their particular licensable activity, each would be ‘a person who carries on … a business which involves the use of the premises for the licensable activities to which the application relates’. This is recognised by para 5.44 of the Guidance, which provides:

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.

Equally, it is possible that, in respect of a single licensable activity, more than one person may carry on a business at the premises, as where premises may be used at weekends by one person as a dance school during the day and by another person as a discotheque during the evening. Again, each might make an application for a premises licence.16 It is clear from s 2(3) that there can be more than one authorisation (that is, a premises licence, a club premises certificate (CPC) or a TEN) in respect of the same premises and that these may be held by the same person or different people. If this can occur, there would seem to be no logical reason why different persons should not hold one form of authorisation, a premises licence, in respect of different licensable activities that take place on the premises.

6.2.5 Similarly, it seems possible that there can be an application in the name of more than one person for a single premises licence in respect of some particular licensable activity or activities and the subsequent grant of a licence in joint names. That references in the 2003 Act are in the singular – application is by ‘a person’ who, if granted a premises licence will be ‘the holder’ of it – will not necessarily preclude the grant of a licence in joint names, as s 6(c) of the Interpretation Act 1978 provides: ‘In any Act, unless the contrary intention appears … words in the singular include the plural and words in the plural include the singular.’ There were similar references in the Licensing Act 1964 and the Local Government (Miscellaneous Provisions) Act 1982 under the previous law, both justices and local authorities granted licences in joint names and there was no suggestion by the courts that this was in any way improper. In Buchanan v Gresswell [1995] COD 355, the Divisional Court considered the question of revocation of a justices’ licence, which was held jointly by two licensees, without

16 Since the nature of the uses of the premises may differ in such a case, even though the licensable activity is of the same description, a licensing authority may wish to impose different conditions on the premise licence and this might be more easily facilitated if each person held a premises licence in respect of his particular activity.
giving any indication that a licence could not be so held. Further, the Guidance envisages that licences might be jointly held, at least in some circumstances. Paragraphs 5.41 and 5.42 provide:

5.41 In considering joint applications (which is likely to be a rare occurrence), it must be stressed that under section 16(1)(a) of the 2003 Act each applicant must be carrying on a business which involves the use of the premises for licensable activities 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 reasonable for the husband and wife or the partners to apply in their joint names for the premises licence in both their names, 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.

Licences held jointly were far from being a rare occurrence under the previous law and it remains to be seen how widespread their use will be under the 2003 Act.

6.2.6 Other categories

6.2.7 The remaining categories of persons who may apply for a premises licence are ones where the person or body would not traditionally be regarded as carrying on a ‘business’ in respect of the licensable activities. Section 16(1)(b) covers two groups, the first of which is any person exercising a statutory function (which, by s 16(3) means ‘a function conferred by or under any enactment’). This will include local authorities and other state agencies not otherwise included in the list of applicants, such as the Fire Service, Prison Service and Probation Service. The second group is any person exercising a function under Her Majesty’s Prerogative, usually referred to as the Royal Prerogative. It is not obvious what this will include. Possibilities might be licensable activities held in Royal Parks (for example, Hyde Park) or to celebrate the grant of honours, awards and privileges (for example, the conferring of city status). Perhaps this provision was intended to ensure inclusion of any ministerial functions that may not be statutory and which might therefore fall outside the first group covered by s 16(1)(b). Section 16(1)(c) includes a recognised club, which is defined in s 193 as one that satisfies the general Conditions 1–3 in s 62. This is, broadly speaking, a club where there is a period of time before a person is admitted to membership or the privileges of membership which is conducted in good faith (see 8.2.8 below).

17 The court held that partial revocation under s 20A of the Licensing Act 1964 was not possible and the justices were wrong to revoke the licence in the name of one licensee, following improper conduct on his part. The licence itself should have been revoked, with an application for transfer into the sole name of the other licensee being made before the revocation took effect.

18 Whilst this may be so, the wording of s 16(1)(a) nevertheless seems wide enough to cover a pub owning company since its business does involve the use of the premises for licensable activities if ‘involves’ is broadly interpreted.
6.2.8 As regards applicants falling within s 16(1)(d) and (g), which cover charities, educational institutions and health bodies in the public and private sector, further provision as to meaning is made by s 16(3). ‘Charity’ has the same meaning as in s 96(1) of the Charities Act 1993, which provides:

“charity” means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the court’s jurisdiction with respect to charities.

The terms ‘educational institution’ and the ‘proprietor’ of such an institution are defined by reference to the Education Act 1992 and the Further and Higher Education Act 1992:

“educational institution” means–
(a) a school, or an institution within the further or higher education sector, within the meaning of section 4 of the Education Act 1996 (c.56),19 or
(b) a college (including any institution in the nature of a college), school, hall, or other institution of a university, in circumstances where the university receives financial support under section 65 of the Further and Higher Education Act 1992 (c.13);20

“proprietor” means–
(a) in relation to a school within the meaning of section 4 of the Education Act 1996 (c.56), has the same meaning as in section 579(1) of that Act,21 and
(b) in relation to an education institution other than such a school, means the governing body of that institution within the meaning of section 90(1) of the Further and Higher Education Act 1992 (c.13).22

19 Section 4(1) provides:
In this Act “school” means an educational institution which is outside the further education sector and the higher education sector and is an institution for providing–
(a) primary education,
(b) secondary education, or
(c) both primary and secondary education,
whether or not the institution also provides part-time education suitable to the requirements of junior pupils or further education.

20 Financial support under s 65 relates to the receipt of funds by the Higher Education Funding Councils established under s 62 of the Act.

21 Section 579(1) provides: “‘proprietor’, in relation to a school, means the person or body of persons responsible for the management of the school (so that, in relation to a community, foundation or voluntary or community or foundation special school, it means the governing body).’

22 Section 90(1) provides:
“governing body”, in relation to an institution, means …–
(a) in the case of an institution conducted by a further education corporation or a higher education corporation, the corporation,
(b) in the case of a university not falling within paragraph (a) above, the executive governing body which has responsibility for the management and administration of its revenue and property and the conduct of its affairs,
(c) in the case of any other institution not falling within paragraph (a) or (b) above for which there is an instrument of government providing for the constitution of a governing body, the governing body so provided for, and
(d) in any other case, any board of governors of the institution or any persons responsible for the management of the institution, whether or not formally constituted as a governing body or board of governors.
A health service body will include an NHS Trust, a Primary Care Trust and a Local Health Board. Section 16(3) of the 2003 Act provides:

“health service body” means–

(a) an NHS trust established by virtue of section 5 of the National Health Service and Community Care Act 1990 (c.19),
(b) a Primary Care Trust established by virtue of section 16A of the National Health Service Act 1977 (c.49), or
(c) a Local Health Board established by virtue of section 16BA of the Act.

As regards the private sector, application can be made by a person who is registered under Part 2 of the Care Standards Act 2000 in respect of an ‘independent hospital’, which has the same meaning as in s 2(2) of the 2000 Act, which provides: ‘A hospital which is not a health service hospital is an independent hospital.’

6.2.9 The remaining specifically identified category, in s 16(1)(h), is police forces in England and Wales, for which the applicant will be the chief officer of police for the force. Finally, there is scope for the Secretary of State to extend the categories of applicant, since s 16(1)(i) makes provision for ‘a person of such other description as may be prescribed’ to be an applicant.

6.3 APPLICATIONS FOR PREMISES LICENCES

6.3.1 Form, notices and fees

Form and Notices

Section 17(1) provides: ‘An application for a premises licence must be made to the relevant licensing authority’; and s 12(1) provides: ‘For the purposes of this Part the “relevant licensing authority” in relation to any premises is determined in accordance with this section.’ The relevant licensing authority will be the authority in whose area the premises are situated, except that where they are situated in the areas of two or more licensing authorities, it will be the authority in whose area the greater (or greatest) part of the premises are situated or, if there is no such authority, the authority nominated by the applicant.23 Section 12(2)–(4) provides:

(2) Subject to subsection (3), the relevant licensing authority is the authority in whose area the premises are situated.

(3) Where the premises are situated in the areas of two or more licensing authorities, the relevant licensing authority is–

(a) the licensing authority in whose area the greater or greatest part of the premises is situated, or

23 Clearly, cases where premises are situated in the areas of two different authorities will be rare, although a notable instance is Earls Court in London, which is in the Royal Borough of Kensington and Chelsea, but which straddles the boundary with the Borough of Hammersmith and Fulham. In such a case, 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’ (Guidance, para 5.29). No instance of premises situated in the areas of more than two different authorities is known.
(b) if there is no authority to which paragraph (a) applies, such one of those authorities as is nominated in accordance with subsection (4).

(4) In a case within subsection (3)(b)–

(a) an applicant for a premises licence must nominate one of the licensing authorities as the relevant licensing authority in relation to the application and any licence granted as a result of it, and

(b) an applicant for a statement under section 29 (provisional statement) in respect of the premises must nominate one of the licensing authorities as the relevant licensing authority in relation to the statement.

Applications, are by virtue of s 17(2), subject to regulations made (a) under s 54 in respect of the form, etc, of applications and any notices that need to be given, and (b) under s 55 in respect of fees to accompany applications and notices. The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, SI 2005/42 (LA 2003 (PL and CPC) Regs 2005) specify the form the application shall take and the information that it must contain.

Fees

Generally

Under the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 (LA 2003 (Fees) Regs 2005) premises are allocated to specific bands for the purposes of determining the appropriate level of fee to be paid when applying for the grant or variation of a premises licence (or CPC) and the appropriate level of the annual fee that is payable.

24 These are regulations made by the Secretary of State. Section 193 provides: ‘‘regulations’’ means regulations made by the Secretary of State ...’; and, under s 197, the power of the Secretary of State to make regulations, or any order under the 2003 Act, is exercisable by statutory instrument (s 197(1)). Regulations or orders may include incidental, supplementary, consequential or transitional provision or savings; may make provision generally or only in relation to specified cases; and may make different provision for different purposes (s 197(2)). Most regulations and orders that can be made under the Act, including those under s 17(2), are subject to the ‘negative resolution procedure’, ie, annulment in pursuance of a resolution of either House of Parliament, although some are subject to the ‘affirmative resolution procedure’, ie, a draft of the statutory instrument has to be laid before and approved by a resolution of each House of Parliament.

25 Regulations may require applications, except applications for review (see 6.12 below), to be accompanied by a fee and may prescribe the amount of the fee; they may also require a premises licence holder to pay an annual fee; and they may prescribe the amount of the annual fee and the time at which any such fee is due. Any annual fee owed to a licensing authority may be recovered as a debt due to the authority. Section 55 provides:

(1) Regulations may–

(a) require applications under any provision of this Part (other than section 51) or notices under section 47 to be accompanied by a fee, and

(b) prescribe the amount of the fee.

(2) Regulations may also require the holder of a premises licence to pay the relevant licensing authority an annual fee.

(3) Regulations under subsection (2) may include provision prescribing–

(a) the amount of the fee, and

(b) the time at which any such fee is due.

(4) Any fee which is owed to a licensing authority under subsection (2) may be recovered as a debt due to the authority.

26 See reg 10 and Sched 2; and 2.4.2 above.
These bands are based on the ‘rateable value’ of the premises, which is defined in reg 2(1) as ‘the value for the time being in force for the premises entered in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 1988’ or, in short, what might be described as the ‘non-domestic rateable value’ (NDRV) of the premises.\(^{27}\) Premises are allocated to one of five bands, Bands A–E, for each of which an application fee is payable, which ranges from £100 to £635.\(^{28}\) Provision is made for increased fees in two instances, one is in respect of certain premises in the top two bands, Bands D and E, and the other is in respect of events where 5,000 or more people may attend the premises concerned. Provision is also made for fee exemptions in certain cases.

*Application and annual fees*

Regulation 3(1) and Sched 1 set out the rateable values applicable to Bands A–E; regs 4(2)–(3) the application fee payable; and reg 5 and Sched 5 the annual fee payable.\(^{29}\) The bands and fees are set out in the table below:

<table>
<thead>
<tr>
<th>Band</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td>NDRV</td>
<td>£0–£4,300</td>
<td>£4,301–£33,000</td>
<td>£33,001–£87,000</td>
<td>£87,001–£125,000</td>
<td>£125,001 or over</td>
</tr>
<tr>
<td>Application Fee</td>
<td>£100</td>
<td>£190</td>
<td>£315</td>
<td>£450</td>
<td>£635</td>
</tr>
<tr>
<td>Annual fee</td>
<td>£70</td>
<td>£180</td>
<td>£295</td>
<td>£3200</td>
<td>£350</td>
</tr>
</tbody>
</table>

In cases where premises do not have a NDRV, because they are not liable to or are exempt from non-domestic rating, a Band A application fee and annual fee are generally payable. This will be the case for domestic premises, public open spaces, for example parks, and vehicles and vessels which lack the degree of permanence required for them to be subject to non-domestic rating. Where, however, premises are in the course of construction they are allocated to Band C. Regulation 2(2) provides: ‘Except in a case where a premises is in the course of construction, in which case the premises shall be in Band C, in all other cases, the premises shall be in Band A.’

\(^{27}\) Where premises form only part of a building that has a NDRV they are treated as having the NDRV for the building. Regulation 3(3) provides: ‘For the purposes of this regulation, in a case where the premises forms part only of a hereditament in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 1988, the premises shall be treated as having a rateable value equal to the rateable value for the hereditament of which it forms part.’ Where the premises comprise two or more buildings they are treated as having the NDRV of the building with the highest rateable value. Regulation 3(4) provides: ‘For the purposes of this regulation, in a case where the premises comprises two or more hereditaments in the local non-domestic rating list, the premises shall be treated as having a rateable value equal to the rateable value for the hereditament with the highest rateable value.’

\(^{28}\) NDRVs are subject to periodic revaluations, the next of which is due in April 2005 although at the time of writing no revaluations have been published. Applicants may therefore find themselves paying a fee for one band when making an application, based on the existing valuation, but an annual fee under a higher band following revaluation.

\(^{29}\) Regulation 5(6) provides that the annual fee is ‘due and payable each year on the anniversary of the date of the grant of the premises licence’.
Increased fees

Provision is made for an increased fee for both applications for grant under s 17 and for variation under s 34 (subject to special arrangements for applications made at the same time for conversion and variation of premises licences under para 2 of Sched 8 during transition – see below). Where premises are in Bands D and E and are used ‘exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises’, there is a multiplier of twice the fee for such premises in Band D and three times the fee for such premises in Band E.

Regulation 4(2), as substituted by reg 2(2) of the Licensing Act 2003 (Fees) (Amendment) Regulations 2005, SI 2005/357 (LA 2003 (Fees) (Amendment) Regs 2005), provides:

Subject to paragraphs (4) [which provides for an additional fee where more than 5,000 persons attend] and, in the case of an application under section 34, (6) and (7) [which apply in respect of transition], where the application under section 17 or section 34 relates to a premises in Band D or Band E and the premises is used exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises, the amount of the fee shall be—

(a) in the case of premises in Band D, two times the amount of the fee applicable for the Band appearing in column 1 of the table in Schedule 2 specified in column 2 of that table, and

(b) in the case of premises in Band E, three times the amount of the fee applicable for that Band appearing in column 1 of the table in Schedule 2 specified in column 2 of that table.

This regulation makes it clear that the increased fee is payable where premises are used exclusively or primarily for supply of alcohol for consumption there, unlike the provision in reg 4(2) in its original form that referred to a case where the ‘application relates to – (a) a premises in Band D or Band E; and (b) the use of the premises exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises’.\(^{30}\) The expression ‘application … relates to … the use of the premises’ might have been taken to mean that the increased fee was payable where the application related to the use of the premises exclusively or primarily for supply of alcohol for consumption there rather than whether the premises themselves were so used. In other words, exclusive or primary use might have been determined by reference to the licensable activities specified in the premises licence application rather than by reference to the licensable and non-licensable activities taking place at the premises, that is by reference to their overall use. This could have meant that if supply of alcohol was the only licensable activity specified in the premises licence application, as may be the case with casino premises, the increased fee would be payable irrespective of other activities taking place at the premises. Casino premises themselves are not used exclusively or primarily for the supply of alcohol for consumption there, but the premises licence application would relate exclusively to such supply.

\(^{30}\) It also excludes application of the provisions for increased fees in the case of applications for variation made at the same time as applications for conversion of existing licences into premises licence during the transition period – see below. There had been no such exclusion in the original reg 4(2) and exclusion is achieved by making the regulation subject to paras (6) and (7).
That the original regulation might be so interpreted was clearly not in accordance with the Government’s intention, which is for the increased fee to be paid for premises used exclusively or primarily for the supply of alcohol for consumption there. This is apparent from a press release issued by the Department of Culture, Media and Sport on 21 January 2005 (Press Release 005/05 ‘New Licensing Fees Will Help Provide Tougher Protections For Local People’), in which it was stated that ‘the largest urban pubs would be required to meet a greater share of the cost to licensing authorities … of running the new licensing regime than previously proposed’. One of ‘key findings’ from the consultation into fees following publication of the draft regulations that needed to be addressed was ‘that the control of premises selling alcohol would in general give rise to higher costs than other premises, particularly during transition, and particularly where these were situated in town and city centres’. The Secretary of State, Tessa Jowell, was quoted as saying:

In particular, we are asking the largest town and city centre pubs to pay a higher premium. This is only right. They can have the biggest capacities, the highest turnover and often make the greatest profit. They are a major beneficiary of our night time economy. They should put more back into policing it.

Thus the rationale for the increased fee seems to have been that those premises in respect of which the deployment of resources is most likely to be required to promote the licensing objectives (perhaps, in particular, prevention of crime and disorder) should make a greater financial contribution via the fees payable and, generally speaking, this will be the larger establishments, falling within Bands D and E, used exclusively or primarily for supply of alcohol for consumption on the premises.31 Once it was drawn to the Government’s attention that the original reg 4(2) might not have this effect, a new reg 4(2) was substituted by the LA 2003 (Fees) (Amendment) Regs 2005 to ensure that it did.32

With regard to determining exclusive or primary use, few premises are used exclusively for the supply of alcohol for consumption there and in most cases it will be necessary to determine primary use. This may not be easy to ascertain in some cases, as is recognised in para 3.34 of the Guidance in respect of the comparable requirement in the offence in s 145 of permitting children under the age of 16 who are not accompanied by an adult to be present on premises being used exclusively or

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31 Evidence that such premises are more likely to require the deployment of resources to promote the licensing objectives may be found in para 7.80 of the Guidance, which provides: 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 No 3 (1999) 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.

32 It is possible that the original reg 4(2) might have been interpreted in a way that the increased fee was payable only where premises themselves were used exclusively or primarily for the supply of alcohol for consumption there. This would have required a purposive interpretation to be given to the regulation, ‘reading in’ the word ‘is’ and reading the reference to ‘relates to’ in the regulation disjunctively in respect of sub-paragraphs (i) and (ii), so that it read: ‘application relates to – (i) premises in Band D or Band E and (ii) use of premises [is] exclusively or primarily for’ such supply.
primarily for supply of alcohol for consumption on those premises (see 11.7.4 below). The inherent difficulty is that primary use might be determined by reference to different criteria – these might include turnover, profit, floor space, the general character of the business, the purpose for which customers go to the premises and the intensity of use by customers33 – and the application of different criteria may produce different results.

The case of a nightclub provides an illustration. The general character of the business may be said to be the provision of music and dancing, suggesting that premises are not used primarily for the supply of alcohol for consumption there and an increased fee is not payable. This might be supported by the fact that under the previous law nightclubs with a special hours certificate (SHC) could supply alcohol beyond the normal permitted hours only where the alcohol was ancillary to the music and dancing and to the provision of substantial refreshment. Indeed, under s 81 of the Licensing Act 1964 the certificate could be revoked where, on the whole, persons resorting to the premises were there for the purpose of obtaining alcohol rather than for music and dancing and substantial refreshment. Arguably therefore use of existing nightclub premises is not primarily for the supply of alcohol otherwise it might have been assumed that steps would have been taken to revoke the SHC. This no longer has application under the 2003 Act and, if regard is had to the purpose for which customers go there and the intensity of use by them, the primary use may not be readily apparent. The premises might (perhaps) be regarded as equally used for the principal purposes of both providing music and dancing, and supplying alcohol, although in this case they would still not be used primarily for the supply of alcohol. If, on the other hand, regard is had to turnover and profit, much of the turnover and profit is derived from selling alcohol rather than from the music and dancing and any entrance fee for admission. On this basis, nightclubs might arguably be regarded as premises primarily used for the supply of alcohol and accordingly subject to the higher fee.

Given that there are various criteria that can be used, judicial clarification may be needed. However, the courts may well decline to offer any guidance and take the view that there are a number of material considerations that can be taken into account, none of which is decisive, and it is a question of fact in each case which factors are material and what weight should be given to them. This was the approach taken by the courts in respect of the definition of ‘sex shop’ in para 4(1) of Sched 3 to the Local Government (Miscellaneous Provisions) Act 1982 as a business which consists to a ‘significant degree’ of the selling, etc, sex articles. In Watford Borough Council v Private Alternative Birth Control Information and Education Centres Ltd [1985] Crim LR 594, Mustill LJ stated:

The ratio between the sexual and other aspects of the business will always be material. So also will the absolute quantity of sales … [and] the court will no doubt find it appropriate to consider the character of the remainder of the business. The nature of the display can be a relevant factor, and the nature of the articles themselves will also be material … It would be wrong to say that in law any single factor is decisive. It is

33 Section 176, in essence re-enacting provisions previously contained in s 9 of the Licensing Act 1964, precludes the sale of alcohol at premises used primarily as a garage and under s 9 the courts regarded intensity of use as the determining criterion, although account might be taken of net turnover and the purpose for which customers visited the site – see 6.1.7 above.
up to the court of trial to decide which considerations are material to the individual case and what weight is to be attached to them.

Before concluding his judgment, Mustill LJ declined an invitation to offer any guidance in the shape of a test to ascertain when the ‘significant degree’ criterion would be satisfied:

I appreciate that such guidance would be useful, as much to shopkeepers as to the enforcement and licensing authorities. I believe, however, that no such test could be devised, and if the court were to attempt one it would be placing an illegitimate gloss on a provision which deliberately leaves the question to the broad judgment of those concerned and, in case of need, to the broad judgment of the court.

It remains to be seen whether the courts adopt the same approach here. If they do, it will be left to the broad judgment, initially of the applicant, as to what fee to submit with his application, then of the licensing authority as to whether its judgment accords with that of the applicant, with the matter being resolved either through agreement or ultimately by the courts.

Additional fees

An additional fee is payable under reg 4(4) where 5,000 or more persons are allowed on the premises at the same time when licensable activities are taking place. However, this is not payable in all cases and, under reg 4(5), does not apply where the premises are ‘a structure which is not a vehicle, vessel or moveable structure’ and the structure has been constructed or structurally altered for purposes which include enabling licensable activities to take place on the premises where a number of requirements are met. Regulation 4(4)–(5) provides:

(4) Subject to paragraph (5) and, in the case of an application under section 34, (8), where the maximum number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises at the same time is 5,000 or more, an application under paragraph (1) must be accompanied by a fee in addition to any fee determined under paragraphs (2) and (3), the amount of which shall be the fee applicable to the range of number of persons within which falls the maximum number of persons the applicant proposes to be so allowed on the premises in column 1 of the table in Schedule 3 specified in column 2 of that table.

(5) Paragraph (4) does not apply where the premises in respect of which the application has been made—

(a) is a structure which is not a vehicle, vessel or moveable structure; and

(b) has been constructed or structurally altered for the purpose, or for purposes which include the purpose, of enabling—

(i) the premises to be used for the licensable activities the applicant proposes the licence should authorise;

(ii) the premises to be modified temporarily from time to time, if relevant, for the premises to be used for the licensable activities referred to in the application;

(iii) at least the number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises, to be allowed on the premises at such times; and
(iv) the premises to be used in a manner which is not inconsistent with the operating schedule accompanying the application.

The reference in reg 4(5)(a) to ‘structure’, and the exclusion of moveable structures, suggests that no payment of the additional fee is required in respect of structures having some degree of permanence, which for the most part is likely to mean buildings.\textsuperscript{34} Thus, the Explanatory Note to the Regulations states: ‘the Regulations disapply the requirement to pay the additional fee in respect of premises that are buildings when certain conditions are met (regulation 4(5)).’\textsuperscript{35} Less helpfully, the Explanatory Note does not go on to say what those conditions set out in reg 4(5) are.

The conditions are ones that relate in various ways to the structure’s construction or structural alteration for the purposes of enabling licensable activities to take place there. The first condition is that the structure has been constructed or altered so that the proposed licensable activities can take place at the premises (reg 4(5)(b)(i)), which suggests it has been purpose-built (or purpose-altered) for those activities, for example an indoor sports arena. The second condition is that the structure has been constructed or altered so as to enable the premises to be temporarily modified on occasions for use for proposed licensable activities (reg 4(5)(b)(ii)), which suggests that the structure has been built (or altered) for other purposes, but might be adapted for occasional use for the proposed licensable activities, for example an exhibition centre such as Earls Court and Olympia, which might be used periodically for musical events.\textsuperscript{36} The third condition is that the structure has been constructed or altered so as to allow on the premises at least the number of persons the applicant is proposing to admit at the times when the licence authorises licensable activities to take place (reg 4(5)(b)(iii)), that is, if the applicant is proposing to admit 5,000 persons, the structure must have a capacity of at least 5,000 persons. The fourth condition is that the structure has been constructed or altered so as to enable the premises to be used in a manner that is not inconsistent with the operating schedule (reg 4(5)(b)(iv)). This seems to mean that the premises are fit for the purposes required.

If any of the requirements in reg 4(5) are not met, the additional fee is payable. It may well be that in most cases where the premises comprise a building the requirements will be met and that, in the main, additional fees are likely to be payable in respect of events such as ‘outdoor’ music concerts held either wholly in the open air or partially in the open air and partially inside moveable structures such as marquees. However, there may be some instances where the additional fee is payable in respect of licensable activities taking place in buildings. Regulation 4(5) provides that ‘the premises in respect of which the application has been made – (a) is a structure’, which suggests that if the premises include a structure, but extend beyond it, as in the case of a

\textsuperscript{34} The additional fee is payable in respect of vehicles or vessels on which 5,000 or more persons are allowed, although these are likely to be few in numbers, since under reg 4(5)(a) exclusion of payment of the fee does not apply in these cases. This is similarly the case with moveable structures.

\textsuperscript{35} For the use of Explanatory Notes as an aid to interpreting the meaning of a statutory provision, see 9.6.4 below.

\textsuperscript{36} Although all of the conditions in reg 4(5)(b) need to be met in order for the additional fee not to be payable, reg 4(5)(b)(ii) clearly does not have application in the case of structures purpose-built (or altered) for licensable activities and it can be ignored in such cases. This is apparent from inclusion of the reference to ‘if relevant’ in reg 4(5)(b)(ii); it will not be relevant for purpose-built structures.
music concert held partially in the open air and partially inside a building, an additional fee is payable.

Schedule 3 specifies the additional fees payable, the amount of which is dependent on the number of persons present, as set out in the following table.

**ADDITIONAL FEE**

<table>
<thead>
<tr>
<th>Column 1 Number</th>
<th>Column 2 Additional fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>5,000 to 9,999</td>
<td>£1,000</td>
</tr>
<tr>
<td>10,000 to 14,999</td>
<td>£2,000</td>
</tr>
<tr>
<td>15,000 to 19,999</td>
<td>£4,000</td>
</tr>
<tr>
<td>20,000 to 29,999</td>
<td>£8,000</td>
</tr>
<tr>
<td>30,000 to 39,999</td>
<td>£16,000</td>
</tr>
<tr>
<td>40,000 to 49,999</td>
<td>£24,000</td>
</tr>
<tr>
<td>50,000 to 59,999</td>
<td>£32,000</td>
</tr>
<tr>
<td>60,000 to 69,999</td>
<td>£40,000</td>
</tr>
<tr>
<td>70,000 to 79,999</td>
<td>£48,000</td>
</tr>
<tr>
<td>80,000 to 89,999</td>
<td>£56,000</td>
</tr>
<tr>
<td>90,000 and over</td>
<td>£64,000</td>
</tr>
</tbody>
</table>

**Fee exemptions**

Where, in respect of certain premises, application is made for a premise licence authorising only the provision of regulated entertainment, there is an exemption in reg 9 from the requirement to pay an application fee. These premises include church halls, chapel halls, village halls, parish and community halls or other premises of a similar nature, as well as schools providing education for pupils up to year 13 or sixth form colleges (where the regulated entertainment is carried on by and for the purposes of the school or college). Regulation 9(1)–(2) provides:

1. In respect of an application under section 17, section 34, section 71 or section 84 which relates to the provision of regulated entertainment only, no fee shall be payable and accompany the application or notice if the conditions of this regulation are satisfied in respect of that application or notice.

2. The conditions referred to in paragraph (1) are—

   a. in the case of an application by a proprietor\(^\text{37}\) of an educational institution in respect of premises that are or form part of an educational institution—

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\(^{37}\) For the definition of ‘proprietor’, see s 16(3) of the 2003 Act and 6.2.8 above.
(i) that the educational institution is a school\textsuperscript{38} or a college\textsuperscript{39} and

(ii) the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or

(b) that the application is in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building.

Further, under reg 10, there is a similar exemption for such premises in respect of the requirement to pay an annual fee, provided conditions are met at the time an annual fee falls due to be paid. Regulation 10(1)–(2) provides:

(1) The requirement under regulation 5(1) or 7(1), as the case may require, to pay to the relevant licensing authority an annual fee does not apply in a circumstance where on the date the fee shall become due and payable the conditions of this regulation are satisfied.

(2) The conditions referred to in paragraph (1) are that–

(a) the premises licence or club premises certificate, as the case may require, in respect of the premises to which it relates authorises the provision of regulated entertainment only; and

(b) either–

(i) the holder of the premises licence or club premises certificate referred to in paragraph (2)(a) is–

(aa) the proprietor of an educational institution which is a school or college; and

(bb) the licence or certificate has effect in respect of premises that are or form part of the educational institution; and

(cc) the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or

(ii) that the premises licence or club premises certificate has effect in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building.

Fees for simultaneous conversion and variation applications during transition

The LA 2003 (Fees) Regs 2005, as originally drafted, did not fully give effect to the Government’s intention as to the fees payable in such cases. It was intended that a reduced fee for the variation application should be payable in cases where a conversion application related to the supply of alcohol on the premises and provision was made in reg 4(6) and Sched 4 for the payment of such a fee (see 13.3.7 below). However, no provision was made for other cases where the application did not relate to such supply, which meant that a full fee or full increased fee for variation would be payable under regs 4(2) and (3), along with a comparable fee for the conversion

\textsuperscript{38} Regulation 2(1) provides: “‘school’ means a school within the meaning of section 4 of the Education Act 1996’ – see 6.2.8 above.

\textsuperscript{39} Regulation 2(1) provides: “‘college’ means a college or similar institution principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19.’
application under the Licensing Act 2003 (Transitional conversion fees) Order 2005, SI 2005/80.\textsuperscript{40} This was not in accordance with the Government’s intention and reg 2(5) LA 2003 (Fees) (Amendment) Regs 2005 accordingly amended reg 4 by adding a new para (7). This disapplies the provisions in reg 4(2) and (3) in respect of the (s 34) variation application. As these provisions govern the fee or increased fee payable for applications for variations (as well as grants), the effect of this is that no fee is payable for the variation application and only one fee, for the conversion application, needs to be paid. Regulation 4(7) provides:

In respect of an application under section 34 made at the same time as an application under paragraph 2 of Schedule 8 to the Act and which does not relate in any way or to any extent to the supply of alcohol for consumption on the premises to which the application relates, the requirement under paragraph (1) for a fee determined in accordance with paragraphs (2) or (3) of this regulation, as applicable, to accompany the application under section 34 does not apply.

Similarly, no provision was made for the non-payment of the additional fee required by reg 4(4) where 5,000 or more persons are allowed on the premises at the same time when licensable activities are taking place (see above). Nor was this in accordance with the Government’s intention and reg 2(5) LA 2003 (Fees) (Amendment) Regs 2005 accordingly amended reg 4 by adding a new para (8). This disapplies the provisions in reg 4(4) in respect of the (s 34) variation application, which again means that no such fee is payable for the variation application and only the conversion application fee needs to be paid. However, there is one exceptional instance where the additional fee is payable for the variation application. This is where the variation sought is to authorise licensable activities on the premises for 5,000 or more persons. In this instance, the amount of the fee will be determined in accordance with Sched 3 and based on the maximum number of persons that the applicant proposes should be allowed on the premises (see above). This is payable in addition to the conversion application fee. Regulation 4(8) and (9) provides:

(8) Subject to paragraph (9), in respect of an application under section 34 made at the same time as an application under paragraph 2 of Schedule 8 to the Act, the requirement under paragraph (4) for a fee in addition to any fee determined under paragraphs (2) or (3) to accompany the application under section 34 does not apply.

(9) Paragraph (8) does not apply where the application to vary under section 34 is made in respect of a licence which at the time of the application does not authorise licensable activities to take place on the premises when the maximum number of people allowed on the premises at the same time is 5000 or more and the application seeks a variation of the licence to authorise licensable activities to take place on the premises when the maximum number of persons allowed on the premises at the same time is 5000 or more.

Advertisements

The 2003 Act requires regulations to be made for the advertising of applications, the giving of notice by applicants to responsible authorities and any other persons

\textsuperscript{40} Conversion application fees under this Order mirror those payable for new premises licence applications under the LA 2003 (Fees) Regs 2005, which have been set out above.
prescribed by regulations, and the periods within which such notice and any representations by interested parties and responsible authorities must be made.\textsuperscript{41} Section 17(5) provides:

(5) The Secretary of State must by regulations--

(a) require an applicant to advertise the application within the prescribed period--

(i) in the prescribed form, and

(ii) in a manner which is prescribed and is likely to bring the application to the attention of the interested parties likely to be affected by it,

(b) require an applicant to give notice of the application to each responsible authority, and such other persons as may be prescribed, within the prescribed period,

(c) prescribe the period during which interested parties and responsible authorities may make representations to the relevant licensing authority about the application.

The LA 2003 (PL and CPC) Regs 2005 make provision for the advertising of applications (regs 25–26) and the giving of notice of the application to responsible authorities by giving them a copy of the application and any accompanying documentation on the same day the application is made to the licensing authority (reg 27), and prescribe a period of 28 consecutive days after the application was given to the authority within which representations can be made (reg 22(b)).\textsuperscript{42}

\subsection*{6.3.2 Accompanying documentation}

\subsection*{6.3.3 Applications must be accompanied by various documents as required by s 17(3), which provides:}

An application under this section must also be accompanied--

(a) by an operating schedule,

(b) by a plan of the premises to which the application relates, in the prescribed form, and

(c) if the licensable activities to which the application relates (‘the relevant licensable activities’) include the supply of alcohol,\textsuperscript{43} by a form of consent in the prescribed form given by the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor.

The operating schedule 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 (Guidance, para 5.46). It should also indicate the type of activities available on the premises, whether licensable under the 2003 Act or

\textsuperscript{41} For the meaning of ‘interested party’ and ‘responsible authority’, see s 13(3) and (4), and 6.4.13–6.4.18 below.

\textsuperscript{42} These are covered in detail in 2.4.2 above.

\textsuperscript{43} Section 14 provides: ‘For the purposes of this Part the “supply of alcohol” means--

(a) the sale by retail of alcohol, or

(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.’
not. This should extend beyond a simple identification of the licensable activity in question, for example ‘dancing’ or ‘music’, for para 5.46 of the Guidance provides:

the type of dancing … 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 … 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.

The operating schedule has to set out various matters, including the relevant licensable activities to be covered by the licence, the times the premises will be used for these activities and other times the premises will be open to the public, the limited period for which the licence will have effect (if applicable), information concerning the premises supervisor where alcohol is supplied, and the steps proposed to promote the licensing objectives. Section 17(4) provides:

An “operating schedule” is a document which is in the prescribed form, and includes a statement of the following matters–

(a) the relevant licensable activities,
(b) the times during which it is proposed that the relevant licensable activities are to take place,
(c) any other times during which it is proposed that the premises are to be open to the public,
(d) where the applicant wishes the licence to have effect for a limited period, that period,
(e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,
(f) where the relevant 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,
(g) the steps which it is proposed to take to promote the licensing objectives, and
(h) such other matters as may be prescribed.

The times during which it is proposed that the relevant licensable activities are to take place will not necessarily be identical to the ‘opening hours’ of the premises, that is the times when premises are open to the public. The times may well be different, particularly for premises where there is the sale or supply of alcohol for consumption on the premises. As para 6.13 of the Guidance states:

… “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

44 See reg 10 and Sched 2 to the LA (PL and CPC) Regs 2005.
therefore permissible for premises to allow the consumption of previously purchased alcohol outside the hours authorised for the sale or supply of alcohol.\footnote{On the question of consumption and drinking up time, see also 13.3.4 below.}

As the operating schedule indicates the times during which it is proposed that the premises are to be open to the public, the licensing authority will know what period of time it is envisaged the premises will be kept open beyond the proposed terminal hour for the licensable activities.\footnote{Quaer whether ‘open to the public’ should indicate only the times proposed for the public to remain on the premises after they have been present at licensable activities or, in addition, any times proposed for the public to be admitted to the premises after licensable activities have ended.} This may well be a limited period, and is likely to be so in the case of public houses, but in other instances, as with hotels and premises with letting rooms, the premises may be open to the public all of the time. Equally, of course, premises may be open to the public prior to the commencement hour for licensable activities, for example, for breakfast or sale of non-alcoholic beverages. There is no specific requirement for inclusion within the operating schedule of any reference to the use of ‘Amusement with Prizes’ (AWP) machines at the premises, although these are often a feature at premises, in particular those licensed for the sale of alcohol for consumption on the premises. Under the previous law, applications for AWP permits issued under s 34 of the Gaming Act 1968 were made to the licensing justices where there was a justices’ on-licence in force for the premises, but para 52 of Sched 7 to the 2003 Act amends Sched 9 to the Gaming Act 1968 (which makes provision for s 34 permits) so that applications will be made to the licensing authority where there is a premises licence authorising the supply of alcohol for consumption on the premises.\footnote{Paragraph 52(2) substitutes the following provision for that in Sched 9, para 1, so that the ‘appropriate authority’ for the issuing of permits: ‘(a) in relation to any premises in England and Wales in respect of which there is in force a premises licence authorising the supply of alcohol for consumption on the premises, means the relevant licensing authority in relation to those premises.’ The effect of this amendment is that all applications will now be made to local authorities. Paragraph 52(3) further amends Sched 9, by inserting a para 1A, so that the issuing of a s 34 AWP permit is to be treated as a ‘licensing function’ for the purposes of s 7 of the 2003 Act: ‘A function conferred by this Schedule on a licensing authority is, for the purposes of section 7 of the Licensing Act 2003 (exercise and delegation by licensing authority of licensing functions), to be treated as a licensing function within the meaning of that Act.’ Guidance for licensing authorities in respect of their new responsibilities for AWP machines, although not forming part of the statutory guidance issued under s 182 of the 2003 Act, is contained in paras 5.119–5.126 of the Guidance.} Although applicants need not specify AWP machines within their operating schedule, they should nevertheless indicate on the application form whether there are any such machines on the premises. Part 3N of the form requires applicants to ‘highlight any … matters ancillary to the use of the premises that may give rise to concern in respect of children’ and Guidance Note 8 on the form refers to the presence of gaming machines by way of example ‘regardless of whether you intend children to have access to the premises’.

6.3.4 The operating schedule will be an important document and will form the basis for the way in which the premises will be operated. As Explanatory Note 59 indicates:

The significance of the operating schedule is that if the application for the premises licence is approved, it will be incorporated into the licence itself and will set out the permitted activities and the limitations on them. As a consequence, it is the applicant who will decide, subject to the determination of applications by the authority, the
nature and extent of the activities and the conditions relating to the carrying on of the activities.

As para 5.65 of the Guidance states, applicants, when preparing their operating schedules, will be ‘expected to conduct a thorough risk assessment with regard to the licensing objectives’. They are also required by s 17(4)(g) to include a statement of the steps that they propose to take to promote the licensing objectives. The Explanatory Notes confine themselves to providing a single example, mentioning only the arrangements to be put in place to prevent crime and disorder, such as door security (Note 59). However, it is apparent from the Guidance that applicants should be liaising closely with the licensing authority and the responsible authorities when drawing up their statement. Paragraph 5.47 of the Guidance provides:

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 … 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.

The requirements and content of the plan of the premises to which the application relates and the prescribed form of consent given by the person who the applicant wishes to be the premises supervisor where alcohol is to be supplied are contained in regs 23 and 24(1) respectively of the LA 2003 (PL and CPC) Regs 2005.48

6.4 DETERMINATION OF APPLICATIONS FOR PREMISES LICENCES

The Act draws a distinction between cases where no ‘relevant representations’ are received and where a licence must be issued (mandatory grants) and cases where there are ‘relevant representations’, in which case the licensing authority has a discretion whether or not to grant a licence (relevant representations and discretion). Where no representations are received, the Guidance recommends delegation to officers and,
where representations are received, delegation to a licensing subcommittee.49 Each of these cases is considered below.

6.4.1 Mandatory grants

The provisions of s 18, which govern the determination of applications, apply where the authority has received an application made in accordance with s 17 and is satisfied that the applicant has complied with the requirements of s 17(5) in relation to publicising and giving notice of the application (s 18(1)). Where this is the case and no relevant representations are received, the authority must grant the licence. Section 18(2) provides:

Subject to subsection (3) [which applies where relevant representations are received], the authority must grant the licence in accordance with the application subject only to–

(a) such conditions as are consistent with the operating schedule accompanying the application, and

(b) any conditions which must under section 19, 20 or 21 be included in the licence.

Paragraph 5.67 of the Guidance envisages that the application ‘must be granted in the terms sought’ (original emphasis) and that 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’. Further, ‘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’. Whether this turns out to be the case remains to be seen. As regards conditions that must be imposed under s 18(2)(b), these apply in three circumstances, where alcohol is sold, where films are exhibited and where door supervisors are required.

6.4.2 Mandatory conditions where alcohol is sold

Section 19(1) provides: ‘Where a premises licence authorises the supply of alcohol, the licence must include the following conditions.’ The two conditions, set out in s 19(2) and (3), are as follows:

(2) The first condition is that no supply of alcohol may be made under the premises licence–

(a) at a time when there is no designated premises supervisor in respect of the premises licence, or

(b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

(3) The second condition is that supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

49 Paragraph 3.63. For the recommendations as to delegation, see 2.4.12 above.
The first condition requires a ‘designated premises supervisor’ (DPS), in relation to the premises licence, who must hold a valid personal licence. A DPS is ‘the individual for the time being specified in the licence as the premises supervisor’. Since the term ‘individual’ is used here and not ‘person’, only an individual and not a corporate body can be the DPS. Further, reference to ‘the individual’, who may be the same person who holds the premises licence or a different person, indicates that, at any one time, there can only be one individual as the DPS. This is reinforced by para 4.19 of the Guidance which states: ‘It is stressed that only one designated premises supervisor may be specified in a single premises licence.’ This clearly indicates a ‘contrary intention’ under s 6(c) of the Interpretation Act 1978 that in this instance reference to the singular is not to include the plural and that there can only be one DPS. Whether, however, an individual can be a DPS in respect of more than one premises is not addressed and this will depend on what is seen to be the purpose and role of the DPS. In this respect para 4.18 of the Guidance provides:

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.

Although this does not go so far as to state that the DPS must be someone who can be readily identified at the premises as having responsibility, this might be implicit in the last sentence. If this is the case, it should not be possible for an individual to be a DPS for more than one premises (except, perhaps, if premises are in very close proximity to each other). Support for this may be found in para 4.19 of the Guidance, which states:

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 ...

For a person to be in day to day charge and be immediately identifiable by enforcement officers as in a position of authority at premises, that person, at least in the case of premises such as public houses and nightclubs, ought to be someone who is normally at the premises directing and overseeing the work of others employed there (for example, a manager), although he cannot, of course, be expected to be there at all times.

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50 Section 15(1) provides: ‘In this Act references to the “designated premises supervisor”, in relation to a premises licence, are to the individual for the time being specified in that licence as the premises supervisor.’

51 Section 15(2) provides: ‘Nothing in this Act prevents an individual who holds a premises licence from also being specified in the licence as the premises supervisor.’

52 The Guidance, para 7.67 provides: ‘This does not mean that the condition should require the presence on the premises at all material times of the designated premises supervisor.’
Not all premises supply alcohol on an everyday basis, however, and some do so only on occasions. Here it is less clear who should be regarded as in ‘day to day charge’ and who should be selected as the DPS. This might be the case with village halls and community premises, for instance, where a premises licence may be held by the local authority. The local authority may (perhaps) appoint as its DPS an officer of the council. Although having responsibility for the premises, the officer may be unlikely to be present when supplies of alcohol are taking place there and may not, in a meaningful sense, be said to be in ‘day to day charge’ at times when the supply of alcohol is taking place.

However, whoever ought to be the DPS for particular premises will not necessarily be the person who becomes the DPS for the premises. Under s 17(4)(f) applicants for premises licences can specify the individual who they wish to be the DPS and, unless there are relevant representations from the police that ‘due to the exceptional circumstances of the case’ the appointment of the person named will undermine the crime prevention objective, there will be no opportunity for the licensing authority to prevent the individual specified from becoming the DPS. Thus, a premises licence holder (for example, a pub operating company) may seek to specify as a DPS someone in a managerial role within the organisation (for example, an area manager) for a number of its premises, although such a person would not normally be at (any of) the premises and would not be immediately identifiable as in a position of authority at premises. In the absence of any police representation, however, it would seem that the person specified will in fact become the DPS for those premises.

The circumstances in which there will be no DPS in respect of the premises licence are likely to be limited. When an application is made for a premises licence, s 17(3) requires that it must be accompanied by a consent form signed by the individual whom the applicant wishes to be the DPS (if the applicant himself is not to be the DPS) and, if the application with the nominated individual is granted, the individual will thereafter be the DPS unless and until he is replaced. This will be so even if he were to leave the premises or his employment. There may be no DPS on the premises in such a case, but there will still be a DPS in respect of the premises licence. However, s 41 makes provision for an individual to secure his removal as DPS by giving the licensing authority a notice to that effect and there may therefore be a period, once removal has taken effect, but before a new DPS is nominated, when there is no DPS in respect of the premises licence (see 6.9.14 below). This situation apart, it is difficult to envisage circumstances where there will be no DPS, except perhaps where the DPS dies.

The second condition requires that supply of alcohol under the premises licence is made or authorised by a person who holds a personal licence. The DPS himself does

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53 See Guidance, para 3.59 which recommends that 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’ and which goes on to mention, by way of example, ‘village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas’.

54 Section 18(9); and see 6.4.23 below.

55 This can be done by an application under s 37 to vary the licence so as to specify the individual named in the application – see 6.9.7–6.9.13 below.

56 However, one of the steps that an authority can take when determining a licence application (where there are relevant representations) is to refuse to specify a person as the premises supervisor (s 18(4)(c)) – see 6.5.1 below and 6.5.3–6.5.4 below – and it may be in such an instance there will also be no DPS.
not need to make or authorise sales, or be on the premises, provided that sales are made or authorised by a person who holds a personal licence.\(^{57}\) Nor, it would seem, does there need to be any personal licence holder present on the premises when sales are made, provided that a personal licence holder has authorised others, such as bar staff, to make sales. Paragraph 7.67 of the Guidance provides:

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.

Thus, ultimately, responsibility rests with the personal licence holder who has authorised the sales in the event of transgressions of the law by those making the sales under his authority (for example, where underage sales or sales to persons who are drunk take place) and it will be his licence that will be at risk where such transgressions occur.

6.4.3 Authorised sales under the mandatory conditions where alcohol is sold

It is clear from the Guidance that a personal licence holder does not need to be present at the point when sales are made and, provided sales are authorised, may be absent from the premises. Less clear, however, is the extent to which a personal licence holder may be absent from the premises and the period of time for which authorisation might be given for sales to take place in his absence. The Guidance refers to a personal licence holder authorising sales ‘during the course of an evening’ and being able to be absent ‘at times’ from the premises. The period of authorisation here is obviously short and the period of absence – ‘at times’ – is even shorter. Whether there can be a longer period of authorisation, extending into days or weeks, or possibly months, during which there can be a more prolonged absence from the premises of a personal licence holder, is uncertain and much will depend on what is considered to be the scope of an ‘authorised’ sale under s 19(3). One view would be that extensive authorisation is permissible and sales might be ‘authorised’ simply by some permission, oral or written, being given by the DPS or another employee holding a personal licence for sales to be made during the period of absence. This might be particularly appropriate in the case of small operators, for whom, if only a short period of absence were permissible, there might be practical difficulties, for example where an off-licence is run by a single individual holding a personal licence, absence for a significant period of time may preclude any sales of alcohol from taking place (perhaps necessitating closure of the premises during that time), unless another personal licence holder can be employed.

An alternative view, however, would be that, if the risks associated with the sale of alcohol are considered so great that a system of personal vetting is needed, sales should in general only be ‘authorised’ if someone who has been personally vetted –

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\(^{57}\) The Guidance, para 7.67 provides: ‘This does not mean that the condition should require the presence on the premises at all material times of the designated premises supervisor.’
either the DPS or another employee holding a personal licence – is present on the premises to give that authorisation. Whilst this would not require a personal licence holder’s presence on the premises at all times and would enable sales to be authorised during brief periods of absence, it would not permit any prolonged absence. This view might be seen as particularly appropriate in the case of larger retail outlets, especially where sale is for consumption on the premises, for example, night clubs, public houses. It would ensure that, brief periods apart, there is always someone on the premises who has been adjudged suitable to have responsibility for the sale of alcohol. If the position were otherwise for such premises, only a single (absentee) personal licence holder would be needed and all sales of alcohol might be effected from the premises by large numbers of bar staff, none of whom holds a personal licence. The view may be taken that this would not accord with the spirit of the legislation and would conflict with what is necessary to promote the licensing objectives.

It is thus difficult to formulate a legal rule of general application, given that views on the extent to which a personal licence holder may be absent from the premises may well be dependent on the nature of the circumstances and the type of retail outlet. One approach to resolving this difficulty might be to require the giving of authorisation to be consistent with the exercise of proper supervisory control over the sale of alcohol. This would incorporate a degree of flexibility (albeit at the expense of some certainty) into the authorisation test. It would not require the presence on the premises of a personal licence holder at all times except for brief periods, for it would be possible to say that, in the case of a non-specialist off-licence, such as a convenience store, where the sole personal licence holder is absent for a significant period of time, there is no lack of proper supervisory control in this instance, given the limited number of sales that are likely to take place. Nevertheless, in the case of larger retail outlets selling alcohol for consumption on the premises where there is likely to be a high volume of sales, the view might be taken that proper supervisory control cannot effectively be exercised without the presence (perhaps at all times) of at least one personal licence holder on the premises.

An alternative approach might be to permit the absence, whether prolonged or brief, from the premises of a personal licence holder, irrespective of the type of premises, and to allow sales to take place under his authorisation, unless and until any difficulties arise (for example, disorder, nuisance, sales to children) that might be attributable to no personal licence holder being present. In the event of such difficulties, it might then be open to a licensing authority, on a review of the premises licence, to attach a condition that a personal licence holder be present on the premises at all times when sales of alcohol take place. This is a more individualised approach. It would enable well-run premises, irrespective of their nature and size, to operate without any personal licence holder on the premises, even for significant periods of time. Essentially a reactive approach, presence of a personal licence holder would be required only where experience had shown this was necessary to promote the licensing objectives.

58 Quaere whether an authority might include in its Statement of Licensing Policy a provision that, for (certain types of) premises selling alcohol, its policy will be for a personal licence holder to be present on the premises at all times. Perhaps in the absence of any evidence of difficulties associated with no personal licence holder being present on the premises, such a provision could not be said to meet the requirement of being necessary to promote any of the licensing objectives. If the Statement were to indicate that this would be the policy following a review of the premises licence, however, this requirement might more easily be met.
licensing objectives. Of the two approaches, it is submitted that the first-mentioned one, a proactive approach of aiming to ensure that proper control is exercised over licensed premises, is to be preferred. It remains to be seen whether either (or neither) of these approaches is adopted under the new legislation.

6.4.4 Mandatory condition for film exhibitions

The mandatory condition for inclusion under s 20 is that, where the licensable activities under the premises licence include the exhibition of films, the admission of children to film exhibitions is to be restricted in accordance with film classification recommendations. These recommendations can be those of the ‘film classification body’, the British Board of Film Classification, or of the licensing authority itself if it operates its own classification system. Section 20 provides:

(1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

(2) Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

(3) Where–
(a) the film classification body is not specified in the licence, or
(b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,
admission of children must be restricted in accordance with any recommendation made by that licensing authority.

(4) In this section–
“children” means persons aged under 18; and
“film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

6.4.5 Mandatory condition for door supervisors

The condition that must be included under s 21 relates to door supervisors being licensed by the Security Industry Authority (SIA).59 Section 21 does not make it mandatory to impose a condition for the employment of door supervisors but, where

59 The SIA was established by the Private Security Industry Act 2001 to regulate the private security industry and the licensing of door supervisors by the SIA has replaced registration schemes operated by local authorities and the police. Although the marginal note to s 21 refers to ‘Mandatory conditions: door supervision’, the term ‘door supervisor’ is not used in the section, which refers to ‘a condition that at specified times one or more individuals must be at the premises to carry out a security activity’. A ‘security activity’ means an activity to which para 2(1)(a) of Sched 2 to the Private Security Industry Act 2001 applies, ie, door supervision by security operatives: s 21(3)(a).
such a condition is imposed, makes it mandatory that the individuals employed are licensed.° Section 21(1) provides:

Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

However, this requirement to impose a condition that individuals are licensed does not apply in all circumstances. Exemptions are provided for premises being used for certain activities. These include premises with a premises licence authorising plays or films, which means that there will be no mandatory condition for licensing by the SIA for theatres and cinemas. The exemptions also include premises where plays or films are authorised under a TEN, premises being used exclusively by a club with a CPC, premises having a gaming licence when they are being used wholly or mainly for the purposes of gaming, or on any occasion prescribed by regulations under the Private Security Industry Act 2001 (although regulations made to date under the Act, the Private Security Industry (Licences) Regulations 2004, SI 2004/237, have not prescribed any such occasion). Section 21(2) provides:

But nothing in subsection (1) requires such a condition to be imposed—

(a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or

(b) in respect of premises in relation to—

(i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or

(ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).°

6.4.6 Prohibited conditions

Apart from the mandatory conditions in ss 19–21, there are two constraints on the power of authorities to impose conditions. First, certain conditions are expressly prohibited and, secondly, authorities can only impose such conditions as are consistent with the operating schedule and so, to the extent that conditions might be inconsistent,
their inclusion is prohibited. Expressly prohibited conditions are covered by s 22, which prevents authorities from imposing conditions as to the nature of plays or the manner of performance where the premises licence authorises the performance of plays. Section 22 provides:

(1) In relation to a premises licence which authorises the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(2) But subsection (1) does not prevent a licensing authority imposing, in accordance with section 18(2)(a) or (3)(b), 35(3)(b) or 53(3), any condition which it considers necessary on the grounds of public safety.

The provision in s 22(1) replicates that previously contained in s 1(2) of the Theatres Act 1968, but the provision in s 22(2), under which conditions might be imposed where necessary only on the grounds of public safety, is rather narrower in scope than the previous law. The proviso to s 1(2) provided that that nothing in the sub-section ‘shall prevent a licensing authority from imposing any … condition … which they consider necessary in the interests of physical safety or health or any condition regulating or prohibiting the giving of an exhibition, demonstration or performance of hypnotism within the meaning of the Hypnotism Act 1952’. Since no provision is made by way of exception for hypnotism or conditions considered necessary in the interest of health by s 22(2), it appears that under s 22(1) such conditions cannot be imposed (unless they can be brought within the criteria of public safety). The reason for the change is so that the power to impose conditions accords with the licensing objectives. Conditions relating solely to health, which is not one of the licensing objectives, cannot lawfully be imposed since they will fall outside the scope of the statutory power,62 and the same is true of conditions relating to hypnotism.

6.4.7 The second constraint on the imposition of conditions is that they are consistent with the operating schedule (s 18(2)(a)) and in this respect para 7.15 of the Guidance provides:

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 licensable 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.

Whether this means that conditions should simply replicate those contained in the operating schedule or whether (and, if so, to what extent) conditions might be imposed that materially differ from those proposed by the applicant is uncertain. The requirement is only for conditions to be ‘consistent with’ the operating schedule, not for them to be identical to those proposed by the applicant, so at least some measure of variation is permissible. The degree of variation permissible and the extent to which conditions might be materially different from those proposed may depend on how the

62 As the Guidance indicates: ‘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’ (para 5.69).
phrase ‘consistent with the operating schedule’ is interpreted. The applicant is required in the operating schedule to specify steps to promote the licensing objectives and, if the phrase is interpreted to mean consistent with the steps the applicant proposes to take to promote the licensing objectives, then conditions that are materially different may not be consistent with the operating schedule. If, on the other hand, the phrase is interpreted to mean consistent with the licensing objectives themselves that have application in the particular case (rather than the applicant’s proposed steps to promote them because, in the authority’s view, the steps proposed do not promote the particular objectives), then materially different conditions that do meet these objectives might be regarded as consistent with the operating schedule. Either interpretation might be possible, but, given that s 17(4)(g) refers to the operating schedule including a statement of steps to promote the objectives and s 18(2) requires conditions to be consistent with the operating schedule, the former view seems to accord more closely with the statutory wording.

Whichever interpretation is adopted, it is clear that authorities can, within the same licence, impose different conditions on different parts of the premises and in relation to different licensable activities. Section 18(10) provides:

In discharging its duty under subsection (2) or (3)(b), a licensing authority may grant a licence under this section subject to different conditions in respect of—

(a) different parts of the premises concerned;
(b) different licensable activities.

### 6.4.8 Relevant representations and discretion

#### 6.4.9 Meaning of ‘relevant representations’

If, however, ‘relevant representations’ have been made, s 18(3)(a) provides that the authority must hold a hearing to consider them. Under reg 5 and para 1 of Sched 5 to the LA 2003 (Hearings) Regs 2005, the hearing must be held within a period of 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c), which itself, under reg 22(b) of the LA 2003 (PL and CPC) Regs 2005, is 28 consecutive days after the day on which the application is given to the authority. Given the combination of working and consecutive days, the total period of time needs careful thought to avoid error. Under reg 6(4) and para 1 of Sched 2, notice of the hearing must be given to the applicant and persons who made relevant representations no later than 10 working days before the day or the first day on which the hearing is to be held. A hearing need not be held if the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary. Relevant representations will be ones made by an ‘interested party’ (local residents and businesses) or a ‘responsible authority’ (statutory bodies) and only such persons are to make representations. The licensing authority itself is unable to do. The rationale for this is that only persons with

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63 As to the giving of notice of hearing, see 2.4.13 above. The applicant must be given the relevant representations with the notice of hearing: reg 7(2) and Sched 3, para 1 of the LA 2003 (Hearings) Regs 2005.
expertise should be entitled to make representations. As Baroness Blackstone explained during the Report Stage of the Bill in the House of Lords:

Judgment of the merit of an application against the licensing objectives should be left to the experts. The experts on crime and disorder, and the protection of children from harm are the police, and so the police have a voice. The experts on public safety are the health and safety and fire authorities, and so they have a voice too. The experts on public nuisance are the local environmental health authority. It follows that they should have a voice too, and the Bill provides them with one. The experts in what it is like to live and do business in a particular area are local residents and businesses ...

What we are not doing, however, is allowing the licensing authority to make representations in its own right. One of the fundamental principles of the Bill is that applications should be granted administratively where the experts have not raised any concerns about them. Where those circumstances apply, there is no reason for the licensing authority as regulatory authority to give a second opinion to those experts, and it would be wrong to give it that opportunity.64

Any representations made will have to be about the likely effect of the grant of the licence on the promotion of the licensing objectives65 and, in the case of representations made by an interested party, not be frivolous or vexatious, that is not trifling or futile, or put forward for the purposes of annoyance or oppression. Representations will cease to be relevant if they are withdrawn. Section 18(6) and (7) provides:

(6) For the purposes of this section, “relevant representations” means representations which–
(a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives,
(b) meet the requirements of subsection (7),
(c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9), and
(d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

(7) The requirements are–
(a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5)(c),
(b) that they have not been withdrawn, and
(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

64 HL Deb, vol 645, col 400, 27 February 2003. Various other parties with expert voices have been added to the parties mentioned here, eg, the local planning authority, which has particular expertise on the issue of cumulative effect, and a body (likely to be the area child protection committee) recognised by the authority as representing those responsible for or interested in matters relating to the protection of children from harm – see 6.4.18 below.

65 The Guidance, para 5.73, makes it clear that this will be in the context of the application and that a representation will be irrelevant if it does not directly relate to the application: ‘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.’
6.4.10 **Representations about the likely effect of the grant of the premises licence on the promotion of the licensing objectives: s 18(6)(a)**

A first criterion for representations to be ‘relevant’ is that they are about ‘likely effect’. The use of the term ‘likely’ seems to indicate that the effect has to be more probable than not, but it is not clear whether it is to be judged by reference to the representor (the ‘objector’) or the representee (the licensing authority). A persuasive argument can be made that it should be judged by reference to the representor. The authority will have the opportunity, when determining the application, to decide what effect the grant will have on the promotion of the licensing objectives, but, if it were able to determine likely effect at this earlier stage, this determination could effectively preclude the holding of a hearing. Representations could be dismissed by the authority as not relevant, since they were not (in its view) concerned with likely effect. The rationale of allowing representations to be made is to improve the quality of decision-making and this would not seem to be met if such an approach could be adopted.

6.4.11 Nevertheless, there needs to be some minimum threshold concerning representations about likely effect to ensure that hearings are not held where trivial complaints are made. This can be achieved if some preliminary investigation is made by the authority. This is not inconsistent with judging likely effect by reference to the representor, which can be done in the vast majority of cases, and a preliminary investigation by the authority to determine relevance may occur only in a relatively small number of cases. As to whether ‘likely effect’ should be determined subjectively or objectively on such a preliminary investigation, it seems likely that this should be done objectively. This seems to be the test for whether a representation is frivolous or vexatious and the same test should apply when determining relevance and ‘likely effect’. If an objective test is applied, it thus will depend on whether a reasonable person in the representor’s position would consider the representation to be about the likely effect.

6.4.12 **Representations by an ‘interested party’ or a ‘responsible authority’ – persons entitled to submit relevant representations: s 18(6)(b) and (7)(a)**

A second criterion for representations to be ‘relevant’ is that they are made by persons or bodies falling within one of two categories, an ‘interested party’ or a ‘responsible authority’.

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66 The Guidance, para 5.75 provides: ‘The interested party making representations may not consider the matter to be vexatious or frivolous, 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.’ What might ordinarily be considered to be vexatious or frivolous suggests an objective test.
6.4.13 Interested party

The former category essentially covers residents and businesses in the vicinity of the premises or bodies representing them. Section 13(3) provides:

“Interested party” means any of the following—
(a) a person living in the vicinity of the premises,
(b) a body representing persons who live in that vicinity,
(c) a person involved in a business in that vicinity,
(d) a body representing persons involved in such businesses.

The extent to which relevant representations can be made will depend on how a number of terms in this provision are interpreted.

6.4.14 First, the meaning given to ‘vicinity’ is of crucial importance. The term ‘vicinity’ is used in other licensing legislation, appearing in para 12(3)(d)(iii) of Sched 3 to the Local Government (Miscellaneous Provisions) Act 1982, which provides that a sex establishment licence may be refused if the grant or renewal of the licence ‘would be inappropriate having regard ... to the use to which other premises in the vicinity are put’. The meaning of ‘vicinity’, in the context of this provision appears not to have been judicially considered, although the term has been used in other statutory provisions and its meaning considered there. Thus, in Adler v George, Lord Parker CJ, considering the offence of obstructing officers or others in the ‘vicinity’ of any prohibited place under s 3 of the Official Secrets Act 1920, referred to ‘the natural meaning of “vicinity”, which I take to be quite generally the state of being near in space’. It is likely that ‘vicinity’ will have a similar meaning in s 13(3). What constitutes being near in space to the premises will be a question of fact for the licensing authority to determine. The Guidance states:

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 ... 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.

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67 Although Forbes J, in R v Birmingham City Council ex p Quietlynn Ltd (1985) 83 LGR 461, 496, referred, when reviewing the provisions of Sched 3, to ‘what is meant when paragraph 12 speaks of “locality” and “vicinity”’, he went on to consider only the meaning of the former term.

68 [1964] 1 All ER 628, 629. The appellant in this case was actually in the prohibited place, rather than in the vicinity of it, but the court was ‘quite satisfied that this is a case where no violence is done to the language by reading the words “in the vicinity of” as meaning “in or in the vicinity of” (per Lord Parker CJ at 629).

69 Paragraph 5.33. See also the remarks of Lord McIntosh, a Government spokesman, in the House of Lords during the passage of the legislation: ‘“vicinity” is a term that will be interpreted on a case-by-case basis. It will not exclude individuals who live a few streets away from the premises and are affected by the application from making representations. And, under certain circumstances, it could be interpreted to cover a neighbourhood or district if the case warranted that breadth of scope. It is chosen because it will allow for the circumstances of each application to be taken into account’ (HL Deb, vol 645, col 406, 27 February 2003).
A number of authorities, in their Statements of Licensing Policy, have adopted a guide distance for ‘vicinity’ of 100 metres from the application premises and this may be varied according to the circumstances. A lesser distance, for instance, might be appropriate where a major road separates a group of residents from the premises or, conversely, a greater distance where premises affect the whole community. It seems unlikely, however, that what constitutes the ‘vicinity’ will need to be determined with any degree of precision. This is certainly the view that the courts have taken in respect of the meaning of the analogous concept of ‘locality’ in para 12 of Sched 3 to the 1982 Act in relation to sex establishments70 and there would seem to be no reason why any different approach should be taken here. Provided the view taken by a licensing authority as to what constitutes the ‘vicinity’ is not wholly unreasonable in the Wednesbury sense,71 a licensing authority’s determination of the ‘vicinity’ should be beyond challenge.

6.4.15 Secondly, a person will need to be ‘living’ in vicinity of the premises to be an interested party. Two questions arise here. The first is what will constitute ‘living’ there and the second is the material time(s), in relation to an application, at which a person will need to be ‘living’ there. As to what constitutes ‘living’, if a literal interpretation were given to ‘living’, this would suggest that a person would need to be actually residing in the vicinity to be entitled to make representations, but this would exclude persons ordinarily resident who for some reason happen to be away from where they live at the material time(s). If, however, a purposive interpretation is given to ‘living’, such persons might be included. The purpose of s 18(3)(a) is to enable representations to be made by those likely to be affected by the application premises and persons ordinarily resident there will be equally affected (once they resume residence) as those who are actually living in the vicinity. They ought therefore to be entitled to make representations and, to ensure that they can, the provision should be given a purposive interpretation. Less clear is whether such an interpretation would include those whose permanent address is in the vicinity, but who, for significant periods of the year, might reside elsewhere, for example students away from the parental home at university, persons who work away on weekdays and return at weekends, those who have a holiday home in an area. As to the material time(s) at which a person will need to be ‘living’ in the vicinity, clearly there will be no difficulties where a person is living there at the point in time when representations can be made,72 when a hearing is held and when the application is determined. Problems may arise, however, where a person is living there at some, but not all, of these points, for example a person living there when representations can be made, although due to move away either immediately before or after the hearing, or a person due to move into property after the period

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70 For details, see Manchester, C, Entertainment Licensing Law and Practice, 2nd edn, 1999, London: Butterworths, paras 15.33 and 15.34.
71 This is considered at 3.5.13 above.
72 Under s 17(5)(c) this is a period prescribed by regulations and, under reg 22 of the LA 2003 (PL and CPC) Regs 2005, is 20 working days after the day on which the application is given to the authority – see 6.3.1 above.
within which representations can be made, but who will be in residence at the time a hearing is held.\textsuperscript{73}

6.4.16 Thirdly, a person ‘involved in a business’ will be an interested party. This is very widely expressed, to such an extent that, if interpreted literally, it could cover all persons having any involvement with the business, including all employees of the business (whether or not working for the business in the vicinity in question), as well as those involved as directors or partners in running the business. Whether all such persons should be seen as affected by an application for a licence so as to entitle them to make representation is open to doubt. It may be that only those running the business or involved in running it may be considered to be ‘involved in a business’ for the purposes of s 13(3)(c) – ‘involved’ may be interpreted to mean involved to a significant or substantial degree rather than involved to any extent. As to what constitutes a ‘business’ for these purposes, this should not be confined to persons involved in commercial practice, but should include a wide range of other organisations not normally classed as ‘businesses’, for example, persons involved in education or the professions. As para 5.32 of the Guidance states:

\textit{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.}

6.4.17 Fourthly, ‘a body representing persons’, whether those involved in a business in the vicinity or those who live in the vicinity, will be an interested party. Whilst this seems clearly designed to enable representations to be made by organisations such as a trade association or a residents’ association,\textsuperscript{74} it is uncertain how far it might extend beyond this. A matter of particular concern will be whether it will encompass only bodies which have some specific mandate from those represented or whether it will extend to bodies claiming to represent such persons.

It seems that interested parties might make representations themselves or may nominate others to make representations on their behalf. Paragraph 5.32 of the Guidance provides:

\textit{Any of these individuals or groups may specifically request a representative to make representations 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 local ward councillors, para 5.32 goes on to provide that ‘it would be expected that any councillor who is also a member of the licensing committee making such representations on behalf of the interested party would disqualify him or herself}

\textsuperscript{73} In the former instance, although such persons would seem to be entitled to make representations, their representations may perhaps not be regarded as relevant representations, either on the ground that they are considered frivolous or vexatious or are considered to have been impliedly withdrawn (since the persons in question will clearly not be affected by the time the premises licence takes effect). In the latter instance, such persons will not literally be living in the vicinity, but might, to all intents and purposes, be regarded as doing so and it might be felt that, on a purposive construction, they should be entitled to make representations, since they undoubtedly will be affected.

\textsuperscript{74} ‘A body is included in subsection 3(b) to ensure that residents’ associations have a voice without the need to take direct instructions from their members on every single matter’ (Baroness Blackstone, HL Deb, vol 645, col 396, 27 February 2003).
from any involvement in the decision-making process affecting the premises licence in question’. This need not in practice inhibit ward councillors from properly representing their constituents. It is likely that most, if not all, licensing decisions will, in accordance with para 3.63 of the Guidance, be taken by licensing subcommittees and a ward councillor who is a member of the committee need not sit on a subcommittee hearing an application in respect of premises in his ward. By not sitting he would not have any involvement in the decision-making process for the application in question and be free to represent his constituents before the subcommittee. The position appears to be different if the ward councillor lives in the constituency in the vicinity of the application premises and is thus an interested party entitled to make representations in respect of the application. If representations are made by him in his personal, as well as his representative, capacity, this seems to preclude him from appearing before the subcommittee hearing the application. This is because in these circumstances, under para 12(1) of the Local Authorities (Model Code of Conduct) (England) Order 2001, SI 2001/3575, council members have a ‘personal interest’ in the matter which is also a ‘prejudicial interest’ and ‘must ... withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting’.

6.4.18 Responsible authority

The other category of persons entitled to make representations is a ‘responsible authority’ and this is covered by s 13(4). This category encompasses the police and fire authority – the statutory consultees under the previous law – but extends beyond this to include other agencies with statutory responsibilities. It does not include the licensing authority itself, which in most cases will be the local authority, although it can include another licensing authority where part of the premises is situated in that authority’s area. It also includes the local authority ‘by which statutory functions are exercisable ... in relation to minimising or preventing the risk of pollution to the environment or of harm to human health’, which would seem to be a relevant section of the local authority dealing with environmental and public health. Other agencies included are 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 planning authority; a body recognised by the

75 This requirement to withdraw applies where, under para 10(1), a member with a personal interest (which the ward councillor will have because he is individually affected by the application premises) also has a ‘prejudicial interest’, which is an interest ‘which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest...’. See R (on the application of Richardson and Another) v North Yorkshire County Council and Others [2004] 2 All ER 31 and Manchester, C, ‘Council members with an interest’ (2004) 58 Licensing Review 19.

76 Section 185 makes provision for the sharing of information by licensing authorities and responsible authorities. Information held by or on behalf of a licensing authority or a responsible authority (including information obtained before the coming into force of s 185) may be supplied to a licensing authority or responsible authority for the purposes of facilitating the exercise of the authority’s functions under the Act (s 185(1)(2)). It must not, however, be further disclosed for any other purpose (s 185(3)). A ‘responsible authority’, for these purposes, means a responsible authority within the meaning of Pt 3 or 4 (s 185(4)).

77 Section 13(5) provides: ‘For the purposes of this section, “statutory function” means a function conferred by or under any enactment.’
licensing authority as being competent to advise it on matters relating to the protection of children from harm (which is likely to be the area child protection committee); various bodies with responsibilities for waterways where licensable activities take place on a vessel; and any person prescribed by the Secretary of State. Section 13(4) provides that:

“Responsible authority” means any of the following—

(a) the chief officer of police for any police area in which the premises are situated,
(b) the fire authority for any area in which the premises are situated,
(c) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 (c.37) for any area in which the premises are situated,
(d) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (c.8) for any area in which the premises are situated,
(e) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution to the environment or of harm to human health,
(f) a body which—

(i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
(ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters,
(g) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated,
(h) in relation to a vessel—

(i) a navigation authority (within the meaning of section 221(1) of the Water Resources Act 1991 (c.57)) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is, or is proposed to be, situated at a time when it is used for qualifying club activities,
(ii) the Environment Agency,
(iii) the British Waterways Board, or
(iv) the Secretary of State,79

(i) a person prescribed for the purposes of this subsection.

The Secretary of State has, under reg 7 of the LA 2003 (PL and CPC) Regs 2005, prescribed one additional person, the local weights and measures authority for any area in which the premises are situated. This is the trading standards department of in

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78 The Guidance, para 5.36, provides:

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.

79 The reference here to the Secretary of State will be the Secretary of State for Transport, but it will effectively be the Maritime and Coastguard Agency that will be making representations. There is no reference to this agency in the Act since it is an Executive Agency of Government that acts for the Secretary of State for Transport, but which itself has no formal legal existence—see Guidance, para 5.37.
local authority area (see 11.7.12 below). The other responsible authorities mentioned in s 13(4) all have recognised expertise in particular areas that relate to the licensing objectives, but it is not readily apparent where the expertise of trading standards lies in this respect. Perhaps it is in the field of enforcement of certain aspects of the legislation, notably the offence under s 146(1) of selling alcohol to children (see 11.7.12 below).

6.4.19 Representations within the prescribed period: s 18(6)(b) and (7)(a)

Section 17(5)(c) provides that regulations may prescribe the period within which relevant representations may be made (see 6.3.1 above) and representations will only be relevant representations if they are made within this period. The definition of ‘relevant representations’ in s 18(7)(a) contains a requirement that the representations were made by an interested party or responsible authority ‘within the period prescribed by section 17(5)(c)’ and reg 22 of the LA 2003 (PL and CPC) Regs 2005 provides that representations can be made during a period of 28 consecutive days starting on the day after the day on which the application was given to the authority. Whether representations that are relevant (in the sense that they are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives) can be taken into account when they are received outside the 28 day period remains uncertain.

If no other representations are received within the period, there will be no relevant representations at all and, where this is the case, the authority must under s 18(2) grant the premises licence. It may be that the late representations cannot be taken into account in such a case. However, a failure to do so might be considered to conflict with the authority’s duty under s 4(1) to carry out its functions under the Act ‘with a view to promoting the licensing objectives’. If the late representations are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives, even if not within the 28 day period, they might be ones that the licensing authority considers it necessary to take into account when reaching a decision on the application in order to promote the licensing objectives. If the authority were to take them into account in relation to attaching conditions consistent with the operating schedule, rather than to refuse a premises licence, this would not be inconsistent with s 18(2). Indeed, it seems open to an authority to hold a hearing to consider the late representations if minded to do so. The authority is obliged under s 18(3)(a) to hold a hearing if there are relevant representations, but is not precluded from doing so where there are none. Paragraph 3.63 of the Guidance recommends delegation to officers where there are no relevant representations (see 2.4.12 above), but an authority can depart from this recommendation if there is good reason to do so and the need to promote the licensing objectives is a good reason.

If relevant representations are received within the 28 day period, the authority must hold a hearing, so there will be an opportunity in such a case for any late representations to be considered. Under the LA 2003 (Hearings) Regs 2005, a ‘party to the hearing’, which under reg 2 and Sched 2 includes a person making relevant representations (see 2.4.13 above), has various rights, including the right to appear, but these will not apply in respect of a person making late representations. Nevertheless, it may be open to the committee to permit persons other than parties to appear at the hearing (see 2.4.13 above) and this might include persons making late representations. To take late representations into account is not inconsistent with s 18(3)(b), which
requires the authority to have regard to relevant representations when determining the  
steps it considers necessary for the promotion of the licensing objectives. Whilst this  
requires the authority to have regard to the relevant representations, it does not  
provide that it can only have regard to these, which leaves open the possibility that an  
authority might have regard to other relevant considerations, such as representations  
received outside the 28 day period. If regard is had to substance and the primary  
importance of promotion of the licensing objectives ahead of form and the prescribed  
period within which representations have to be made, a persuasive case might be  
made for the authority having a discretion to take into account late representations.  
Thus the legal position may be that, where relevant representations are made, the  
authority is obliged to take these into account at the hearing at which the persons  
making the representations have various rights, but consideration of late  
representations and any appearance at the hearing by persons making them are at the  
authority’s discretion. This approach would accord with that taken by the Divisional  
Court, in *Quietlynn Ltd v Plymouth City Council* [1988] QB 114, in respect of the  
requirement in para 10(15) of Sched 3 to the Local Government (Miscellaneous  
Provisions) Act 1982 that objections to sex establishment licence applications must be  
made not later than 28 days after the date of the application. Webster J stated (at 133):

We ... would conclude for our part that the essential difference between an objection  
which complies with paragraph 10(15) and one which does not is that the authority is  
obliged to consider objections made not later than 28 days, but that it has a discretion  
whether or not to take into account objections made later. Of course it would follow  
that if it takes into account later objections, of which notice in writing will not have  
been given to the applicant pursuant to the requirement of sub-paragraph (16), then  
such notice has to be given to the applicant as is sufficient to ensure that the hearing of  
his application is fair ...

This was, however, not the established legal position in relation to sex establishment  
licence applications, since in an earlier Divisional Court case, *R v Birmingham City  
Council ex p Quietlynn Ltd* (1985) 83 LGR 461, 487, Forbes J had stated:

It would indeed be strange if Parliament, having carefully set limits for the notification  
of objections, and enjoined local authorities to have regard to such objections, should  
at the same time have expected local authorities to have a discretion to have regard to  
objections irrespective of whether they conformed to the limits or not. The  
combination of paragraph 10(15) and paragraph 10(18) seems to me to show that  
Parliament was intending to say to objectors, ‘Put your objections in before 28 days; if  
they come in late they will not be entertained by the local authority’.

Although this view was disapproved in the *Plymouth* case, conflicting statements, both  
of which appear to be obiter, in two Divisional Court cases leave the legal position  
unclear. It may be that, of the two decisions, the *Plymouth* case should carry greater  
weight, since there was a stronger court in that case, consisting of three judges,  
whereas in the *Birmingham* case Forbes J was sitting alone as a single judge. If the  
approach in the *Plymouth* case were to be followed in respect of the 28 day period  
under the 2003 Act, late representations might be considered at the authority’s  

discretion and, given the overriding importance under the Act of promotion of the licensing objectives, it is submitted that this is the approach that should be followed.

6.4.20 Representations not withdrawn nor frivolous or vexatious: 
\(s\ 18(6)(b)\) and \(7)(b)(c)\)

6.4.21 To be relevant representations, it is necessary that the representations have not been withdrawn and are not frivolous or vexatious (s 18(7)(b)(c)). As to withdrawal, reg 10 of the LA 2003 (Hearings) Regs 2005 provides that a party who wishes to withdraw any representations can do so by giving notice to the authority no later than 24 hours before the day or the first day on which the hearing is to be held or orally at the hearing. Representations can be regarded as frivolous or vexatious (frivolous) if they are trifling or futile, or put forward for the purposes of annoyance or oppression. Representations can only be so regarded if made by an interested party. It is presumed (irrebutably) that ones made by a responsible authority are not frivolous.

Representations are frivolous only if they are considered to be so ‘in the opinion of the relevant licensing authority’ (s 18(7)(c)). For these purposes, the Guidance recommends delegation of this function to officers and the application of an objective test based on what might ‘ordinarily be considered’ vexatious or frivolous:

The interested party making representations may not consider the matter to be vexatious or frivolous, 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.\(^81\)

Once a determination is made that representations are frivolous, s 18(8) requires that the authority ‘must notify the person who made them of the reasons for the determination’. Such notification will need to be in accordance with s 184 (see 2.4.19–2.4.22 above) and, under reg 31 of the LA 2003 (PL and CPC) Regs 2005, must be given writing as soon as is reasonably practicable and in any event before the determination of the application to which the representations relate. If there is a failure to notify or to give reasons, this does not amount to an offence. Although no criminal sanction is provided, this is not to say that the requirement can be ignored and that failure to comply will have no consequences.

6.4.22 Where a statutory duty is imposed and no sanction is provided by the statute for non-compliance, courts can interpret the statute as conferring a civil action for breach of statutory duty. Alternatively, failure by an authority to comply may mean that its conduct is unlawful under s 6 of the Human Rights Act 1998 because the authority is acting in a way which is incompatible with a Convention right.\(^82\) Article 6(1) of the Convention requires that everyone, in the determination of his civil

\(^{81}\) Guidance, para 5.75. The recommendation for delegation is contained in para 3.63 of the Guidance – see 2.4.12 above. Although officers cannot determine a premises licence application where representations have been received, as delegation to them is excluded by s 10(4)(a), determination in the case of frivolous representations is concerned with the question of whether (relevant) representations have been received and this is not excluded by s 10(4).

\(^{82}\) This is in effect a breach of the statutory duty in s 6 of the Human Rights Act 1998, as distinct from a breach of the statutory duty in s 18(8) of the 2003 Act.
rights and obligations, is entitled to a fair hearing before an independent tribunal. Licensing decisions affecting applicants involve the determination of a civil right and this may also be the case with those making representations, as persons on the ‘other side’ of the dispute or ‘contestation’ that is being determined by the licensing authority (see 3.5.4 above). Failure to give applicants reasons for the decision is a violation of Art 6(1) (see 3.5.9 above) and it may be that failure to notify and give interested parties reasons why their representations are considered frivolous and will not be taken into account could similarly be regarded as a violation. Further, there may be a violation in that the requirement for a fair hearing by an ‘independent tribunal’ is not met. For the purposes of Art 6(1), if the decision-making body is not ‘independent’ (which is the case with local authorities, as they are part of the executive), it will suffice if there is access to an independent tribunal that has ‘full jurisdiction’ to hear the complaint that the applicant wishes to bring. This will be the case where there is a right of appeal to a court and this takes the form of a rehearing, but the Act makes no provision for an appeal against a determination that a representation is frivolous. The availability of judicial review and access to the High Court, a ground for challenge mentioned in para 5.75 of the Guidance, may meet the requirement of access to an independent tribunal, but this will depend on whether judicial review proceedings can address the nature of the complaint. This may not necessarily be the case.

An additional consequence of non-compliance with the duty in s 18(8) might be that this could invalidate the licensing decision made in the particular case. Where statute provides a decision-making procedure and there is a failure to comply with some requirement of the procedure when reaching a decision, this may, but not necessarily will, make the decision invalid. Much will depend on the importance of the requirement and, in particular, whether the court regards it as a mandatory or a directory one. Although the requirement in s 18(8) appears to be mandatory on the wording of the subsection (‘must notify … of the reasons’), it is perhaps doubtful whether non-compliance ought to be regarded as invalidating a licensing decision, since it would not seem to be a central requirement, or one of crucial importance, in the decision-making process.

6.4.23 Representations relating to the proposed premises supervisor: s 18(6)(c)

These will be relevant under s 18(6)(c) if they ‘relate to the identity of the person named in the application as the proposed premises supervisor’, provided the requirements of s 18(9) are met. Section 18(9) provides:

The requirements of this subsection are that the representations—

(a) were made by the chief officer of police for the police area in which the premises are situated, and

83 This may depend on whether persons making representations are regarded as affected to a sufficient degree by the authority’s decision and whether they can be classed as a ‘victim’ – see 3.2.1 above.

84 On this aspect, see further 3.5.12–3.5.13 above.
(b) include a statement that, due to the exceptional circumstances of the case, he is satisfied that the designation of the person concerned as the premises supervisor under the premises licence would undermine the crime prevention objective.

Such representations are confined to cases where the licensable activities include the sale or supply of alcohol, since it will only be in such instances that there will be a premises supervisor.

Where the term ‘exceptional circumstances’ is used in legislation, how unusual circumstances have to be to become ‘exceptional’ is notoriously difficult to predict. Paragraph 4.22 of the Guidance, however, stresses that they will need to be highly exceptional:

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 example given is where a personal licence holder has been allowed by the courts to retain his licence, despite convictions for selling alcohol to minors, and transfers into premises which have some degree of notoriety for underage drinking. Less clear is whether exceptional circumstances might include cases where a proposed supervisor does not have any convictions, but where there may be evidence of past criminal activities. For example, a prosecution may have been commenced, but discontinued, an acquittal may have resulted, or a conviction may have been quashed on appeal. Licensing authorities have traditionally had regard to such matters under the ‘fit and proper person’ test under the previous law (see 6.12.12 below) and, notwithstanding the fact that this test now no longer applies (Guidance, para 4.1), the ‘exceptional circumstances’ provision in s 18(9)(b) might enable them to continue to do so in appropriate cases. This will, however, be possible only if representations are made by the police in accordance with s 18(9). It is, in addition, unclear whether ‘exceptional circumstances’ might include instances where, although there is no evidence of past criminal activity, the proposed supervisor may for some reason be thought to be manifestly unsuitable, for example an inexperienced 18-year-old for a large nightclub or a person about to marry a convicted drug dealer.

6.4.24 Representations excluded by s 32: s 18(6)(d)

Section 32 contains restrictions on representations that can be made following the issuing of a provisional statement. The restrictions are, broadly, that, unless there has been any material change in circumstances, representations cannot be made following

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85 Paragraph 4.20. The convictions here are for ‘relevant offences’, which may preclude a person from obtaining or retaining a personal licence. These offences are specified in Sched 4. Selling alcohol to minors will fall either within para 1 of Sched 4 (an offence under the 2003 Act) or 2(b) (an offence under the Licensing Act 1964). For details of ‘relevant offences’, see 10.5.6–10.5.11 below. Convictions for offences other than ‘relevant offences’ should not constitute exceptional circumstances. Parliament has made express provision in s 120(2) that (provided certain other conditions are met) a person must be granted a personal licence if he does not have any convictions for a relevant offence. This, by implication, means that he must be granted a licence even if he has convictions for other offences. If such convictions could be introduced via s 18(9), this might be regarded as countermanding the intention of Parliament as expressed in s 120(2).
the issuing of a provisional statement and on application for the grant of a premises licence (which is made after the issuing of the statement) if they could have been made at the time the provisional statement was issued. Where these restrictions apply, representations, although they may be relevant in other respects, will not be considered ‘relevant representations’ by virtue of s 18(6)(d).

6.5 GRANT OR REFUSAL OF A PREMISES LICENCE – TAKING STEPS NECESSARY TO PROMOTE THE LICENSING OBJECTIVES

6.5.1 Whether the licence is granted, either as sought by the applicant or in modified form, or refused will be determined by what the authority considers necessary to promote the licensing objectives. A hearing must be held to consider relevant representations (unless there is agreement that this is unnecessary) and then, having regard to the representations, the authority must take one of a number of steps that it considers necessary to promote the licensing objectives. Section 18(3) and (4) provide:

(3) Where relevant representations are made, the authority must–

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary;

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are–

(a) to grant the licence subject to–

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any condition which under section 19 or 21 must be included in the licence;

(b) to exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) to refuse to specify a person in the licence as the premises supervisor;

(d) to reject the application.

Section 18(3)(b) requires the authority to ‘have regard’ to the representations and then take any of the specified steps as necessary to promote the licensing objectives. This seems wide enough to encompass the authority taking into account matters other than those raised in the relevant representations when deciding what is necessary to promote the licensing objectives. Under s 18(3)(a), relevant representations are necessary in order for the holding of a hearing, but the authority is not confined to considering such representations when making its decision on the application. It is simply required to have regard to them. This is in keeping with the view that an authority, when exercising its discretion, is to make a decision on the merits of the case.

86 For details of provisional statements and these restrictions, see 6.8.13 below.
This must include matters that might affect the promotion of the licensing objectives, whether or not these are contained in any of the relevant representations made. The requirement, in reg 19(b) of the LA 2003 (Hearings) Regs 2005, for the authority to disregard at the hearing information that is not relevant to any representation made, should not be interpreted as excluding information relevant to the promotion of the licensing objectives (see 2.4.13 above). Ultimately, as indicated in Chapter 4, the authority must seek to promote the licensing objectives, but, in doing so, strike a balance between them and promoting the wider, social, cultural and economic benefits for the community, which are derived from licensable activities taking place (see 4.2.16 above).

It is not necessary that any of the steps mentioned in sub-s (4) be taken, since s 18(3)(b) refers to the authority taking such of the steps, ‘if any’, as it considers necessary for the promotion of the licensing objectives. If none of the steps are considered necessary, the authority can grant the licence in the terms sought by the applicant, subject only to such conditions as are consistent with the operating schedule accompanying the application in accordance with s 18(2)(a) (and any mandatory conditions under ss 19–21). The conditions imposed on the grant of the licence in such a case will thus be the same as if no relevant representations had been received and the authority had been obliged to grant the licence.

6.5.2 Apart from rejecting the application and refusing a licence, the authority can grant the licence in accordance with any or all of the three steps mentioned in s 18(4)(a)–(c). First, the licence can be granted subject to conditions consistent with the operating schedule, but modified to such extent as the authority considers necessary for the promotion of the licensing objectives (again, with any mandatory conditions under ss 19–21). As regards conditions being ‘modified’, s 18(5) provides:

For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

Further, as in the case of a mandatory grant, authorities can, under s 18(10), impose different conditions on different parts of the premises and in relation to different licensable activities (see 6.4.7 above). Given that both the power to modify and licensing objectives are broadly expressed, this should give authorities a considerable discretion in respect of the imposition of conditions.87

Secondly, any of the licensable activities to which the application relates can be excluded from the scope of the licence. An example of where this might occur is given in Explanatory Note 64: ‘a licensing authority may remove the performance of amplified music after 11 pm from the scope of the licence applied for by the tenant of a pub in the middle of a quiet residential area.’

6.5.3 Thirdly, the authority can ‘refuse to specify a person in the licence as the premises supervisor’. It is not clear from the wording whether this means refuse to specify the person named in the application or refuse to specify a premises supervisor at all, that is anyone (at this stage). Presumably it means the former, although it is perhaps likely to arise only in limited instances. One might be if there have been representations from the police that designation of the person concerned as the

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87 An example is given in one of the Explanatory Notes (64) to s 18 – the authority may prohibit the admittance of under-18s to premises where adult entertainment is provided (which would accord with the licensing objective of protection of children from harm).
premises supervisor would undermine the crime prevention objective. This might be
the case if a young, inexperienced person were proposed as the premises supervisor
for a large capacity nightclub. Another might be if the person had previously been a
premises supervisor for similar premises, but had been removed following a premises
licence review for those premises. In general, an authority will not be concerned with
the premises supervisor’s suitability, since he will need to have a personal licence and
his suitability (or lack of it) will have been considered when an application was made
for such a licence. If the authority does refuse to specify a person, it is not clear
whether it can do so only where the proposed premises supervisor is someone other
than the applicant for the premises licence or whether this can also be done if the
applicant himself proposes to be the premises supervisor.

Where there is a refusal to specify, the section seems to envisage the licence being
granted, but it is not clear how an authority should proceed in such a case. One option
would be to grant the licence subject to a condition that the premises must not be open
for the supply of alcohol until a satisfactory premises supervisor has been appointed.
Another would be to grant the licence and (as an interim measure) specify the
applicant as the premises supervisor. This particular step of refusing to specify a
premises supervisor is not, in practice, likely to arise very often since police
representations about a premises supervisor can be made only in ‘exceptional
circumstances’.

6.5.4 There is no requirement imposed on the authority to notify the applicant and
any person who made relevant representations of its reasons for any decision it makes
as to whether or not to take any steps mentioned in s 18(4). However, the authority
will be under a duty to give reasons under Art 6(1) of the European Convention on
Human Rights since the right to a fair hearing under this Article extends to the giving
of reasons.88

6.6 NOTIFICATION OF GRANT OR REFUSAL AND ISSUING OF
THE PREMISES LICENCE AND SUMMARY

6.6.1 When a premises licence is granted or refused, the licensing authority is
required to notify its decision to the applicant, any person who made relevant
representations and the chief officer of police. If the licence is granted, the notification
must include a statement of the authority’s reasons for taking or not taking any of the
steps that it did. It must then issue the licence and a summary of it. If refused,
notification must be given stating the reasons for doing so. Section 23 provides:

(1) Where an application is granted under section 18, the relevant licensing authority
must forthwith—

(a) give a notice to that effect to—

(i) the applicant,

88 See 3.5.9 above. The requirement to give reasons ‘cannot be understood as requiring a
detailed answer to every argument’ (Hiro Balani v Spain (1994) 19 EHRR 565, para 27). As
Lightman J stated in Bushell v Newcastle upon Tyne Licensing Justices [2004] LLR 306, para 41:
‘The reasons need not be elaborate or lengthy, but should tell the parties in broad terms why
the decision was reached.’
(ii) any person who made relevant representations in respect of the application, and

(iii) the chief officer of police for the police area (or each police area) in which the premises are situated, and

(b) issue the applicant with a licence and summary of it.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1)(a) must state the authority’s reasons for its decision as to the steps (if any) to take under section 18(3)(b).

(3) Where an application is rejected under section 18, the relevant licensing authority must forthwith give a notice to that effect, stating the reasons for the decision, to–

(a) the applicant,

(b) any person who made relevant representations in respect of the application, and

(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(4) In this section “relevant representations” has the meaning given in section 18(6).

6.6.2 The authority is required to give notice ‘forthwith’, the ordinary meaning of which is ‘at once, without delay’ and, if this meaning is adopted, the authority might be required to give notice as soon as the decision is reached. This seems unrealistic, given that reasons are required and the drafting of reasons will not necessarily be able to take place immediately. The purpose of including the requirement for notice to be given ‘forthwith’ seems to have been to provide assurance to those in the industry that applications will be dealt with without delay, as can be seen from the following remarks of Baroness Blackstone during the committee stage of the Bill in the House of Lords:

> We sought to reassure the industry that applications for licences will be dealt with promptly and efficiently. The use of the word “forthwith” in Clauses 22 and 35 reflect that aim. It is there to emphasise that there should be no delay in notifying applicants when a matter has been determined. We should not interpret that to mean that, when there is a hearing late in the evening, the licensing authority then has to tell people in the middle of the night. That would be absurd, and I should like to give that reassurance.89

In the light of this, a sensible approach would be to interpret ‘forthwith’ to mean ‘forthwith’ in practical terms and to equate it with ‘as soon as is reasonably practicable’. This approach would in fact accord with that adopted by courts where the term has been used in other legislative provisions. In *Sameen v Abeyewickrema [1963] AC 597*, a case in which a statutory provision required the filing of notice ‘forthwith’, Lord Dilhorne LC, delivering the judgment of the Privy Council, stated (at 609):

> In the light of this, a sensible approach would be to interpret ‘forthwith’ to mean ‘forthwith’ in practical terms and to equate it with ‘as soon as is reasonably practicable’. This approach would in fact accord with that adopted by courts where the term has been used in other legislative provisions.

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89 HL Deb, vol 643, cols 302–03, 16 January 2003. Inclusion of the ‘forthwith’ requirement might possibly have the opposite effect to that intended. Authorities might, in consequence of this requirement, be inclined to delay announcement of a decision. Under reg 26(2) of the LA 2003 (Hearings) Regs 2005 authorities must make a determination within a period of five working days beginning with the day or the last day on which the hearing was held, so they might delay a determination until in a position to provide more or less immediate notification.
Their Lordships do not propose to attempt to define “forthwith”. The use of that word clearly connotes that the notice must be filed as soon as practicable, but what is practicable must depend on the circumstances of each case.\(^{90}\)

6.6.3 Notification of the decision to the applicant, those who made relevant representations and the police will be in accordance with s 184(3), under which the authority may give notice by delivery of it to the person in question or by leaving it at his proper address, or by sending it by post to him at that address (see 2.4.21 above). Where granted, the licence and a summary of it will be in a form prescribed in regulations by the Secretary of State. Section 24 makes provision to this effect and sets out the basic requirements as to the information which must be included. Section 24 provides:

(1) A premises licence and the summary of a premises licence must be in the prescribed form.

(2) Regulations under subsection (1) must, in particular, provide for the licence to—

(a) specify the name and address of the holder;

(b) include a plan of the premises to which the licence relates;

(c) if the licence has effect for a limited period, specify that period;

(d) specify the licensable activities for which the premises may be used;

(e) if the licensable activities include the supply of alcohol, specify the name and address of the individual (if any) who is the premises supervisor in respect of the licence and his address;

(f) specify the conditions subject to which the licence has effect.

Regulation 33 and Pt A of Sched 12 to the LA 2003 (PL and CPC) Regs 2005 prescribe the form for the premises licence. Under reg 33 the licence must include: (a) an identifier for the licensing authority; (b) a number that is unique to the licence; and (c) certain information set out in Pt A of Sched 12. This information includes, but is not confined to, the above-mentioned matters in s 24(2). As regards inclusion of the plan, this is specified in Annex 4 to the Schedule, along with conditions in Annexes 1–3, which strongly suggests that the plan forms part of the licence (see 2.4.2 above). In some instances additional information is required in respect of included matters, for example, the designated premises supervisor’s telephone number, personal licence number and the name of the issuing authority as well as his name and address. Matters not specified in s 24(2), but on which information is required include the times at which licensable activities may take place and whether supply of alcohol is for consumption on and off or just on the premises. Regulation 34 requires inclusion of the identifier and premises licence number on the summary of the licence and the information that the summary must contain is set out in Pt B of Sched 12. In large measure, the information replicates that contained in the premises licence, excluding a plan of the premises and licence conditions, and requires reference to whether access to the premises by children is restricted or prohibited. Regulation 34 also requires the summary to be printed on paper of a size equal to or larger than A4.

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\(^{90}\) The requirement in this case to file notice of security for the costs of an appeal ‘forthwith’ was held not to require it to be done the same day: ‘It is not right to construe “forthwith” as meaning “on the same day”. If it had been intended that the notice must be filed on the same day … that could have been expressed [in the statute]’ (per Lord Dilhorne LC at 608).
In the event that the licence or summary is lost, stolen, damaged or destroyed, s 25 enables the licence holder to obtain a copy, in the same form as it existed immediately before it was lost, stolen, damaged or destroyed, on payment of a fee, which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is £10.50:

(1) Where a premises licence or summary is lost, stolen, damaged or destroyed, the holder of the licence may apply to the relevant licensing authority for a copy of the licence or summary.

(2) Subsection (1) is subject to regulations under section 55(1) (fee to accompany applications).

(3) Where an application is made in accordance with this section, the relevant licensing authority must issue the holder of the licence with a copy of the licence or summary (certified by the authority to be a true copy) if it is satisfied that–
   (a) the licence or summary has been lost, stolen, damaged or destroyed, and
   (b) where it has been lost or stolen, the holder has reported that loss or theft to the police.

(4) The copy issued under this section must be a copy of the premises licence or summary in the form in which it existed immediately before it was lost, stolen, damaged or destroyed.

(5) This Act applies in relation to a copy issued under this section as it applies in relation to an original licence or summary.

The section does not, however, impose any requirement on the licence holder to return to the licensing authority the licence that is lost or stolen should it come back into his possession, although it might have been expected for such a provision to be included.

6.7 DURATION OF PREMISES LICENCE

6.7.1 Indefinite duration and exceptions

A premises licence, once granted, will generally remain in force indefinitely. The circumstances in which it will not do so are when it:

- is revoked;
- was granted only for a limited period;
- is suspended;
- lapses due to some incapacity on the part of the licence holder; or
- lapses on surrender.

The first three situations are covered by s 26 and the remaining two by ss 27 and 28 respectively.

Section 26 provides:

(1) Subject to sections 27 and 28, a premises licence has effect until such time as–
   (a) it is revoked under section 52, or
   (b) if it specifies that it has effect for a limited period, that period expires.

(2) But a premises licence does not have effect during any period when it is suspended under section 52.
Revocation and suspension are covered in 6.12.8–6.12.9 below, and the only other circumstance covered by s 26 is where the licence specifies that it has effect for a limited period and that period expires. Not all applicants will be seeking a ‘permanent’ premises licence – those wishing to hold pop concerts for larger numbers and/or for longer periods than are permitted by a TEN will need a premises licence (see 6.1.3 above) – and one of the matters that will be included in an applicant’s operating schedule will be ‘where the applicant wishes the licence to have effect for a limited period, that period’ (s 17(4)(d)).

6.7.2 Whilst an applicant may seek a premises licence for a limited period, it is doubtful whether an authority could grant one for such a period if there is no request for this by the applicant in the operating schedule. Although s 26(1)(b) simply refers to a licence specifying that it has effect for a limited period, which on the wording would seem to be wide enough to permit an authority to do so, a narrower interpretation confining this to cases where a limited period was sought would be more in accordance with the intention of Parliament. The legislation is based on the White Paper and it is clear from this that the intention was that premises licences should be of indefinite duration. Nor, in view of the power to impose conditions in s 18, would it seem possible to impose a condition that the licence should have effect in the first instance only for a limited period. If there are no relevant representations, only conditions that are consistent with the operating schedule can be imposed (s 18(2)(a)). If there was no request in the operating schedule for a licence for a limited period, it is hard to see that attaching a condition that it has effect for such a period would be consistent with the operating schedule. If there are relevant representations, conditions can be imposed that are consistent with the operating schedule modified to such extent as the authority considers necessary for the promotion of the licensing objectives. It would, however, be difficult to substantiate a claim that a condition that the licence has effect for a limited period would be necessary for the promotion of the licensing objectives. It is really conditions relating to noise control, prevention of disturbance or access by children, etc, that promote the licensing objectives rather than one that the licence is of limited duration, even though it was not uncommon for authorities to grant such licences for public entertainments under the previous law in order to monitor and assess the impact of new licences where there were objections and/or it was felt there may be a potential nuisance.

6.7.3 Lapse of licence due to incapacity on the part of the licence holder covers several situations, including death, mental incapacity, insolvency (of an individual or company), dissolution of a company and, in the case of a club, if it ceases to be a recognised club. Insolvency is widely defined to include voluntary arrangements, bankruptcy, sequestration of an estate, deeds with creditors, appointment of administrators and receivers, and liquidation. Lapse is, however, subject to the

91 See para 46 of Cm 4696, 2000 (‘a licence should be issued either for the life of the business providing alcohol sales and/or public entertainment at the premises or until such time as it is revoked or suspended’).
92 See op cit, Manchester, fn 70, para 5.48.
93 For the meaning of ‘recognised club’, see s 193 and 8.2.3 below.
possibility of the licence being reinstated under s 47 or 50 (see 6.11.1 below). Section 27 provides:

(1) A premises licence lapses if the holder of the licence—
   (a) dies,
   (b) becomes mentally incapable (within the meaning of section 13(1) of the
       Enduring Powers of Attorney Act 1985 (c.29)),
   (c) becomes insolvent,
   (d) is dissolved, or
   (e) if it is a club, ceases to be a recognised club.

(2) This section is subject to sections 47 and 50 (which make provision for the
    reinstatement of the licence in certain circumstances).

(3) For the purposes of this section, an individual becomes insolvent on—
   (a) the approval of a voluntary arrangement proposed by him,
   (b) being adjudged bankrupt or having his estate sequestrated, or
   (c) entering into a deed of arrangement made for the benefit of his creditors or a
      trust deed for his creditors.

(4) For the purposes of this section, a company becomes insolvent on—
   (a) the approval of a voluntary arrangement proposed by its directors,
   (b) the appointment of an administrator in respect of the company,
   (c) the appointment of an administrative receiver in respect of the company, or
   (d) going into liquidation.

(5) An expression used in this section and in the Insolvency Act 1986 (c.45) has the
    same meaning in this section as in that Act.

It is not clear if a licence would lapse in the above circumstances if it were held in joint
names with another person (see 6.2.5 above). If a licence does lapse, there is no
provision for notification of the holder of any other premises licence in respect of the
same premises, although the holder may be notified when a change is made in the
licensing register if he has a property interest in the premises and has given notice of
that interest to the licensing authority under s 178 (see 2.4.18 above).

6.7.4 A licence will lapse if the licence holder voluntarily surrenders the licence. This
is done by a notice of surrender to the licensing authority, accompanied by the return
of the licence or a statement of reasons why this cannot be done, for example, because
the licence has been lost. Lapse is, however, subject to the possibility of the licence
being reinstated under s 50. Section 28 provides:

(1) Where the holder of a premises licence wishes to surrender his licence he may give
    the relevant licensing authority a notice to that effect.

(2) The notice must be accompanied by the premises licence or, if that is not
    practicable, by a statement of the reasons for the failure to provide the licence.

(3) Where a notice of surrender is given in accordance with this section, the premises
    licence lapses on receipt of the notice by the authority.

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Section 13(1) provides: “‘mentally incapable’ or ‘mental incapacity’, except where it refers to
revocation at common law, means, in relation to any person, that he is incapable by reason of
mental disorder of managing and administering his property and affairs and ‘mentally
capable’ and ‘mental capacity’ shall be construed accordingly.”
(4) This section is subject to section 50 (which makes provision for the reinstatement in certain circumstances of a licence surrendered under this section).

Perhaps surprisingly, there does not appear to be any requirement for payment of a fee nor is there any provision for notice of surrender to be given to any other persons, for example, the DPS (if a person other than the premises licence holder), the owner of the premises or the police. This is perhaps unfortunate, given that surrender of a licence may have serious repercussions, such as the DPS being effectively out of a job and the premises owner finding the premises cease to be in use.95

6.7.5 Updating the premises licence

Once a premises licence has been granted, the holder of the licence is under a duty to notify the licensing authority of any change in either his name or address or that of the DPS (unless the DPS has himself given notice to the authority). The notice given must be accompanied by the appropriate fee (which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is £10.50) and the premises licence for the changes to be recorded on it. (A duty to update the licensing document is imposed on the licensing authority by s 56 – see 6.13.1 below.) Section 33(1)–(5) provides:

(1) The holder of a premises licence must, as soon as is reasonably practicable, notify the relevant licensing authority of any change in–
   (a) his name or address, or
   (b) unless the designated premises supervisor has already notified the authority under subsection (4), the name or address of that supervisor.

(2) Subsection (1) is subject to regulations under section 55(1) (fee to accompany application).

(3) A notice under subsection (1) must also be accompanied by the premises licence (or appropriate part of the licence) or, if that is not practicable, by a statement of the reasons for the failure to produce the licence (or part).

(4) Where the designated premises supervisor under a premises licence is not the holder of the licence, he may notify the relevant licensing authority under this subsection of any change in his name or address.

(5) Where the designated premises supervisor gives a notice under subsection (4), he must, as soon as is reasonably practicable, give the holder of the premises licence a copy of that notice.

Failure to comply with the duty without reasonable excuse is a criminal offence, for which the penalty is a level 2 fine on the standard scale. Section 33(6)–(7) provides:

(6) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(7) A person who is guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

The premises owner may be notified of the surrender of the licence if he has given notice under s 178 to the licensing authority of his property interest in the premises, which will entitle him to be notified of the surrender once this change has been made in the licensing register kept under s 8 – see 2.4.18 above; but persons such as the DPS are unlikely to have any property interest in the premises entitling them to give notice under s 178.
6.8 PROVISIONAL STATEMENTS PRECEDING APPLICATION FOR A PREMISES LICENCE

6.8.1 Introduction

6.8.2 Provisional statements replace provisional licences that could be obtained by applicants prior to the 2003 Act in respect of premises that were to be, or were in the course of being, constructed, altered or extended. Under the previous law, authorities, where satisfied they would grant licences for the premises if the premises were completed in accordance with plans deposited, could grant the licences provisionally. When the premises were so completed, the authority was then obliged to confirm the licence (subject to it being held by a fit and proper person).96 The provisional grant procedure was particularly important for leisure industry business ventures involving a large financial investment, whether for the construction or refurbishment of premises, or for the acquisition of premises under contracts, very often conditional on the obtaining of planning permission and any necessary licences. The viability of a venture often depends on obtaining a licence for alcohol and entertainment and the procedure enabled an assessment to be made prior to the incurring of any substantial expenditure. The intention is that this should continue to be the case under the 2003 Act, although the Act does not replicate the provisional licence procedure. Instead, it makes provision for the obtaining of a provisional statement, following which, on completion of the building, an application can then be made for a premise licence. As Explanatory Note 76 indicates:

The effect of the section is to establish a mechanism whereby those engaged in or about to engage in construction or development work at premises to be used for licensable activities can obtain a certain degree of assurance about their potential trading conditions. By obtaining a provisional statement they can receive, at an early stage, a statement describing the likely effect of the intended licensable activities on the licensing objectives and an indication of the prospects of any future application for a premises licence.

A provisional statement does not therefore ‘convert’ into a premises licence on completion of the construction or development and a subsequent application, with attendant requirements for advertising, will be needed. There will be an opportunity for relevant representations to be made once the premises licence application is submitted, although there are restrictions on the making of relevant representations (imposed by s 32) following the issuing of a provisional statement.

Although differing from provisional licences in respect of procedure, provisional statements do not differ as regards the premises to which they apply, namely, ones that are being or about to be constructed, altered or extended. Section 29(1) provides:

(1) This section applies to premises which--

(a) are being or are about to be constructed for the purpose of being used for one or more licensable activities, or

(b) are being or are about to be extended or otherwise altered for that purpose (whether or not they are already being used for that purpose).  

Although not identically worded to any of the previous legislative provisions, there appear to be no differences of substance between provisions under the previous law and this section.

It is not obligatory to obtain a provisional statement prior to applying for a premises licence, so in principle there would seem to be no reason why a premises licence application could not be made for partly constructed premises without first obtaining a provisional statement. The provisional statement procedure is, after all, for the benefit of applicants, and if they choose not to take advantage of it, this is a matter for them. Indeed, it seems that an application can be made in the first instance for a premises licence even though the premises have not yet been constructed, provided the necessary information required in respect of the application can be supplied. Any licence granted will take effect at a subsequent date, presumably some time after completion of the construction, alteration or extension. Paragraph 5.85 of the Guidance provides:

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.

6.8.3 Premises being or about to be constructed, altered or extended will most obviously apply in respect of buildings, but the meaning of ‘premises’ extends beyond this to include a vessel, vehicle or moveable structure (see 6.1.4–6.1.6 above). Where these types of premises are not permanently located in one place, s 189 makes provision for determining the relevant licensing authority to which an application for a premises licence will be made (see 6.1.6 above) and stipulates, in these cases, that provisional statements will not have application. Section 189(5) provides:

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97 Premises might be ‘otherwise altered’ for the purpose of being used for one or more licensable activities if a previously unlicensed area in the building is to be used for a licensable activity and a provisional statement may be sought in respect of the additional area – see Guidance, para 5.84. Extension or alteration of premises already used for licensable activities under a premises licence might be effected by means of an application to vary the licence, although s 36(6) provides that it is not possible through a variation application to vary substantially the premises to which the licence relates – see 6.9.5 below. If a substantial extension or alteration is sought, application should be made for a provisional statement, followed (on completion of the work) by an application for a (new) premises licence.
Sections 29 to 31 (which make provision in respect of provisional statements relating to premises licences) do not apply in relation to a vessel, vehicle or structure to which this section applies.

This provision does not, however, appear to rule out provisional statements in respect of vessels, vehicles or moveable structures in all cases. It states that ss 29–31 on provisional statements do not apply to a vessel, vehicle or structure ‘to which this section applies’. Reference to the opening words of s 189(1), (2) and (3) indicate that the section does not apply to a vessel which is not permanently moored or berthed or to a vehicle or structure which is not permanently situated in the same place (see 6.1.6 above). Where there is a permanent location and a person is interested in making an extension or alteration, it would seem open to him to make an application for a provisional statement prior to making an application for a premises licence.

6.8.4 Applicants for a provisional statement

Section 29(2) specifies who may apply for a provisional statement98 and provides:

A person may apply to the relevant licensing authority for a provisional statement if–

(a) he is interested in the premises, and

(b) where he is an individual, he is aged 18 or over.

As with applicants for a premises licence, ‘a person’ making application can be either a company or an individual, although in the latter instance there is a requirement that he is aged at least 18 (see 6.2.2–6.2.3 above). The section also requires that the company or individual ‘is interested’ in the premises, although no guidance is given in the Act, the Explanatory Note (76) to the section or the Guidance as to the nature of the interest that will suffice. Clearly some proprietary interest in the premises, as where a person is the owner or lessee, will suffice, but the section is not restricted in its wording to such interests and should not be interpreted as so restricted. The expression ‘interested in the premises’ was used in s 6 of the Licensing Act 1964 and its meaning was considered by the High Court in R v Dudley Crown Court ex p Pask and Moore (1983) 147 JP 417, which gave it a broad interpretation. Taylor J stated (at 424):

I see no reason why one should import automatically any requirement of an interest in property, legal or equitable, nor any requirement of any actual contractual right to operate on the premises. In my judgment the phrase is one to be construed in each case by the justices looking broadly at the circumstances of the individual application and what is proposed to be carried out and by whom. Approach in that way, I see no reason why an occupier, who has no interest in the land as such and has no firm contract with the owners, should not be able to make application … It may well be that Parliament used the phrase in the broad way that it did to embrace not only those who presently have a legal or equitable interest in the property, but those who are in negotiation and considering acquiring such interest so that they may well be able, without having to make conditional contracts, to make an application and see whether

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98 Section 29(3) provides that: ‘In this Act “provisional statement” means a statement issued under section 31(2) or (3)(c)’ – see 6.8.7–6.8.8 below.
the justices are prepared to grant a licence and so know whether it is commercially viable to proceed with their proposals.

It is likely that the provision in s 29(2)(a) will be similarly interpreted. If it were not, a person interested in acquiring property with a view to carrying out licensable activities there, but who wished to obtain a provisional statement ahead of acquiring any interest in the property would be unable to do so. It ought therefore to include cases where a person has some interest in one or more of the licensable activities to be carrying on at the premises on completion. It might also include those who have some interest in the premises at the time of the application, but who may not have any interest in respect of the licensable activities being carried out there once the premises are completed. This seems to follow from the statement contained in para 5.86 of the Guidance that ‘the applicant could be a firm of architects or a construction company or a financier’.

Since it seems that more than one person can hold a premises licence in respect of the same premises if they each were using the premises for a different licensable activity (see 6.2.4 above) it should follow that more than one person can obtain a provisional statement in respect of premises. If each person intended to use the premises for a different licensable activity, each may wish to obtain a provisional statement ahead of incurring any significant expenditure in respect of his particular licensable activity. Where, however, the intention is to use premises with only a single premises licence in respect of some particular licensable activity or activities, it is less clear whether an application for a provisional statement must be made in the name of one person or whether it can be made in joint names. This will depend on whether a (single) premises licence can be held in joint names (see 6.2.5 above). If it can, then it should be possible to obtain a provisional statement in joint names, and vice versa.

6.8.5 Application for a provisional statement

As with a premises licence, application is subject to regulations made (a) under s 54 in respect of the form etc of applications and any notices that need to be given, and (b) under s 55 in respect of fees to accompany applications and notices (s 29(4)). The LA 2003 (PL and CPC) Regs 2005 specify the form the application shall take and the information that it must contain, and under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 the fee payable is £315. Notices can include the publicising of applications and s 30 provides for this to be done in a similar manner to applications for premises licences:

(1) This section applies where an application is made under section 29.

(2) The power to make regulations under section 17(5) (advertisement etc of application) applies in relation to an application under section 29 as it applies in relation to an application under section 17.100

(3) Regulations made by virtue of subsection (2) may, in particular, require advertisements to contain a statement in the prescribed form describing the effect

99 See reg 11 and Sched 3.
100 For the provision in s 17(5), see 6.3.1 above.
of section 32 (restrictions on representations following issue of a provisional statement).101

Provision is made in regs 25–26 of the LA 2003 (PL and CPC) Regs 2005 for the advertising of applications (see 2.4.2 above) and, in accordance with s 30(3), reg 26(2)(a) requires the notice posted on the premises and placed in the local newspaper to state that representations are restricted after the issue of a provisional statement. Further, under reg 26(2)(b), the notice may state, where known, the relevant licensable activities which it is proposed will be carried on on or from the premises.

The application must, under s 17(5), be accompanied by a ‘schedule of works’ and s 17(6) provides:

A schedule of works is a document in the prescribed form which includes—
(a) a statement made by or on behalf of the applicant including particulars of the premises to which the application relates and of the licensable activities for which the premises are to be used,
(b) plans of the work being or about to be done at the premises, and
(c) such other information as may be prescribed.

Regulation 11 and Sched 3 to the LA 2003 (PL and CPC) Regs 2005 prescribe the form for the schedule of works and require the schedule to specify whether the premises are about to be constructed or whether they are being extended or altered, to provide details of the work and attach plans of the work being done or to be done at the premises, to give particulars of the premises to which the application relates, and to indicate the licensable activities for which the premises will be used.102

6.8.6 Determination of applications for provisional statements

6.8.7 The provisions of s 31, which govern the determination of applications, apply where the authority has received a provisional statement application, that is an application made in accordance with s 29,103 and is satisfied that the applicant has complied with any requirement imposed on him by virtue of s 30 in relation to publicising and giving notice of the application (s 31(1)). Section 31(2) goes on to provide: ‘Where no relevant representations are made, the authority must issue the applicant with a statement to that effect.’104 However, a statement ‘to that effect’ will be an indication only that the application has been properly made and advertised, which in itself is of little value to the applicant. What the applicant requires, and what the statement needs to contain, is an indication that the intended licensable activities are likely to have no adverse effect on the licensing objectives and a future premises licence application is likely to be successful. Where there are relevant representations,
s 31(3) requires the licensing authority to hold a hearing to consider them (unless the applicant and those making representations agree this is unnecessary). The term ‘relevant representations’ here has a similar meaning as in respect of premises licences, there is a similar period of 20 working days within which the hearing must be held and 10 working days’ notice of the hearing must be given to the applicant and persons who made relevant representations. 105 Section 31(5) and (6), which is defined in broadly similar terms to s 18(6) and (7), 106 provides:

(5) In this section “relevant representations” means representations—

(a) which are about the likely effect on the licensing objectives of the grant of a premises licence in the form described in the provisional statement application, if the work at the premises was satisfactorily completed, and

(b) which meet the requirements of subsection (6).

(6) The requirements are—

(a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5)(c) by virtue of section 30, 107

(b) that the representations have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority) that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious. 108

Representations under s 31(5)(a) will be about the likely effect on the licensing objectives if a premises licence is granted in the form described in the provisional statement application ‘if the work at the premises was satisfactorily completed’. Work will be satisfactorily completed if it ‘substantially complies’ with the Schedule of works that accompanied the application. Section 29(7) provides:

For the purposes of this Part, in relation to any premises in respect of which an application for a provisional statement has been made, references to the work being satisfactorily completed are to work at the premises being completed in a manner which substantially complies with the schedule of works accompanying the application.

No indication is provided as to what ‘substantially complies’ means and this will be a question of fact in the circumstances. The ordinary and natural meaning of ‘substantial’ in this context suggests ‘compliance to a large extent’ or ‘compliance for

105 Regulation 5 and Sched 1, para 2 and reg 6(1)(4) and Sched 2, para 2 of the LA 2003 (Hearings) Regs 2005. As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 2 the applicant must be given the relevant representations with the notice of hearing.

106 See 6.4.9 above. Reference should be made back to commentary on these provisions, which should have equal application in respect of provisional statements.

107 See reg 22(b) of the LA 2003 (PL and CPC) Regs 2005, which provides that representations can be made at any time during a period of 28 consecutive days starting on the day after the day on which the application was given to the authority.

108 For notification of interested parties, see reg 31 of the LA 2003 (PL and CPC) Regs 2005 and 6.4.21 above.
the most part’, rather than simply ‘complying in some measure’. The remaining requirements for representations to be relevant, set out in s 31(6), mirror those in s 18(7) and there is a requirement in s 31(7), comparable to that in s 18(8), for notifying any person whose representations are determined to be frivolous or vexatious of the reasons for that determination (see 6.4.21 above).

6.8.8 If relevant representations are made, the steps which the licensing authority is required to take are set out in s 31(3), which provides:

Where relevant representations are made, the authority must–
(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agrees that a hearing is unnecessary,
(b) determine whether, on the basis of those representations and the provisional statement application, it would consider it necessary to take any steps under section 18(3)(b) if, on the work being satisfactorily completed, it had to decide whether to grant a premises licence in the form described in the provisional statement application, and
(c) issue the applicant with a statement which
   (i) gives details of that determination and,
   (ii) states the authority’s reasons for its decision as to the steps (if any) that it would be necessary to take under section 18(3)(b).

When a hearing is held (or dispensed with if agreed to be unnecessary), the licensing authority must determine 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 take any of the steps under s 18(3)(b). These steps, set out in s 18(4), are to attach conditions to any licence granted, rule out any of the licensable activities applied for, refuse to accept the person specified as the designated premises supervisor, or reject the application (see 6.5.1 above). Once a determination has been made, the applicant must be issued with a statement under s 31(3)(c) giving details of the steps and the reasons for requiring them. No period of time is specified within which the statement must be issued, but, in cases where no period is specified, reg 28(1) of the LA 2003 (Hearings) Regs 2005 provides that the authority must notify a party of its determination forthwith on making its determination. A copy of the statement must also be given to: (a) each person who made relevant representations; and (b) the chief officer of police for each police area in which the premises are situated (s 31(4)).

109 The word ‘substantial’, as Deane J observed in the Australian case of Tillmans Butcheries Property Ltd v Australasian Meat Industry Employees Union [1979] 42 FLR 331, 348, ‘is not only susceptible of ambiguity: it is a word calculated to conceal a lack of precision’. However, the meaning normally given is large or considerable rather than something above the minimal or trivial: “Substantial”… is not the same as “not unsubstantial” ie just enough to avoid the de minimis principle. One of the primary meanings of the word is equivalent to considerable, solid or big’ (per Viscount Simon in Palser v Grinling [1948] AC 292, at 316).

110 This will have the meaning ascribed by s 29(7) – see 6.8.7 above.

111 This will be a ‘provisional statement’: s 29(3) – see 6.8.4 above.

112 The Guidance, para 5.87, states that the licensing authority ‘should give full and comprehensive reasons for its decision’.

113 For the meaning of ‘forthwith’, see 6.6.2 above.
6.8.9 Restriction on representations following a provisional statement

6.8.10 Where an application is subsequently made for a premises licence for premises in relation to which a provisional statement has been issued, s 32 imposes restrictions on the making of representations in respect of the premises licence application. This is designed to prevent representations being made at the premises licence application stage in respect of matters upon which representations could have been made at the earlier provisional statement application stage. These restrictions will apply where a provisional statement has been issued for premises and there is a subsequent premises licence application in respect of those premises or part of them, or of premises that are substantially the same as those premises or a part of them. Section 32(1) provides:

This section applies where a provisional statement has been issued in respect of any premises (‘the relevant premises’) and a person subsequently applies for a premises licence in respect of—

(a) the relevant premises or a part of them, or
(b) premises that are substantially the same as the relevant premises or a part of them.

Application therefore can be made for a premises licence for only part of the particular premises for which a provisional statement was issued and the restrictions will still apply. Presumably, this is designed to allow for applicants revising or scaling down their operations between being issued with a provisional statement and making an application for a premises licence and deciding to use only a part of the premises for their licensable activities.

6.8.11 The restrictions will also still apply if the premises licence application is for premises that are ‘substantially the same’ as the premises in respect of which the provisional statement was issued. The ordinary and natural meaning of these words suggests the premises will have to be ‘to a large extent’ the same (see 6.8.7 above), although it is not clear whether these have to be the particular premises or whether they might be different premises. The particular premises could be ‘substantially the same’ if they are completed in a manner which substantially complies with the schedule of works accompanying the provisional statement application. If there is substantial compliance, the work will under s 29(7) will be regarded as satisfactorily completed for the purposes of the provisional statement and, although the premises will not be as envisaged in the schedule of works, they may be ‘substantially the same’. Equally, it is possible that different premises could be ‘substantially the same’. If a number of new units were built in a leisure complex in an area to similar specification, a provisional statement was issued in respect of one unit and an application was made for a premises licence for another unit, the other unit premises could be ‘substantially the same’ as the unit premises for which the provisional statement was issued.

6.8.12 In order for the s 32 restrictions to apply, the premises licence application has to be in the same form as the application for the provisional statement and the work described in the schedule of works has to have been satisfactorily completed. Section 32(2) provides:

Where—

(a) the application for the premises licence is an application for a licence in the same form as the licence described in the application for the provisional statement, and
(b) the work described in the schedule of works accompanying the application for that statement has been satisfactorily completed,\(^\text{114}\)

representations made by a person (“the relevant person”) in respect of the application for the premises licence are excluded representations for the purposes of section 18(6)(d) if subsection (3) applies.\(^\text{115}\)

It seems likely that an application will not be ‘in the same form’ if it relates to different licensable activities, although the position is less clear if it relates to the same licensable activities, but with some significant differences. The following example of where representations would not be excluded under s 33(1)(a) was given by Lord McIntosh, a Government spokesman, during the committee stage of the Bill in the House of Lords (HL Deb, vol 643, col 317, 16 January 2003):

A builder may wish to construct a new night club and applies for a provisional statement setting out that the club will be open between eight o’clock and two o’clock for six days a week and provide music and dancing. The operator who takes a lease on the club may decide that he wants to stay open until four o’clock on Saturday nights and provide hot food between eleven and one. The builder could not have predicted that, but the information in the premises licence application would be different from that in the provisional statement application. Therefore, further representations could be made by responsible authorities or interested parties.

Here, the application relates both to different activities (hot food instead of just music and dancing) and some significant differences as regards the same licensable activities (music and dancing but ending at four o’clock on Saturday nights instead of two o’clock). Whilst, as regards the different activities, the application would not seem to be ‘in the same form’, whether further representations could be made if the application had only an increase in the hours for music and dancing is uncertain. In one sense it is ‘in the same form’ (same licensable activity), but in another sense it is not (different hours). It is not easy to predict how this expression, ‘in the same form’, will be interpreted and ultimately it will be a matter for the courts to decide.

6.8.13 The restrictions on the making of representations are set out in s 32(3), which provides:

This subsection applies if–

(a) given the information provided in the application for the provisional statement, the relevant person could have made the same, or substantially the same, representations about that application but failed to do so, without reasonable excuse, and

(b) there has been no material change in circumstances relating either to the relevant premises or to the area in the vicinity of those premises.

The restrictions are, then, that representations cannot be made on the premises licence application in respect of matters upon which representations could have been made when the provisional statement was applied for. The restrictions will not, however, apply in two instances. First, if the person wishing to make those representations has a reasonable excuse for not having made them at the time of the application for the provisional statement. An example given in Explanatory Note 81 is where a person is confined to hospital during the period in which representations could have been made.

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114 This will have the meaning ascribed by s 29(7) – see 6.8.7 above.
115 For sub-s (3), see 6.8.13 below.
and where arrangements could not have been put in place for representations to be made. This might be the case if the nature of the person’s injuries or illness was such that he was unable to make representations, as where a person was unconscious or in a serious, unstable condition. A further example might be if a person had moved into the area in the period between the issuing of the provisional statement and the application for the premises licence.

The second instance where the restrictions will not apply is where there has been a material change in circumstances. As para 5.89 of the Guidance recognises, ‘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’ and ‘genuine and material changes in circumstances may arise during the intervening years’. The material change can be either to the premises or to the area in the vicinity of the premises. A material change relating to the premises might be where they have increased in size through the use of additional storeys or through connection with adjoining property, or where use of an open terrace area is proposed. A material change relating to the area in the vicinity of the premises might include a case where there was a new development of residential properties near to the premises after the issuing of the provisional statement or where there had been a significant increase in the number of licensed premises nearby. The term ‘vicinity’ here, which is also used in s 13(3), will presumably have the same meaning as under that provision (see 6.4.14 above).

6.9 VARIATION OF PREMISES LICENCES

6.9.1 Generally

6.9.2 Applications for variation

Sections 34–36 make provision for variation of premises licences, except as regards a change in the designated premises supervisor, for which there is a separate procedure under s 37. Application is subject to the same fee as for the grant of a premises licence (see 6.3.1 above) and must be accompanied by the premises licence or, if this cannot be provided, a statement of the reasons why this cannot be produced. As with applications for the grant of a licence, provision is made as to the form of applications and for advertising applications (see 2.4.2 above). Section 34 provides:

(1) The holder of a premises licence may apply to the relevant licensing authority for variation of the licence.

(2) Subsection (1) is subject to regulations under—

(a) section 54 (form etc of applications etc);

(b) section 55 (fees to accompany applications etc).

(3) An application under this section must also be accompanied by the premises licence (or the appropriate part of that licence) or, if that is not practicable, by a statement of the reasons for the failure to provide the licence (or part).

(4) This section does not apply to an application within section 37(1) (application to vary licence to specify individual as premises supervisor).

(5) The power to make regulations under subsection (5) of section 17 (advertisement etc of application) applies in relation to applications under this section as it applies in relation to applications under that section.
Section 34(1) refers to an application for ‘the variation of the licence’, which is more broadly expressed than previous legislative provisions such as para 16(1) of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982, which referred to applications for variation ‘of the terms, conditions or restrictions on or subject to which the licence is held’. The section will not therefore be confined to applications for variation of conditions and might include applications for a variation of the licence itself in some way, such as a change in the licensable activities, or a variation in the premises to which it relates, provided this is not substantial (see 6.9.5 below). This is apparent from Explanatory Note 83, which provides:

... a premises licence holder can apply ... to vary that licence in any way, other than to change the designated premises supervisor, (for which there is a separate procedure (see section 38)), to extend the time for which the licence has effect (if it is time limited) or to vary substantially the premises to which it relates.116

It might also include variation of the plan of the premises on the basis that this is part of the premises licence (see 2.4.2 above). The LA 2003 (PL and CPC) Regs 2005 specify the form the application shall take and the information that it must contain.117 They also specify the requirements for advertising and for the making of relevant representations within a period of 28 consecutive days after the application was given to the authority (see regs 25 and 22(b) respectively, and 2.4.2 above)

6.9.3 Determination of applications

6.9.4 The procedure for determining applications for variation of a licence is similar to that in respect of grant (see 6.4 above). If no relevant representations are received, the authority must grant the variation118 and, if there are representations, under reg 5 and para 3 of Sched 1 to the LA 2003 (Hearings) Regs 2005 a hearing must be held within 20 working days to determine what steps should be taken to promote the licensing objectives (unless this is dispensed with by agreement). Notice of the hearing must be given to the applicant and persons who have made relevant representations no later than 10 working days before the day or the first day on which the hearing is to be held.119 Section 35(1)–(3) provides:

(1) This section applies where the relevant licensing authority—

(a) receives an application, made in accordance with section 34, to vary a premises licence, and

(b) is satisfied that the applicant has complied with any requirement imposed on him by virtue of subsection (5) of that section.

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116 Variations that seek to extend the time for which the licence has effect or to vary substantially the premises to which it relates are excluded by s 36(6) – see 6.9.5 below.

117 See reg 12 and Sched 4.

118 Insofar as the variation application relates to conditions, s 36(7) provides that different conditions can be imposed on different parts of the premises and in relation to different licensable activities – see 6.9.5 below.

119 Regulation 6(4) and Sched 2, para 3 of the LA 2003 (Hearings) Regs 2005. As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 3, the applicant must be given the relevant representations with the notice of hearing.
(2) Subject to subsection (3) and section 36(6),\(^{120}\) the authority must grant the application.

(3) Where relevant representations\(^{121}\) are made, the authority must—

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

Section 35(3)(b) envisages that no steps may be necessary (and makes provision for this through inclusion of the words ‘if any’) and, if this is felt to be the case, the variation requested can be granted in the terms sought. If steps are felt to be necessary, the steps that the authority can take include modifying the conditions (either by altering or omitting existing ones or adding new ones) or rejecting the whole or part of the application. Section 35(4) provides:

The steps are—

(a) to modify the conditions of the licence;

(b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

6.9.5 When modifying the conditions, the authority can vary the licence so that different conditions apply to different parts of the premises and in respect of different licensable activities. Provision for such variation is made by s 36, which contains supplementary provisions about determinations of applications. Section 36(7) provides:

In discharging its duty under subsection (2) or (3) of that section [s 35], a licensing authority may vary a premises licence so that it has effect subject to different conditions in respect of—

(a) different parts of the premises concerned;

(b) different licensable activities.

The power of the authority to modify the conditions of the licence or grant the variation is, however, subject to some limitations. First, it is subject to the provisions of ss 19–21, which provide for the imposition of mandatory conditions relating to the supply of alcohol, the exhibition of films and licensed door supervisors (see 6.4.2–6.4.5 above). Section 35(7) provides:

\(^{120}\) Section 36(6) excludes any variation which seeks to extend the licence’s period of duration or to make a substantial variation in respect of the premises – see 6.9.5 below.

\(^{121}\) ‘Relevant representations’, for the purposes of this section, has the same meaning as in s 18(6)(a)(b) and (7) in respect of applications for grant of a premises licence – see 6.4.9 above. Section 35(5) and (6) are expressed in identical terms to these provisions in s 18. If any representations are determined to be frivolous or vexatious, the authority must notify the person who made them of the reasons for the determination: s 36(5). Notification must be given in writing to the person who made the representations as soon as is reasonably practicable and in any event before the determination of the application to which the representations relate: reg 31 of the LA 2003 (PL and CPC) Regs 2005 (see 6.4.21 above).
Subsections (2) and (3) are subject to sections 19, 20 and 21 (which require certain conditions to be included in premises licences).

Secondly, s 36(6) precludes an authority from varying the licence so as to extend the period of its duration or from making a substantial variation in respect of the premises. It provides:

A licence may not be varied under section 35 so as—
(a) to extend the period for which the licence has effect; or
(b) to vary substantially the premises to which it relates.

Premises licences in most instances will be of an indefinite duration and no question of extending the period will arise, but it is possible for applicants to include in their operating schedule a request for the licence to have effect for a limited period, for example if they wish to hold music concerts only at certain times of the year (see 6.7.1 above). If the licence is granted for a limited duration, s 36(6)(a) precludes any variation that extends the licence’s duration and, if an extension is required, it will be necessary for an application for a new premises licence to be made.

An application for a new premises licence will similarly be required if there is a substantial variation to the premises to which an existing premises licence relates. The meaning normally given to ‘substantial’ is ‘large or considerable’ (see 6.8.7 above). Certainly a new premises licence application will be required for such variations, which might encompass not only extensions to the premises, but also modifications to the internal layout of the premises and a change in character. Less clear, however, is the position where variations to premises are not large or considerable. Ordinarily, these would not be thought of as ‘substantial’, in which case a variation application under s 34 might be made instead of a new premises licence application under s 17. However, an element of doubt is introduced by the Guidance, which tends to link applications for premises licences with applications for ‘major variations of premises licences’ and goes on to provide in para 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.’ This is certainly a wide view of a ‘major variation’, which effectively seems to encompass any change being made to the premises themselves and only excludes changes in respect of an individual. This is perhaps unfortunate because the reference to ‘vary substantially the premises’ in s 36(6)(b) might be equated with ‘major variations of premises licences’ as referred to in the Guidance, with the possible result that ‘substantially’ is considered to mean ‘something above the minimal or trivial’ rather than ‘large or considerable’. If this were the case, the effect would be to preclude a variation application under s 34 in most cases and, instead, a new premises licence application under s 17 would be required. Whilst ‘substantial’ is sometimes given a meaning of ‘more than trivial’, its ordinary and natural meaning is ‘large or considerable’ and it is submitted that it should be given this meaning here. There

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122 See para 5.65 (‘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’) and para 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 …’).
would seem to be no compelling reason why a new premises licence application should be made where variations are little more than minimal or trivial. Indeed, if variations are little more than minimal or trivial, no variation application in any event ought to be required, not least in view of the requirement for variation applications to be advertised (see 6.9.2 above). It may well be that such variations can be dealt with informally by the licensing authority and s 34 does not seem to preclude this. Section 34(1) does not impose any obligation on a premises licence holder to apply for a variation, providing only that he ‘may’ do so, nor does it provide that a variation can be made by a licensing authority only when there is an application under s 34. In sum, substantial variations require a new premises licence application under s 17, ‘middle range’ variations require a variation application under s 34 and minor variations might be dealt with informally by the licensing authority.123

6.9.6 Notification of decision

The authority must notify its decision to the applicant, the police and any person who made relevant representations. Where the authority decides to grant the variation, persons who made relevant representations must be given reasons for the decision and the notice must specify the time when the variation is to take effect. Section 36(1)–(3) provides as follows:

(1) Where an application (or any part an application) is granted under section 35, the relevant licensing authority must forthwith give a notice to that effect to–
   (a) the applicant,
   (b) any person who made relevant representations124 in respect of the application, and
   (c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1) must state the authority’s reasons for its decision as to the steps (if any) to take under section 35(3)(b).

(3) The notice under subsection (1) must specify the time when the variation in question takes effect.

That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

Where the authority decides not to grant the variation, similar notification of its decision is required. Section 36(4) provides that:

Where an application (or any part an application) is rejected under section 35, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to–
   (a) the applicant,
   (b) any person who made relevant representations in respect of the application, and

123 It is possible that some ‘middle range’ variations, if not thought likely to have an effect on the promotion of the licensing objectives, may be dealt with informally.

124 ‘Relevant representations’ has the same meaning as in s 35(5): s 36(8) – see 6.9.4 above.
Whether the variation application is granted or rejected, notification is required ‘forthwith’, the meaning of which has been considered in 6.6.2 above.

6.9.7 Variation of the licence to change the premises supervisor

6.9.8 Applications for variation

6.9.9 Where the premises licence holder wishes to change the DPS, s 37 prescribes a separate procedure. Change may take the form of either naming a person in the licence as DPS, if no person was previously named and the premises licence holder himself was the DPS, or substituting a different person for the person currently named. Application by the premises licence holder, for which a fee of £23 is payable under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005, must be by accompanied by the premises licence (or, if this cannot be provided, a statement of the reasons why this cannot be produced) and a form of consent by the person who it is proposed will become the DPS. Section 37(1)–(3) provides:

(1) The holder of a premises licence may–
   (a) if the licence authorises the supply of alcohol, or
   (b) if he has applied under section 34 to vary the licence so that it authorises such supplies,

apply to vary the licence so as to specify the individual named in the application (“the proposed individual”) as the premises supervisor.

(2) Subsection (1) is subject to regulations under–
   (a) section 54 (form etc of applications etc);
   (b) section 55 (fees to accompany applications etc).

(3) An application under this section must also be accompanied by–
   (a) a form of consent in the prescribed form given by the proposed individual, and
   (b) the premises licence (or appropriate part of that licence) or, if that is not practicable, a statement of the reasons for the failure to provide the licence (or part).

Regulation 13 and Sched 5 to the LA 2003 (PL and CPC) Regs 2005 specify the form the application shall take and the information that it must contain, and reg 24(1) and Pt A of Sched 11 specify the form of consent for the individual who the applicant wishes to have specified in the licence as the premises supervisor. There is no requirement to advertise the application – presumably because changing the premises supervisor is not seen as having any impact on the surrounding area – but notice of the application has to be given to the police and the current DPS (if there is one). Section 37(4) provides:

The holder of the premises licence must give notice of his application–
   (a) to the chief officer of police for the police area (or each police area) in which the premises are situated, and
   (b) to the designated premises supervisor (if there is one).
Under reg 28(a) of the LA 2003 (PL and CPC) Regs 2005, notice takes the form of the premises licence holder giving the police and (if applicable) the DPS a copy of the application together with any accompanying documents on the same day as he gives the application to the licensing authority. The reason the current DPS needs to be notified is so that he is aware that he will no longer have responsibility as the premises supervisor and the police are to be notified so that they can object if they feel that there are exceptional circumstances whereby the granting of the application to change the DPS would undermine the crime prevention objective. The police can object by giving notice within 14 days and must provide reasons for their decision. Section 37(5) and (6) provides:

(5) Where a chief officer of police notified under subsection (4) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.

(6) The chief officer of police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under subsection (4).

6.9.10 An applicant who seeks a variation can, under s 38(1), include a request that it should have immediate effect. This is a particularly important facility to enable the premises licence holder to continue the supply of alcohol if, for some reason, difficulties arise in relation to the existing DPS. If there is no DPS in respect of the premises, there can be no supply of alcohol under the premises licence, as there is a mandatory condition under s 19(2)(a) that there can be no supplies at a time when there is no DPS in respect of the premises licence (see 6.4.2 above). Section 38(1) provides:

This section applies where an application made in accordance with section 37, in respect of a premises licence which authorises the supply of alcohol, includes a request that the variation applied for should have immediate effect.

Difficulties may arise in relation to the existing DPS if, for instance, he suddenly becomes indisposed or unable to work (Explanatory Note 87). The incapacity of the existing DPS will not, however, necessarily prevent the continued supply of alcohol since, so long as the existing DPS remains designated as the premises supervisor, any other personal licence holder can authorise the supply of alcohol; but it may prevent the continued supply of alcohol in the cases of small outlets where there are no other personal licence holders apart from the DPS. In such cases, a request for the variation to have immediate effect would be important, since making a change in the DPS under s 37 may take some time, which could have an adverse effect on the operation of premises. Difficulties may also arise if a dispute arises between the DPS and his employer over some matter, for example misappropriation of company money, as a result of which the DPS may give notice under s 41 to the licensing authority requesting his removal as DPS (see 6.9.14 below). Here, the continued supply of alcohol may well be at risk because, under s 41(7) and (8), as soon as notice is received by the licensing authority the individual is to be treated as if he were not the DPS (although under s 41(4) there is no requirement to notify the premises licence holder

125 The police have a similar power of objection in respect of the grant of a premises licence and the (initial) designation of the premises supervisor. This matter has been considered at 6.4.23 above and reference should be made back to this section.
for 48 hours). From the point that notice is received there is no DPS in respect of the premises and accordingly, as indicated above, there can be no supply of alcohol under the premises licence. If this were to happen in the case of popular premises over a bank holiday weekend, this could have serious implications not only for the owner of the premises in terms of lost custom, but also for the police in terms of potential crime and disorder if suddenly alcohol, apparently inexplicably, could not be sold at the premises. Further, making a variation application with immediate effect will be difficult in such circumstances as these, given that licensing authority premises will be closed over the weekend period. Although provision is made for electronic communication in reg 21(2) of the LA 2003 (PL and CPC) Regs 2005, the application is not to be treated as given, under reg 21(3), until the fee has been received by the licensing authority (see 2.4.2 above). Whether arrangements can be made with licensing authorities in order to overcome this difficulty remains to be seen.

6.9.11 Where a request is made for variation to have immediate effect, under s 38(2), the change in DPS has immediate effect as soon as the application is made. The period for which the variation has immediate effect is determined, under s 37(3), by reference to the outcome of the application. If the application is granted, it will have immediate effect until the variation takes effect (s 38(3)(b)(i)). In effect, there will be no change here – the interim immediate effect will cease to operate at this point (when the application is granted) and the new DPS will become the premises supervisor for the premises licence. If the application is rejected, it will have immediate effect only until the time the rejection is notified to the applicant (s 38(3)(b)(ii)). At this point, the licence will revert to the form that it took before the application was made. This will mean that old DPS (if there was one) or the premises licence holder (if there was not a DPS) will continue to be the premises supervisor. If the application is withdrawn before it is determined, it will have immediate effect only until the time of the withdrawal (s 38(3)(b)(iii)). From this point, the position will be the same as if the application had been rejected, that is the licence will revert to the form that it took before the application was made. Section 38(2) and (3) provides:

(2) By virtue of this section, the premises licence has effect during the application period as if it were varied in the manner set out in the application.

(3) For this purpose “the application period” means the period which–

(a) begins when the application is received by the relevant licensing authority, and

(b) ends–

(i) if the application is granted, when the variation takes effect,

(ii) if the application is rejected, at the time the rejection is notified to the applicant, and

(iii) if the application is withdrawn before it is determined, at the time of the withdrawal.

It seems the variation will have immediate effect even if the police feel that there are exceptional circumstances whereby the granting of the application to change the DPS would undermine the crime prevention objective. Whilst the police can object on these grounds under s 37(5), they can do so only when notified of the application and any objection will become effective only if upheld by the licensing authority when it determines and rejects the application. This might be regarded as a weakness in the
provision, since someone who is completely unsuitable can, albeit for a limited period time pending determination of the application, become the premises supervisor.

Whether the variation will have immediate effect under s 38(2) if the request for it to do so is not included in the application is uncertain. Section 38(1) refers to ‘where an application made in accordance with section 37… includes a request’, which suggests that the request has to be included in the application. If this provision is given a literal interpretation, where a request is made at any point subsequent to the application, but before its determination, it would seem that the variation will not have immediate effect by virtue of s 38(2); but there may be circumstances where the premises licence holder might wish it to have immediate effect in this interim period. There may, for instance, be no perceived need for a variation to have immediate effect at the time of the application and no such request may be made, for the existing DPS may not intend to depart until the application is determined; but replacement of the existing DPS may be needed sooner than envisaged, ahead of his intended time of departure, if he suddenly becomes indisposed or unable to work once the application has been made. Such a situation might perhaps be avoided if s 38(1) were given a purposive interpretation. The purpose of the provision is to enable a variation to have immediate effect where circumstances necessitate this and these might just as easily exist when the application is made or when it has been made, but before its determination. A purposive interpretation of ‘includes’ in s 38(1) might encompass both inclusion at the time of the application and inclusion at any subsequent point ahead of determination. This would avoid the need to make a fresh application with a request for the variation to have immediate effect, as will be necessary if the section is interpreted so as to require the request to be included in the application. However, since either interpretation is possible, perhaps the safest course is for a fresh application to be made.

6.9.12 Determination of applications

The procedure here is very similar to that which applies for variations generally (see 6.9.4–6.9.5 above). Thus, the application has to be made in accordance with the statutory provisions, in this case s 37; it must be granted if unopposed; if opposed (by the police giving notice that grant would undermine the crime prevention objective), under reg 5 and para 4 of Sched 1 to the LA 2003 (Hearings) Regs 2005 a hearing must be held within 20 working days unless the parties consider this unnecessary; and the application must be refused if the authority is satisfied it is necessary to promote the crime prevention objective. Notice of the hearing must be given to the applicant, the police and the individual proposed as the new premises supervisor no later than 10 working days before the day or the first day on which the hearing is to be held.126 Section 39(1)–(3) provides:

(1) This section applies where an application is made, in accordance with section 37, to vary a premises licence so as to specify a new premises supervisor (‘the proposed individual’).

126 Regulation 6(4) and Sched 2, para 4 of the LA 2003 (Hearings) Regs 2005. As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 4, the applicant must be given the police notice of objection with the notice of hearing.
(2) Subject to subsection (3), the relevant licensing authority must grant the application.

(3) Where a notice is given under section 37(5) (and not withdrawn), the authority must–
   (a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and
   (b) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.

6.9.13 Notification of decision

Whether the application is granted or rejected, notice must be given by the authority to the applicant, the proposed individual who will become the DPS and the chief officer of police for the police area(s) where the premises are situated. Where notice was given by the police to oppose the variation, the notice given by the authority under s 39(4) must state the authority’s reasons for granting or rejecting the application and, where the application is granted, the authority’s notice must specify the time when the variation takes effect. This will be the time specified in the application or, if the applicant is given notice after that time, such later time as the authority specifies in the notice. Section 39(4)–(6) provides:

(4) Where an application under section 37 is granted or rejected, the relevant licensing authority must give a notice to that effect to–
   (a) the applicant,
   (b) the proposed individual, and
   (c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(5) Where a chief officer of police gave a notice under subsection (5) of that section (and it was not withdrawn), the notice under subsection (4) of this section must state the authority’s reasons for granting or rejecting the application.

(6) Where the application is granted, the notice under subsection (4) must specify the time when the variation takes effect.

That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

Once the applicant has been given notice of the decision under s 39(4), he must forthwith notify the person who was the current DPS when the application was made, provided there was such a person and the applicant himself (as premises licence holder) was not the DPS. Section 40(1) provides:

Where the holder of a premises licence is notified under section 39(4), he must forthwith–
   (a) if his application has been granted, notify the person (if any) who has been replaced as the designated premises supervisor of the variation, and

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127 Notice must be given forthwith on making the determination and the notice must be accompanied by information regarding the right of a party to appeal against the determination of the authority: regs 28–29 of the LA 2003 (Hearings) Regs 2005. For the meaning of ‘forthwith’, see 6.6.2 above.
(b) if his application has been rejected, give the designated premises supervisor (if any) notice to that effect.

Failure to comply, without reasonable excuse, is a summary offence punishable by a level 3 fine (s 40(2)(3)).

### 6.9.14 Request to be removed as premises supervisor

Section 41 makes provision for an individual to secure his removal as DPS where he no longer wishes to act in this capacity in respect of the premises licence. Section 41(1) provides:

Where an individual wishes to cease being the designated premises supervisor in respect of a premises licence, he may give the relevant licensing authority a notice to that effect.

The notice, which must be in prescribed form, must be accompanied by the premises licence or appropriate part of it where the premises licence holder is the DPS (or, if he is unable to produce it, a statement of reasons). In cases where the DPS is another individual, that individual must give the premises licence holder a copy of the notice that he has given to the licensing authority (indicating that he no longer wishes to be the DPS) and a notice directing the premises licence holder to send to the licensing authority within 14 days the premises licence or appropriate part of it (or, if unable to do so, a statement of reasons). These must be given to the premises licence holder within 48 hours of the giving of the notice under s 41(1). Section 41(3) and (4) provides:

(3) Where the individual is the holder of the premises licence, the notice under subsection (1) must also be accompanied by the premises licence (or the appropriate part of the licence) or, if that is not practicable, by a statement of the reasons for the failure to provide the licence (or part).

(4) In any other case, the individual must no later than 48 hours after giving the notice under subsection (1) give the holder of the premises licence—

(a) a copy of that notice, and

(b) a notice directing the holder to send to the relevant licensing authority within 14 days of receiving the notice—

(i) the premises licence (or the appropriate part of the licence), or

(ii) if that is not practicable, a statement of the reasons for the failure to provide the licence (or part).

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128 Section 41(2) provides: ‘Subsection (1) is subject to regulations under section 54 (form etc of notices etc).’ Regulation 21(1) of the LA 2003 (PL and CPC) Regs 2005 requires only that the notice be in writing, although reg 21(2) makes provision for this requirement to be satisfied by electronic communication where certain criteria are met – see 2.4.2 above.
When so notified, the authority can then make the appropriate change in the licensing register. Failure to comply with the above requirements, without reasonable excuse, is a summary offence punishable by a level 3 fine (s 41(5)(6)). Where the requirements are complied with, the person requesting removal will cease to be the DPS from the time the notice (under s 41(1)) containing the request is received by the licensing authority or any later time specified in the notice. Section 41(7) and (8) provides:

(7) Where an individual—
   (a) gives the relevant licensing authority a notice in accordance with this section, and
   (b) satisfies the requirements of subsection (3) or (4),

he is to be treated for the purposes of this Act as if, from the relevant time, he were not the designated premises supervisor.

(8) For this purpose “the relevant time” means—
   (a) the time the notice under subsection (1) is received by the relevant licensing authority, or
   (b) if later, the time specified in the notice.

The effect of the above provisions seems to be that the individual ceases to be the DPS once the notice indicating he no longer wishes to act in this capacity is received by the authority. If, prior to this time, an application to vary the licence to change the DPS with immediate effect has been made by the premises licence holder, the premises will continue to have a DPS. However, if this is not the case, there may be no DPS in respect of the premises licence, in which case no alcohol can be sold under s 19(2)(a) (see 6.4.2–6.4.3 above) until such time as the premises licence is varied to change the DPS.

6.10 TRANSFER OF PREMISES LICENCES

6.10.1 Applications

6.10.2 Any person entitled to apply for a premises licence under s 16(1) (see 6.2 above) may apply to the licensing authority for a transfer of a premises licence to him and, where he is an individual, must be aged 18 or over. Section 42(1) and (2) provides:

(1) Subject to this section, any person mentioned in section 16(1) (applicant for premises licence) may apply to the relevant licensing authority for the transfer of a premises licence to him.

(2) Where the applicant is an individual he must be aged 18 or over.

A transfer will only change the identity of the holder of the licence and does not alter the licence in any other way (Guidance, para 5.78). The procedure for applications for transfer of a licence is similar to that in respect of applications for variation (see 6.9.4–6.9.5 above). Thus an application must be in prescribed form130, accompanied by the prescribed fee (which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is

129 The Guidance, para 3.63, recommends that a request to be removed as the DPS should be delegated to and dealt with by officers – see 2.4.12 above. For details of the licensing register, see 2.4.14–2.4.17 above.

£23), and by the premises licence or, if that is not practicable, a statement of the reasons for failure to provide the licence. Notice of the application must be given to the chief officer of police for the police area(s) in which the premises are situated, and, if he is satisfied that the exceptional circumstances of the case are such that the granting of the application would undermine the crime prevention objective, he must give the licensing authority a notice stating the reasons why he is so satisfied. This notice must be given within 14 days beginning with the day on which notification of the application is given. Section 42(3)–(7) provides:

(3) Subsection (1) is subject to regulations under—
   (a) section 54 (form etc of applications etc);
   (b) section 55 (fees to accompany applications etc).

(4) An application under this section must also be accompanied by the premises licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence.

(5) The applicant must give notice of his application to the chief officer of police for the police area (or each police area) in which the premises are situated.

(6) Where a chief officer of police notified under subsection (5) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.

(7) The chief officer of police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under subsection (5).

6.10.3 As in the case of an application to vary the premises licence by changing the DPS, an application to transfer the licence can include a request that the transfer has immediate effect. Section 43(1) and (2) provides:

(1) Where—
   (a) an application made in accordance with section 42 includes a request that the transfer have immediate effect, and
   (b) the requirements of this section are met,
   then, by virtue of this section, the premises licence has effect during the application period as if the applicant were the holder of the licence.

(2) For this purpose “the application period” means the period which—
   (a) begins when the application is received by the relevant licensing authority, and
   (b) ends—
      (i) when the licence is transferred following the grant of the application, or

131 Giving notice requires a copy of the application, together with any attachments, to be given on the same day the application is given to the licensing authority: reg 28(b) of the LA 2003 (PL and CPC) Regs 2005.

132 As in other cases where the police can object on this ground (eg, varying the DPS), the Guidance stresses that this should ‘only arise in truly exceptional circumstances’ (para 5.81).

133 *Quaere* whether an authority has a discretion to take into account any notice given outside the 14 day period. Arguably it has, since the authority must carry out its functions under the Act with a view to promoting the licensing objectives, one of which is the prevention of crime and disorder (s 4(1) and (2)(a)), and it might be seen as failing to discharge this duty if the notice were to be discounted.
(ii) if the application is rejected, when the applicant is notified of the rejection, or
(iii) when the application is withdrawn.

The effect of this provision is to allow licensable activities to be carried on at the premises without interruption, pending the determination of an application to transfer.\textsuperscript{134} Where there is a request under s 43(1) for the transfer to have immediate effect and there is a DPS in respect of the premises licence, the applicant must forthwith notify the DPS of the application, except (obviously) in cases where the applicant himself is the DPS. Further, he must notify the DPS if the transfer application is granted. Section 46(1)–(3) provides:

(1) This section applies where–
   (a) an application is made in accordance with section 42 to transfer a premises licence in respect of which there is a designated premises supervisor, and
   (b) the applicant and that supervisor are not the same person.

(2) Where section 43(1) applies in relation to the application, the applicant must forthwith notify the designated premises supervisor of the application.

(3) If the application is granted, the applicant must forthwith notify the designated premises supervisor of the transfer.\textsuperscript{135}

6.10.4 In addition, if the applicant requests the transfer to have immediate effect, he must generally obtain the consent of the premises licence holder to the making of the application, although no provision is made for failure to obtain consent to constitute a criminal offence. The procedure for obtaining consent is specified in reg 24(2) and Pt B of Sched 11 to the LA 2003 (PL and CPC) Regs 2005.\textsuperscript{136} Consent is, however, not required in two cases. First, if the applicant himself is the holder of the premises licence by virtue of an interim authority under s 47 (see 6.11.1–6.11.11 below) and he is making the application for transfer of the licence into his own name. Secondly, if the applicant has taken all reasonable steps to obtain consent and is in a position to use the premises immediately for the licensable activities authorised by the licence. Section 43(3)–(5) provides:

(3) Subject to subsections (4) and (5), an application within subsection (1)(a) may be made only with the consent of the holder of the premises licence.

(4) Where a person is the holder of the premises licence by virtue of an interim authority notice under section 47, such an application may also be made by that person.

\textsuperscript{134} Explanatory Note 94. See also Guidance, para 5.79: ‘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.’

\textsuperscript{135} For the meaning of ‘forthwith’, see 6.6.2 above. Failure to comply with the requirement of notification, without reasonable excuse, is a criminal offence punishable on summary conviction with a fine not exceeding level 3 on the standard scale: s 46(4)(5).

\textsuperscript{136} \textit{Quaer} whether the provisions in s 184 – see 2.4.19–2.4.22 above – with regard to the giving of notices apply to the giving of consent. These apply ‘in relation to any document required or authorised by or under this Act to be given to any person’ (s 184(1)). The term ‘document’ is not defined and, whilst it is clear (from the marginal note to the section) that it will include the giving of notices, it is less clear whether it will apply to cases where a person gives consent. It could be said that the effect of s 43(3) is to authorise (for it does not require) the giving of consent by the premises licence holder to the applicant for transfer and therefore consent should be given in accordance with s 184.
(5) The relevant licensing authority must exempt the applicant from the requirement to obtain the holder’s consent if the applicant shows to the authority’s satisfaction—
(a) that he has taken all reasonable steps to obtain that consent, and
(b) that, if the application were one to which subsection (1) applied, he would be in a position to use the premises during the application period for the licensable activity or activities authorised by the premises licence.

Where the authority refuses to exempt an applicant under sub-s (5), it must notify the applicant of its reasons for that decision (s 43(6)). In such a case, as Explanatory Note 94 states, the applicant ceases to be treated as the holder of the licence under this section and the licence reverts to the person who held it before the application was made.

6.10.5 Determination of applications

The procedure is similar to that which applies for variation of the licence to change the premises supervisor (see 6.9.12 above). Thus the application has to be made in accordance with the statutory provisions, in this case s 42, and it must, in general, be transferred.137 There are, however, two cases where a transfer is not mandatory. First, where the application has been accompanied by a request that the transfer has immediate effect under s 43, the authority must reject the application unless the premises licence holder consents to the transfer or the applicant is exempted from the need to obtain consent. Section 44(1)–(4) provides:

(1) This section applies where an application for the transfer of a licence is made in accordance with section 42.

(2) Subject to subsections (3) and (5), the authority must transfer the licence in accordance with the application.

(3) The authority must reject the application if none of the conditions in subsection (4) applies.

(4) The conditions are—
(a) that section 43(1) (applications given interim effect) applies to the application,
(b) that the holder of the premises licence consents to the transfer, or
(c) that the applicant is exempted under subsection (6) from the requirement to obtain the holder’s consent to the transfer.

The applicant will be exempt from the need to obtain consent if he has taken reasonable steps to obtain the consent and is in a position to use the premises. Section 44(6) provides:

The relevant licensing authority must exempt the applicant from the requirement to obtain the holder’s consent if the applicant shows to the authority’s satisfaction—
(a) that he has taken all reasonable steps to obtain that consent, and
(b) that, if the application were granted, he would be in a position to use the premises for the licensable activity or activities authorised by the premises licence.138

137 The Guidance, para 5.79 states: ‘In the vast majority of cases, it is expected that a transfer will be a very simple administrative process …’
138 Section 44(7) provides: ‘Where the relevant licensing authority refuses to exempt an applicant under subsection (6), it must notify the applicant of its reasons for that decision.’
Secondly, if the application has been opposed (by the police giving notice under s 42(6) that grant would undermine the crime prevention objective), a hearing must be held unless the parties consider this unnecessary and the application must be refused if the authority is satisfied it is necessary to promote the crime prevention objective. Section 44(5) provides:

Where a notice is given under section 42(6) (and not withdrawn), and subsection (3) above does not apply, the authority must–

(a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and

(b) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.

The hearing must be held within 20 working days\(^{139}\) and notice of the hearing must be given to the person applying for transfer, the police and the premises licence holder no later than 10 working days before the day or the first day on which the hearing is to be held.\(^{140}\)

### 6.10.6 Notification of decision

Whether the application is granted or rejected, notice must be given by the authority to the applicant and to the chief officer of police for the police area(s) in which the premises are situated.\(^{141}\) Where notice was given by the police under s 42(6) to oppose the transfer, the notice given by the authority under s 45(1) must state the authority’s reasons for granting or rejecting the application and, where the application is granted, the authority’s notice must specify the time when the transfer takes effect.\(^{142}\) Section 45(1)–(3) provides:

1. Where an application under section 42 is granted or rejected, the relevant licensing authority must give a notice to that effect to—
   a. the applicant, and
   b. the chief officer of police for the police area (or each police area) in which the premises are situated.

2. Where a chief officer of police gave a notice under subsection (6) of that section (and it was not withdrawn) the notice under subsection (1) of this section must state the licensing authority’s reasons for granting or rejecting the application.

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139 Regulation 5 and Sched 1, para 5 of the LA 2003 (Hearings) Regs 2005.
140 Regulation 6(4) and Sched 2, para 5 of the LA 2003 (Hearings) Regs 2005. As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 5, the applicant and the holder of the premises licence must be given the police notice of objection with the notice of hearing.
141 Notice must be given forthwith on making the determination and the notice must be accompanied by information regarding the right of a party to appeal against the determination of the authority: regs 28–29 of the LA 2003 (Hearings) Regs 2005. For the meaning of ‘forthwith’, see 6.6.2 above.
142 Section 45(3) goes on to provide: ‘That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.’
(3) Where the application is granted, the notice under subsection (1) must specify the
time when the transfer takes effect.

In addition, the authority must give a copy of the notice to the person who was the
premises licence holder before the application for transfer was granted or before it was
given interim effect (in cases where the application contained a request under s 43 for
the transfer to have immediate effect). Section 45(4) provides:

The relevant licensing authority must also give a copy of the notice given under
subsection (1)–
(a) where the application is granted–
(i) to the holder of the licence immediately before the application was
   granted, or
(ii) if the application was one to which section 43(1) applied, to the holder of
   the licence immediately before the application was made (if any),
(b) where the application is rejected, to the holder of the premises licence (if any).

Further, in cases where there is a DPS in respect of the premises licence and the
application included a request that the transfer has immediate effect, the applicant
must forthwith notify the DPS of the transfer if it is granted (see 6.10.3 above).

6.11 REINSTATEMENT OF PREMISES LICENCE FOLLOWING
LAPSE: INTERIM AUTHORITY NOTICES AND TRANSFER
APPLICATIONS HAVING IMMEDIATE EFFECT

6.11.1 Introduction

A premises licence, although generally remaining in force indefinitely, can lapse either
due to some incapacity on the part of the licence holder or on surrender,143 but it can
be reinstated, within a period of seven days, in one of two ways. One is by the giving
of an interim authority notice (IAN) under s 47 and the other is by a transfer
application having immediate effect under s 50. The latter might be an appropriate
course if there was someone in a position to take over immediately as premises licence
holder and to whom the licence could be transferred with immediate effect. Where this
is not possible, the former provides an interim authority to carry out the licensable
activities until a transfer can be effected at a later date.

6.11.2 Reinstatement by interim authority notice

6.11.3 Giving a notice

6.11.4 A notice can be given where a licence has lapsed due to death, incapacity or
insolvency of the premises licence holder and no application has been made for a
transfer application to have immediate effect under s 43. Such events may be sudden
and unforeseen, leaving little time to make arrangements for transfer, let alone
immediate transfer, and the IAN will enable a business to continue in the meantime.

143 See 6.7.3–6.7.4 above.
As the Guidance, para 5.92 states, the Act:

provides special arrangements for the continuation of permissions under a premises licence when the holder of a premises 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 can be 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.

In such circumstances, an IAN may be given to the licensing authority, either by a person with a ‘prescribed interest’ in the premises or by a person ‘connected to’ the person who held the premises licence immediately before lapse, within seven days beginning with the day after the licence lapsed.\textsuperscript{144} Section 47(1) and (2) provides:

(1) This section applies where–

(a) a premises licence lapses under section 27 in a case within subsection (1)(a), (b) or (c) of that section (death, incapacity or insolvency of the holder), but

(b) no application for transfer of the licence has been made by virtue of section 50 (reinstatement of licence on transfer following death etc).

(2) A person who–

(a) has a prescribed interest in the premises concerned, or

(b) is connected to the person who held the premises licence immediately before it lapsed (“the former holder”),

may, during the initial seven day period, give to the relevant licensing authority a notice (an “interim authority notice”) in respect of the licence.

6.11.5 Persons with a ‘prescribed interest’ in the premises are those with a legal interest in the premises as freeholder or leaseholder.\textsuperscript{145} Those ‘connected to’ the former holder of the licence are his personal representative (for death), a person with a power of attorney (for incapacity) or his insolvency practitioner (for insolvency). Section 47(5) provides:

For the purposes of subsection (2) a person is connected to the former holder of the premises licence if, and only if–

(a) the former holder has died and that person is his personal representative,

\textsuperscript{144} The notice must be given within ‘the initial seven day period’ referred to in s 47(2) and defined in s 47(10) to mean ‘the period of seven days beginning with the day after the day the licence lapses’. Section 47(3) provides: ‘Subsection (2) is subject to regulations under – (a) section 54 (form etc of notices etc); (b) section 55 (fees to accompany applications etc).’ For the form and information to be contained in an IAN, see reg 15 and Sched 7 to the LA 2003 (PL and CPC) Regs 2005. Under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005, the fee payable is £23.

\textsuperscript{145} The form of notification and information required are set out in reg 9 and Sched 1 to the LA 2003 (PL and CPC) Regs 2005.
(b) the former holder has become mentally incapable\textsuperscript{146} and that person acts for him under a power of attorney created by an instrument registered under section 6 of the Enduring Powers of Attorney Act 1985 (c.29), or

(c) the former holder has become insolvent and that person is his insolvency practitioner.\textsuperscript{147}

The initial seven day period within which notification must be given, which means seven days beginning with the day after the licence lapsed,\textsuperscript{148} is not a particularly long period given the traumatic effect that death may have on the personal representative. The personal representative will often be a spouse or other close relative and it would be understandable if, within such a short period, the giving of an IAN were to be overlooked. If it this were to occur, there would be no further opportunity to give an IAN, since s 47(4) provides: ‘Only one interim authority notice may be given under subsection (2).’ Further, if the licence is not to lapse after the initial seven day period, a copy of the IAN must be given to the chief officer of police for the police area(s) in which the premises are situated before the end of that period (s 47(7)(a)).\textsuperscript{149} Again, it would be understandable if this were to be overlooked.

Once an IAN has been given to the licensing authority, it must issue to the person giving the notice a copy of the licence and summary of the licence in the form in which they existed immediately before the licence lapsed, except for specifying as the premises licence holder the person who gave the IAN. Section 49, which makes supplementary provision for IANs, provides in sub-ss (1) and (2):

(1) On receipt of an interim authority notice, the relevant licensing authority must issue to the person who gave the notice a copy of the licence and a copy of the summary (in each case certified by the authority to be a true copy).

(2) The copies issued under this section must be copies of the premises licence and summary in the form in which they existed immediately before the licence lapsed under section 27, except that they must specify the person who gave the interim authority notice as the person who is the holder.\textsuperscript{150}

6.11.6 Effect of a notice

6.11.7 The effect of giving an IAN is to reinstate the premises licence in the name of the person giving the notice and thereby allow licensable activities to continue to take

\textsuperscript{146} Section 47(10) provides: ‘“mentally incapable” has the same meaning as in section 27(1)(b)’ – see 6.7.3 above.

\textsuperscript{147} Section 47(10) provides: ‘“becomes insolvent” is to be construed in accordance with section 27’ – see 6.7.3 above – and “insolvency practitioner”, in relation to a person, means a person acting as an insolvency practitioner in relation to him (within the meaning of section 388 of the Insolvency Act 1986 (c.45)).’ Section 388 makes different provision, depending on whether a person is acting as an insolvency practitioner in relation to a company, individual or an insolvent partnership.

\textsuperscript{148} Section 47(10) provides: ‘“initial seven day period”, in relation to a licence which lapses as mentioned in subsection (1), means the period of seven days beginning with the day after the day the licence lapses.’

\textsuperscript{149} A copy of the application, together with any attachments, must be given on the same day the application is given to the licensing authority: reg 28(b) of the LA 2003 (PL and CPC) Regs 2005.

\textsuperscript{150} Section 49(3) provides: ‘This Act applies in relation to a copy issued under this section as it applies in relation to an original licence or summary.’
place pending a formal application for transfer (Guidance, para 5.95). Section 47(6) provides:

Where an interim authority notice is given in accordance with this section—
(a) the premises licence is reinstated from the time the notice is received by the relevant licensing authority, and
(b) the person who gave the notice is from that time the holder of the licence.

Whilst the giving of an IAN will reinstate the premises licence, it seems, however, that no licensable activities will be able to take place after the premises licence has lapsed, but before the IAN is given. This is because no premises licence is in existence during this period of time. Where the premises licence is reinstated and a person becomes the holder of it by virtue of this provision, he must, unless he is the DPS under the licence, forthwith notify the DPS (if any) of the IAN (s 49(4)). Failure to comply with this requirement, without reasonable excuse, is a summary offence punishable with a fine not exceeding level 3 on the standard scale (s 49(5)(6)).

6.11.8 Although reinstatement of the premises licence has immediate effect on receipt of the IAN, the licence will lapse again thereafter in two cases. First, as indicated above, if at the end of the initial seven day period a copy of the notice has not been given to the police. Secondly, if an application for transfer with a request under s 43 for the transfer to have immediate effect has not been made at the end of the interim authority period (s 47(7)(b)), which is a period of up to two months from the time when the authority received the IAN. The transfer application can be, but need not be, by the person giving the IAN and, if unsuccessful or withdrawn, will result in the licence lapsing again. Section 47(7)–(9) provides:

(7) But the premises licence lapses again—
(a) at the end of the initial seven day period unless before that time the person who gave the interim authority notice has given a copy of the notice to the chief officer of police for the police area (or each police area) in which the premises are situated;
(b) at the end of the interim authority period, unless before that time a relevant transfer application is made to the relevant licensing authority.

151 The Guidance, para 5.93, provides:

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.

152 Section 47(7)(a) – see 6.11.5 above. If a copy has been given, the reinstatement of the premises licence continues, although it may thereafter lapse if the licensing authority cancels the IAN following police objections – see 6.11.9–6.11.11 below.

153 Section 47(10) provides:

“interim authority period” means the period beginning with the day on which the interim authority notice is received by the relevant licensing authority and ending—
(a) two months after that day, or
(b) if earlier, when it is terminated by the person who gave the interim authority notice notifying the relevant licensing authority to that effect.

154 Section 47(10) provides: “relevant transfer application” in relation to the premises licence, is an application under section 42 which is given interim effect by virtue of section 43.”
(8) Nothing in this section prevents the person who gave the interim authority notice from making a relevant transfer application.

(9) If–
(a) a relevant transfer application is made during the interim authority period, and
(b) that application is rejected or withdrawn,
the licence lapses again at the time of the rejection or withdrawal.

6.11.9 Cancellation of notice following police objections

6.11.10 The police can object within 48 hours of being notified of an IAN, but only if satisfied that exceptional circumstances mean that failure to cancel the IAN would undermine the crime prevention objective (Explanatory Note 100). A notice to this effect must be given to the licensing authority. Section 48(1) and (2) provides:

(1) This section applies where–
(a) an interim authority notice by a person (“the relevant person”) is given in accordance with section 47,
(b) the chief officer of police for the police area (or each police area) in which the premises are situated is given a copy of the interim authority notice before the end of the initial seven day period (within the meaning of that section), and
(c) that chief officer (or any of those chief officers) is satisfied that the exceptional circumstances of the case are such that a failure to cancel the interim authority notice would undermine the crime prevention objective.

(2) The chief officer of police must no later than 48 hours after he receives the copy of the interim authority notice give the relevant licensing authority a notice stating why he is so satisfied.

The licensing authority must then hold a hearing within five working days to decide whether or not to cancel the IAN, unless the parties agree that this is unnecessary. The need to deal with such matters speedily is emphasised by the Guidance in para 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.’ If the authority decides cancellation is necessary for the promotion of the crime prevention objective, it must notify the person who has given the IAN and the police no later than two working days before the day on which the hearing is to be held, together with the authority’s reasons for its decision. Section 48(3)–(5) provides:

(3) Where a notice is given by the chief officer of police (and not withdrawn), the authority must–
(a) hold a hearing to consider it, unless the authority, the relevant person and the chief officer of police agree that a hearing is unnecessary, and

155 Regulation 5 and Sched 1, para 6 of the LA 2003 (Hearings) Regs 2005.
156 Regulation 6(2)(a), and Sched 2, para 6 of the LA 2003 (Hearings) Regs 2005. As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 6, the person giving the IAN must be given the police notice of objection with the notice of hearing.
(b) having regard to the notice given by the chief officer of police, cancel the interim authority notice if it considers it necessary for the promotion of the crime prevention objective to do so.

(4) An interim authority notice is cancelled under subsection (3)(b) by the licensing authority giving the relevant person a notice stating that it is cancelled and the authority’s reasons for its decision.

(5) The licensing authority must give a copy of a notice under subsection (4) to the chief officer of police for the police area (or each police area) in which the premises are situated.

6.11.11 If the IAN is cancelled, the premises licence lapses when the authority gives notice to the person who gave the IAN (although the licence may be reinstated by an appeal against cancellation – see 12.4.12 below). The authority is, however, only able to cancel the IAN up to the time an application for transfer with a request for this to have immediate effect is made. Section 48(6) and (7) provides:

(6) The premises licence lapses if, and when, a notice is given under subsection (4). This is subject to paragraph 7(5) of Schedule 5 (reinstatement of premises licence where appeal made against cancellation of interim authority notice).

(7) The relevant licensing authority must not cancel an interim authority notice after a relevant transfer application (within the meaning of section 47) is made in respect of the premises licence.

6.11.12 Reinstatement by transfer application

Where a premises licence has either lapsed due to the death, incapacity or insolvency of the premises licence holder (and there is no IAN having effect), or through surrender of the licence, a person entitled to apply for a premises licence can have the licence reinstated by making an application for transfer.157 The transfer application must include a request under s 43 that the transfer shall have immediate effect and the application must be made not later than seven days after the day that the licence lapsed. Section 50(1)–(4) provides:

(1) This section applies where–

(a) a premises licence lapses by virtue of section 27 (death, incapacity or insolvency of the holder), but no interim authority notice has effect, or

(b) a premises licence lapses by virtue of section 28 (surrender).

(2) For the purposes of subsection (1)(a) an interim authority notice ceases to have effect when it is cancelled under section 48 or withdrawn.

(3) Notwithstanding the lapsing of the licence, a person mentioned in section 16(1) (who, in the case of an individual, is aged 18 or over) may apply under section 42 for the transfer of the licence to him provided that the application–

(a) is made no later than seven days after the day the licence lapsed, and

(b) is one to which section 43(1)(a) applies.

(4) Where an application is made in accordance with subsection (3) above, section 43(1)(b) must be disregarded.

157 For lapse in the circumstances mentioned, see 6.7.3–6.7.4 above. For persons entitled to apply for a premises licence, see s 16(1) and 6.2 above.
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The reference in s 50(3)(b) to the application being ‘one to which section 43(1)(a) applies’ is a reference to the need to include in the transfer application of a request for the transfer to have immediate effect. Normally, for a transfer to have immediate effect under s 43 not only must such a request be included under s 43(1)(a), but also, in accordance with s 43(1)(b), the requirements of s 43 must be met. These requirements include obtaining, or taking reasonable steps to obtain, the consent of the premises licence holder, requirements which are clearly inapplicable in cases where the premises licence has lapsed, not least when this is through death. It is for this reason that s 50(4) provides that s 43(1)(b) must be disregarded for the purposes of s 50.

The premises licence is reinstated once the transfer application is received, but will lapse again if rejected or if the application is withdrawn. Section 50(5) and (6) provides:

(5) Where such an application is made, the premises licence is reinstated from the time the application is received by the relevant licensing authority.

(6) But the licence lapses again if, and when–

(a) the applicant is notified of the rejection of the application, or

(b) the application is withdrawn.

Finally, not more than one application can be made for transfer so as to effect reinstatement under this section, since s 50(7) provides: ‘Only one application for transfer of the premises licence may be made in reliance on this section.’

6.12 REVIEW OF PREMISES LICENCES

6.12.1 Application

6.12.2 According to the Guidance, procedures set out in the Act for reviewing premises licences represent a key protection for a 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 of premises licences and to variations by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.158

It is envisaged, however, that applications will be preceded by warnings to premises licence holders of concerns arising and the need for remedial action to be taken, with a review following in the event of a failure to address these concerns:

It would … be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the

158 Paragraph 5.99. ‘The provisions for the review of the premises licence are a powerful means of securing the promotion of the licensing objective[s]. They are reactive provisions which are designed to deal with problems as and when they arise. We need to recognise that exceptional action should be taken when a particular personal licence holder marries up with a certain set of premises and produces a damaging mixture’ (Lord McIntosh – see HL Deb, vol 645, col 410, 27 February 2003).
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.159

6.12.3 Application is confined to interested parties and responsible authorities. The licensing authority itself cannot institute a review, although the relevant section of the local authority dealing with environmental and public health may (as a responsible authority) do so.160 Section 53 provides:

(a) the relevant licensing authority, and
(b) a responsible authority,
in respect of any premises.

(2) The authority may, in its capacity as a responsible authority, apply under section 51 for a review of any premises licence in respect of the premises.

(3) The authority may, in its capacity as licensing authority, determine that application.

Whilst the section makes no reference to the time at which an application can be made, stating only (in s 51(1)) that an interested party or a responsible authority may apply ‘where a premises licence has effect’, it is clear from the Guidance that an application can be made at any time. Paragraph 5.100 provides:

At any stage, following the grant of a premises licence, a responsible authority, such as the police or the fire authority, or 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.161

The application is subject to regulations that may make provision for notice to be given to the premises licence holder and each responsible authority, and for advertisement (in this instance, by the authority rather than the applicant) and for the making of representations.162 Section 51(1)–(3) provides:

Where a premises licence has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of the licence.

159 Guidance, para 5.103, which also provides: ‘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.’

160 The Guidance, para 5.100, provides: ‘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.’

161 The Guidance goes on to provide: ‘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.’

162 No provision, however, is made for the payment by an applicant of a fee for review, presumably so as not to discourage the making of applications.
(2) Subsection (1) is subject to regulations under section 54 (form etc. of applications etc).\textsuperscript{163}

(3) The Secretary of State must by regulations under this section—

(a) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;

(b) require the authority to advertise the application and invite representations about it to be made to the authority by interested parties and responsible authorities;

(c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party;

(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

As regards giving notice to the premises licence holder and each responsible authority, reg 29 of the LA 2003 (PL and CPC) Regs 2005 requires the applicant to give them a copy of the application and any accompanying documents on the same day as he gives the review application to the licensing authority.\textsuperscript{164} Regulation 38 requires the authority to advertise the application in two ways. First, the authority must prominently display a notice at, on or near the site of the application premises, where it can conveniently be read from the exterior of the premises, for not less than 28 consecutive days from the day following the giving of the application to the licensing authority. Further, the notice, which must be at least A4 in size, in a pale blue colour, and printed legibly in black ink or typed in black in a font of at least 16 point, must be displayed in a central and conspicuous place at the licensing authority’s offices. In addition, where the premises cover more than 50 square metres, a further such notice must be displayed every 50 metres along their external perimeter adjoining any highway. Secondly, the authority must publish a notice (which need not be in the form specified above) on its website where it maintains a website for the purpose of advertisement of applications. Regulation 38 provides:

(1) Subject to the provisions of this regulation and regulation 39, the relevant licensing authority shall advertise an application for the review of a premises licence under section 51(3), of a club premises certificate under section 87(3) or of a premises licence following a closure order under section 167—

(a) by displaying prominently a notice—

(i) which is—

(aa) of a size equal or larger than A4;

(bb) of a pale blue colour; and

\textsuperscript{163} For the form and information to be contained in a premises licence review application, see reg 16 and Sched 8 to the LA 2003 (PL and CPC) Regs 2005.

\textsuperscript{164} Regulation 29 provides:

In the case of an application for a review of a premises licence under section 51 or a review of a club premises certificate under section 87, the person making the application shall give notice of his application to each responsible authority and to the holder of the premises licence or the club in whose name the club premises certificate is held and to which the application relates by giving to the authority, the holder or the club a copy of the application for review together with its accompanying documents, if any, on the same day as the day on which the application for review is given to the licensing authority.
(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;

(ii) at, on or near the site of the premises to which the application relates where it can conveniently be read from the exterior of the premises by the public and in the case of a premises covering an area of more than fifty metres square, one further notice in the same form and subject to the same requirements shall be displayed every 50 metres along the external perimeter of the premises abutting any highway; and

(iii) at the offices, or the main offices, of the licensing authority in a central and conspicuous place; and

(b) in a case where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website;

(2) the requirements set out in paragraph (1) shall be fulfilled–

(i) in the case of a review of a premises licence following a closure order under section 167, for a period of no less than seven consecutive days starting on the day after the day on which the relevant licensing authority received the notice under section 165(4); and

(ii) in all other cases, for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority.

The information contained in the premises and website notices must include the postal address of the premises, the dates within which relevant representations in writing can be made, the grounds of review, the postal address and any website address where authority’s licensing register is kept and may be inspected, and a statement of the offence and maximum fine for knowingly or recklessly making a false statement in connection with an application. Regulation 39 provides:

All notices referred to in regulation 38 shall state–

(a) the address of the premises about which an application for a review has been made;

(b) the dates between which interested parties and responsible authorities may make representations to the relevant licensing authority;

(c) the grounds of the application for review;

(d) the postal address and, where relevant, the worldwide web address where the register of the relevant licensing is kept and where and when the grounds for the review may be inspected; and

(e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

6.12.4 An application for review may be rejected (without a hearing and determination) if the authority is satisfied that the ground of review is not relevant to the licensing objectives or, if made by an interested party, is frivolous, vexatious or repetitious. Section 51(4) provides:

The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied–

(a) that the ground is not relevant to one or more of the licensing objectives, or
(b) in the case of an application made by a person other than a responsible authority, that—

(i) the ground is frivolous or vexatious, or

(ii) the ground is a repetition.

For a ground not to be relevant, it would be necessary for it to have no bearing on one or more of the licensing objectives. This may not be easy to establish given that the licensing objectives are expressed in broad terms. Rejection because the ground is frivolous or vexatious is similar to a licensing authority rejecting relevant representations by interested parties for these reasons on an application for grant of a premises licence, which has been considered in 6.4.21–6.4.22 above. Rejection on the ground of repetition is further clarified by s 51(5) which provides:

For this purpose a ground for review is a repetition if—

(a) it is identical or substantially similar to—

(i) a ground for review specified in an earlier application for review made in respect of the same premises licence and determined under section 52, or

(ii) representations considered by the relevant licensing authority in accordance with section 18, before it determined the application for the premises licence under that section, or

(iii) representations which would have been so considered but for the fact that they were excluded representations by virtue of section 32,165 and

(b) a reasonable interval has not elapsed since that earlier application for review or the grant of the licence (as the case may be).166

6.12.5 Neither the legislation nor the Guidance gives any indication when a ground of review is ‘substantially similar’, but the ordinary and natural meaning of these words suggests ‘bearing a strong resemblance’ or ‘very much of the same kind’ rather than simply ‘having some similarity’. At the very least, it seems that the ground of review will have to relate not only to the same licensing objective to be substantially similar, but also to the same aspect of the objective (such as public nuisance through noise in a particular area). The onus will be on the licensing authority to show that the ground of review is substantially similar, since the authority has to be satisfied under s 51(4) that the ground is a repetition in order to reject the application for review. Application for review on an identical or substantially similar ground is not automatically ruled out, but only if a reasonable interval has not elapsed since the ground was previously considered. The Guidance indicates that what constitutes a reasonable interval is a matter for the authority to decide; the Guidance then proceeds to indicate that there should normally be an interval of at least 12 months. Having cautioned authorities 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’, the Guidance goes on to state:

165 For excluded representations, see 6.8.12–6.8.13 above.

166 The wording of this provision is similar to that used in s 14(2) of the Freedom of Information Act 2000, which provides: ‘Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.’ This provision does not appear to have received any judicial consideration.
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.167

If an application for review is rejected, the authority must notify the applicant of its decision. The reason for rejection will be self-evident if it is on the ground that it is repetitious, but reasons must be given if it is rejected on the ground that it is frivolous or vexatious. Section 51(6) provides:

Where the authority rejects a ground for review under subsection (4)(b), it must notify the applicant of its decision and, if the ground was rejected because it was frivolous or vexatious, the authority must notify him of its reasons for making that decision.

Where an application is rejected because the ground is frivolous, vexatious or a repetition, reg 32 of the LA 2003 (PL and CPC) Regs 2005 requires written notification to be given as soon as is reasonable practicable. An application may, of course, seek review on a number of grounds, only some of which may be considered irrelevant, frivolous, vexatious and/or repetitious. In this case, an application may be rejected only to the extent that it is so considered and will need in other respects to be determined. Accordingly, s 51(7) provides:

The application is to be treated as rejected to the extent that any of the grounds for review are rejected under subsection (4).

Accordingly the requirements imposed under subsection (3)(a) and (b) and by section 52 (so far as not already met) apply only to so much (if any) of the application as has not been rejected.

6.12.6 Determination of applications

6.12.7 There is a range of powers set out in s 52 that the authority can exercise, when determining applications for review, where it considers them necessary to promote the licensing objectives. Where a review is sought and an application has been made in accordance with the statutory provisions in s 51, under reg 5 and para 7 of Sched 1 to the LA 2003 (Hearings) Regs 2005 the authority must hold a hearing within 20 working days to consider the application and any relevant representations received following advertisement of the application under s 51(3)(b). Notice of the hearing must be given to the premises licence holder, persons who made relevant representations and the person who has made the review application no later than 10 working days before the day or the first day on which the hearing is to be held.168 Section 52(1) and (2) provides:

(1) This section applies where—

(a) the relevant licensing authority receives an application made in accordance with section 51,

167 Paragraph 5.105. This recommendation relates only to reviews originating from interested parties and not from responsible authorities.

168 Regulation 6(4), and Sched 2, para 7 of the LA 2003 (Hearings) Regs 2005. As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 7, the premises licence holder must be given the relevant representations with the notice of hearing.
(b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and

c) the authority has complied with any requirement imposed on it under subsection (3) (b) or (d) of that section.

(2) Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

There is no provision for dispensing with the hearing if the parties consider this to be unnecessary (which admittedly is unlikely if a review of the licence is being sought). The relevant representations, that is, relevant to one or more of the licensing objectives, will include those made both by responsible authorities or interested parties and by the holder of the premises licence whose licence is being reviewed. There is the usual provision for relevant representations not to be considered where they have been withdrawn or when they are regarded as frivolous or vexatious (see 6.4.20–6.4.22 above). Section 52(7) and (8) provides:

(7) In this section “relevant representations” means representations which—

(a) are relevant to one or more of the licensing objectives, and

(b) meet the requirements of subsection (8).

(8) The requirements are—

(a) that the representations are made—

(i) by the holder of the premises licence, a responsible authority or an interested party, and

(ii) within the period prescribed under section 51(3)(c),

(b) that they have not been withdrawn, and

(c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

The criterion specified for relevant representations in s 52(7)(a), that the representations are relevant to one or more of the licensing objectives, differs from that for relevant representations for the grant of a new premises licences or the variation of an existing one, where the requirement is that the representations are ‘about the likely effect of the grant … on the promotion of the licensing objectives’. This, on the face of it, seems a more stringent standard than being ‘relevant’ in s 52(7)(a). A representation may be ‘relevant’ to a licensing objective simply if has some bearing on it. This would seem to be less onerous than if the representation had to be about the likely effect of the continued operation of the premises on the promotion of the licensing objectives, which would be the equivalent to the criterion adopted for grant or variation. It is possible that ‘relevant’ could be interpreted in this sense, rather than being given its more natural meaning of having some link or bearing, although whether it will be remains to be seen.

6.12.8 When determining the application, the authority must take one of a number of steps that it considers necessary to promote the licensing objectives. Section 52(3) and (4) provides:

169 See s 18(6)(a) and 6.4.11 above, and s 35(5) and 6.9.4 above respectively.
(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are–

(a) to modify the conditions of the licence;
(b) to exclude a licensable activity from the scope of the licence;
(c) to remove the designated premises supervisor;
(d) to suspend the licence for a period not exceeding three months;
(e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Once steps are taken and a determination is made, the authority’s decision does not, however, have immediate effect. It only takes effect when the period for making an appeal has expired or, if an appeal is lodged, when the appeal is ‘disposed of’ (which presumably will include either withdrawal or determination of the appeal).

Section 52(11) provides:

A determination under this section does not have effect–

(a) until the end of the period given for appealing against the decision, or
(b) if the decision is appealed against, until the appeal is disposed of.

It is not necessary that any of the steps mentioned in subsection (4) are taken, since s 52(3) refers to the authority taking such of the steps ‘if any’ as it considers necessary for the promotion of the licensing objectives. If none of these steps are considered necessary, the authority can decide to take no action. Alternatively, it can decide to take some informal action falling short of the steps specified in sub-s (4), such as issuing a warning or guidance. As para 5.108 of the Guidance states:

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 the licence.

If the authority decides to modify the conditions of the licence (for example, by reducing the hours of opening or requiring door supervisors at particular times) or to exclude a licensable activity from the scope of the licence (for example, by excluding the playing of live music), it can do so either permanently or for a temporary period of up to three months. Section 52(6) provides:

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170 The examples given are mentioned in the Guidance, para 5.109. As regards modifying conditions, this power is subject to ss 19–21, which contain requirements to include certain conditions in premises licences: s 52(5). These are conditions, respectively, relating to the supply of alcohol (requiring a DPS for the premises and for supply to be made or authorised by personal licence holders), for the admission of children to film exhibitions to be restricted in accordance with film classification recommendations and for door supervisors to be licensed by the Security Industry Authority – see 6.4.2–6.4.5 above.
Where the authority takes a step mentioned in subsection (4)(a) or (b), it may provide that the modification or exclusion is to have effect only for such period (not exceeding three months) as it may specify.

Suspension, similarly, can be for a period of up to three months, although not for any longer period. Presumably if an authority feels a three months’ suspension period is inadequate to promote the licensing objectives the appropriate course would be to revoke the licence.

In deciding which of these various steps to take, 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 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 (Guidance, para 5.110).

6.12.9 Taking steps to promote the licensing objectives will include steps to prevent the commission of crime, since this is one of the licensing objectives, but the Guidance makes it clear, in para 5.113, that only steps necessary in connection with the premises licence should be taken for the promotion of the crime prevention objective:

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.

That such activity may take place notwithstanding the best efforts of the licensee and those working at the premises does not preclude the authority from taking any necessary steps in the wider interests of the community. As the Guidance goes on to state in the same paragraph:

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.

6.12.10 In particular, certain types of criminal activity should be treated particularly seriously and licensing authorities, the police and other law enforcement agencies should use the review procedures effectively to deter such activities. Revocation of the licence, even in the first instance, should be seriously considered in these cases where the authority determines that the crime prevention objective is being undermined through the premises being used to further crimes (Guidance, paras 5.116–5.117). The types of criminal activity in question that should be treated particularly seriously are set out in para 5.115 of the Guidance and these are where there is 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 use of licensed premises 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.

6.12.11 The Guidance further provides for review proceedings not to be used as a substitute for criminal proceedings and for authorities to focus on whether problems associated with the alleged criminal activity are taking place on the premises rather than on individual criminal responsibility. Paragraphs 5.112 and 5.113 provide:

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.

6.12.12 Certainly, where review follows a conviction for an offence in respect of activity taking place on the premises, such as drug dealing or the sale of stolen goods, the authority will be justified in taking steps to promote the prevention of crime objective. Not all reviews, however, will take place after a conviction, as the Guidance recognises; but it would seem that if the authority is satisfied, on a balance of probabilities, that some criminal activity is taking place and problems on the premises are associated with that activity, the authority will similarly be justified in taking steps
to promote the prevention of crime objective. Less clear is the position where criminal proceedings have been instituted, but there has been no conviction, which will cover cases where there has been an acquittal, a failure by a jury to reach a verdict, a conviction quashed on appeal or discontinuance of a prosecution. In principle, such a case should be no different from one where no criminal proceedings have been instituted. It should, in each case, be a question of whether the authority is satisfied, on a balance of probabilities, that the criminal activity in question is taking place and that it is causing problems on the premises. This is the view that has been traditionally taken in cases of fitness to hold a licence. In civil proceedings, an authority need only be satisfied on a balance of probabilities that criminal conduct took place and the High Court has held, in *R v Crown Court at Maidstone ex p Olson* [1992] COD 496 and *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889, that it is entitled to make such a finding notwithstanding that criminal proceedings have been unsuccessful. The final sentence of para 5.112 of the Guidance (see above), however, seems to leave it in doubt whether this will continue to be the case as far as reviews under the 2003 Act are concerned. If there is a failure of a criminal prosecution, this sentence in the Guidance might be read as indicating that the authority should not revisit the question of liability for the criminal activity (‘not … go behind any finding of the courts’) and, in accordance with the view of the criminal court, should regard such criminal activity as not having taken place (‘should be treated as a matter of undisputed evidence before them’).

Alternatively, the sentence might be read in a more restrictive way. The ‘finding of the courts’ in failed prosecutions is that criminal liability has not been established beyond reasonable doubt and indicating that the authority should ‘not … go behind’ could be read simply as an exhortation not to redetermine the question of criminal liability to a standard beyond reasonable doubt. (This would be consistent and in keeping with the statement in para 5.112 that the role of the authority in a review is ‘not … to establish the guilt or innocence of any individual’.) On this reading, the failed prosecution ‘should be treated as a matter of undisputed evidence before them [the authority]’ that criminal liability has not been established beyond reasonable doubt. Treating this as a matter of undisputed evidence would not, however, preclude the authority from examining whether such liability might be established on a balance

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171 In *R v Crown Court at Maidstone ex p Olson* [1992] COD 496, the High Court held that an authority, when refusing to renew a taxi driver’s licence, could rely on the evidence of a female passenger of whom he had been convicted of indecently assaulting, notwithstanding that the conviction had subsequently been quashed by the Court of Appeal as unsafe and unsatisfactory on account of a number of misdirections and non-directions by the trial judge when summing up to the jury. A later High Court, in *McCool v Rushcliffe Borough Council* [1998] 3 All ER 889 (a case with similar facts), applying the Maidstone principle, held that hearsay evidence, in this case a newspaper report of the passenger’s evidence at the first trial (which was later accepted by the driver as an accurate record following acknowledgment that he had lied to the police and on oath at the trial), might establish unfitness and direct evidence from the victim was not necessary. Where, however, criminal proceedings are discontinued and a defendant disputes both liability and admissions made in a police note of the incident, there may be no way of knowing whether the denial was well founded. In this instance hearsay evidence might not establish unfitness and there may be no reasonable cause for the licence to be revoked: *R (Wrexham Borough Council) v Chester Crown Court* [2004] LLR 802 (where the Administrative Court, distinguishing *McCool*, held that that case did not support the proposition that the court should have taken into account the police note and required the defendant to give evidence or offered him the opportunity to do so).
of probabilities. Given the uncertainty as to the meaning and implications of this sentence in para 5.112, it is submitted that authorities, when having regard to it, should give it a restrictive meaning. The well established principles in Olsen and McCool should continue to apply, in the absence of any clear statement to the contrary, and the Guidance cannot be regarded as containing any such clear statement.

6.12.13 Notification of decision

The authority must notify its decision, with reasons, to the premises licence holder, the applicant, any person who made relevant representations and the police. It must also notify, with reasons, any interested party whose representations were considered to be frivolous or vexatious. Section 52(9) and (10) provides:

9) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

10) Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to–

(a) the holder of the licence,
(b) the applicant,
(c) any person who made relevant representations, and
(d) the chief officer of police for the police area (or each police area) in which the premises are situated.

6.13 UPDATING, KEEPING AND PRODUCTION OF PREMISES LICENCE

6.13.1 Updating of licence

Where modifications are made to a premises licence, for example where the licence is varied, transferred or amended following a review, the authority must update the licence and, if necessary, issue a new summary of it. Section 56(1) provides:

Where–

(a) the relevant licensing authority, in relation to a premises licence, makes a determination or receives a notice under this Part, or
(b) a premises licence lapses under this Part, or
(c) an appeal against a decision under this Part is disposed of,

the relevant licensing authority must make the appropriate amendments (if any) to the licence and, if necessary, issue a new summary of the licence.

In order for the authority to make the modifications, it may be necessary for the licence to be returned to the authority and the authority can require the premises licence holder to produce the licence or appropriate part of it within 14 days of being notified of the need to do so. Section 56(2) provides:

Where a licensing authority is not in possession of the licence (or the appropriate part of the licence) it may, for the purposes of discharging its obligations under subsection (1), require the holder of a premises licence to produce the licence (or the appropriate
part) to the authority within 14 days from the date on which he is notified of the requirement.

Failure to comply, without reasonable excuse, with the requirement to produce the licence or part is a summary offence punishable by a fine not exceeding level 2 on the standard scale. Section 56(3) and (4) provides:

(3) A person commits an offence if he fails, without reasonable excuse, to comply with a requirement under subsection (2).

(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

6.13.2 Keeping and production of licence

6.13.3 The premises licence holder is under a duty to keep at the premises and produce the licence or a certified copy of it whenever the premises are being used for licensable activities. The licence or certified copy must be kept in the custody or control of himself or a person working at the premises who he has nominated in writing, and a summary of the licence or certified copy together with a notice indicating the position held at the premises by the nominated person, must be prominently displayed at the premises. Section 57(1)–(3) provides:

(1) This section applies whenever premises in respect of which a premises licence has effect are being used for one or more licensable activities authorised by the licence.

(2) The holder of the premises licence must secure that the licence or a certified copy of it is kept at the premises in the custody or under the control of:

(a) the holder of the licence, or

(b) a person who works at the premises and whom the holder of the licence has nominated in writing for the purposes of this subsection.

(3) The holder of the premises licence must secure that:

(a) the summary of the licence or a certified copy of that summary, and

(b) a notice specifying the position held at the premises by any person nominated for the purposes of subsection (2), are prominently displayed at the premises.

It might be expected, and clearly would be desirable, for the summary and notice to be prominently displayed in the same place at the premises, although there is no requirement to this effect in s 57(3). It will presumably therefore meet the terms of the section if the summary and notice were to be (prominently) displayed in different parts of the premises. Failure to comply, without reasonable excuse, with the requirement to display the summary or to keep the licence at the premises is a

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172 Section 58 makes provision about certified copies: s 57(10). A certified copy is a copy certified to be a true copy by the relevant licensing authority, a solicitor or notary, or a person of a prescribed description: s 58(1). Any certified copy produced in accordance with a requirement under s 57(5) (for a person having custody or control of the licence to produce it for examination by a constable or authorised officer) must be a copy of the document in the form in which it exists at the time: s 58(2). A document which purports to be a certified copy is to be taken to be such a copy unless the contrary is shown: s 58(3).

173 The summary is a reference to the summary issued under s 23 – see 6.6.1 above – or, where one or more summaries have been subsequently issued under s 56 following updating of the licence, the most recent summary to have been so issued: s 57(9).
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summary offence punishable by a fine not exceeding level 2 on the standard scale (s 57(4)(8)).

6.13.4 A constable or authorised person may require the person having custody or control of the licence or certified copy to produce it for inspection, the authorised person being required to produce evidence of his authorisation if requested to do so, and a failure to produce the licence or certified copy, without reasonable excuse, is a summary offence punishable by a fine not exceeding level 2 on the standard scale. Section 57(5)–(8) provides:

(5) A constable or an authorised person\textsuperscript{174} may require the person who, by virtue of arrangements made for the purpose of subsection (2), is required to have the premises licence (or a certified copy of it) in his custody or under his control to produce the licence (or such a copy) for examination.

(6) An authorised person exercising the power conferred by subsection (5) must, if so requested, produce evidence of his authority to exercise the power.

(7) A person commits an offence if he fails, without reasonable excuse, to produce a premises licence or certified copy of a premises licence in accordance with a requirement under subsection (5).

(8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

6.14 PRE-DETERMINATION INSPECTIONS OF PREMISES

6.14.1 Under the previous law, it was common practice for visits to be made to premises to inspect them prior to the grant of a licence to sell intoxicating liquor or provide entertainment and s 59 confers a power on constables and authorised persons (on production of authorisation on request) to enter premises, prior to determination of an application to grant, vary or review a licence, or to issue a provisional statement, to assess the likely effect on the promotion of the licence objectives of the grant. Section 59(1)–(3) provides:

(1) In this section “relevant application” means an application under–
(a) section 17 (grant of licence),
(b) section 29 (provisional statement),
(c) section 34 (variation of licence), or
(d) section 51 (review of licence).

(2) A constable or an authorised person may, at any reasonable time before the determination of a relevant application, enter the premises to which the application relates to assess–
(a) in a case within subsection (1)(a), (b) or (c), the likely effect of the grant of the application on the promotion of the licensing objectives, and
(b) in a case within subsection (1)(d), the effect of the activities authorised by the premises licence on the promotion of those objectives.

(3) An authorised person exercising the power conferred by this section must, if so requested, produce evidence of his authority to exercise the power.

\textsuperscript{174} For the meaning of ‘authorised person’, see s 13 and 6.14.2 below.
6.14.2 An authorised person for the purposes of this section (and other provisions involving inspection and enforcement) is defined by s 13 to include, in respect of all premises, 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. In respect of vessels, they also include an inspector or a surveyor of ships appointed under s 256 of the Merchant Shipping Act 1995. Such persons would normally be officers acting on behalf of the Maritime and Coastguard Agency (Guidance, para 5.31). The Secretary of State may also prescribe other authorised persons by means of a statutory instrument. Section 13(2) provides:

“Authorised person” means any of the following—
(a) an officer of a licensing authority in whose area the premises are situated who is authorised by that authority for the purposes of this Act,
(b) an inspector appointed under section 18 of the Fire Precautions Act 1971 (c.40),
(c) an inspector appointed under section 19 of the Health and Safety at Work etc Act 1974 (c.37),
(d) an officer of a local authority, in whose area the premises are situated, who is authorised by that authority for the purposes of exercising one or more of its statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health,
(e) in relation to a vessel, an inspector, or a surveyor of ships, appointed under section 256 of the Merchant Shipping Act 1995 (c.21),
(f) a person prescribed for the purposes of this subsection.

By virtue of s 59(4), constables and authorised persons may use reasonable force to gain entry, although, for reasons which are not readily apparent, this is restricted to cases involving an application for review and cannot be exercised in cases involving other applications. Section 59(5) makes it an offence for a person to intentionally obstruct an authorised person exercising the power of entry175 and obstruction of a constable exercising the power will similarly constitute an offence, although falling within the general provision of obstructing a constable in the course of his duties under the Police Act 1996.176

175 The offence is punishable summarily by a fine not exceeding level 2 on the standard scale: s 59(6).
176 See s 89(2) of the Police Act 1996, which provides: ‘Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale, or to both.’
CHAPTER 7

CONDITIONS

7.1 INTRODUCTION

Conditions may be attached to a premises licence and to a club premises certificate (CPC), but not to a personal licence or to a temporary event notice (TEN) except where the licensable activities include the supply of alcohol, in which case under s 100(6) a condition must be attached to the TEN that all supplies of alcohol must be made or authorised by the premises user (see 9.2.3 below). When licences and certificates (hereafter ‘licences’) are granted, there are also some mandatory conditions that must be imposed. For premises licences, these are that no supply of alcohol may be made unless there is a designated premises supervisor (DPS) with a personal licence in respect of the premises licence and unless supply is made or authorised by a personal licence holder; that the admission of children to film exhibitions is to be restricted in accordance with film classification recommendations; and that any condition requiring door supervisors must also require them to be licensed by the Security Industry Authority (ss 19–21; and see 6.4.2–6.4.5 above). For CPCs that authorise the supply of alcohol for consumption off the premises, there are mandatory conditions that supply must be at a time when the premises are open for supply to club members for consumption on the premises, the alcohol must be supplied in a sealed container and the supply must be made to a member of the club in person.1 For CPCs that authorise the exhibition of films, there is a mandatory condition that the admission of children to exhibitions is to be restricted in accordance with film classification recommendations (s 74; and see 8.4.2 below).

Conversely, there are some conditions the inclusion of which is prohibited by the 2003 Act. No condition may be attached as to the nature of any plays that may be performed, which applies to both premises licences and CPCs,2 and, for CPCs, no conditions may be attached preventing the sale by retail of alcohol or the provision of regulated entertainment to any associate member or guest.3 Apart from the instances of mandatory or prohibited conditions, authorities have a discretion to impose conditions, although this must be exercised in accordance with the general principles set out below. In cases where no representations have been received in respect of an application, an authority can attach such conditions as are consistent with the operating schedule.4 In other cases, an authority, if it decides to grant a licence, can attach such conditions as are consistent with the operating schedule with the conditions modified to such extent as it considers necessary for the promotion of the licensing objectives.5

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1 Section 73(2)–(5); and see 8.4.2 below.
2 Sections 22 and 76; and see 6.4.6 above and 8.4.3 below respectively.
3 Section 75; and see 8.4.3 below. For the meaning of ‘associate member’ and ‘regulated entertainment’, see s 67(2) and Sched 1, and 8.2.3 below and 5.3 above respectively.
4 Sections 18(2)(a) (premises licences) and 72(2)(a) (CPCs); and see 6.4.1 above (and 6.4.7 above) and 8.4.2 below respectively.
5 Sections 18(4)(a)(i) (premises licences) and 72(4)(a)(i) (CPCs); and see 6.5.1 above and 8.5.1 below respectively.
7.2 GENERAL PRINCIPLES

There are a number of general principles that operate in respect of the imposition of conditions. First, and foremost, is a requirement that conditions may only be attached to licences where the conditions are necessary for the promotion of one or more of the four licensing objectives. In addition, there is a need to avoid duplication with other statutory provisions, to avoid the imposition of standard conditions, and for conditions to be proportionate.

7.2.1 Conditions necessary for promotion of the licensing objectives

The Guidance, in its opening paragraph dealing with conditions, para 7.1, states:

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.

Conditions that are necessary for the promotion of the licensing objectives will essentially be ones that indicate the steps the holder of the premises licence or the CPC will be required to take at all times when licensable activities are taking place at the premises in question. When licensable activities are not taking place, the conditions will not have application. For example, conditions attached to night cafés and takeaway outlets operating after 11.00 pm must relate to the night time operation of the premises and cannot relate to their day time operation (Guidance, para 7.1).

Conditions which are not necessary for the promotion of the licensing objectives may not be attached and this may mean that some conditions previously attached to licences can no longer be so attached. For example, for at least certain types of public entertainment, it was not uncommon for a condition to be attached requiring the licence holder to take out public liability insurance in order to ensure that the means existed to pay any compensation in the event of injury or damage being caused. It is doubtful that such a condition could be attached under the 2003 Act since such a condition does not seem to promote any of the licensing objectives. It is tangentially linked to the public safety objective, but it does not really promote that objective in the sense of contributing to make the public safe. Rather, it makes provision for situations where that objective may not be met.6

7.2.2 Avoiding duplication with other statutory provisions

Since only conditions that are necessary to achieve the licensing objectives can be attached, it follows that, if the existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose similar duties or the same duty, by way of conditions, on the holder of a

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6 This is unless it can be said that, in order to hold the licence holder properly accountable for public safety and to properly promote this objective, there needs to be the means available to compensate those who sustain loss and this can be guaranteed only with a requirement for compulsory insurance. Further, public liability insurance may be obtainable only if insurance companies are satisfied about various matters with regard to the proposed provision of the entertainment, so it might be said that requiring such insurance provides assurance that certain minimum public safety commitments and standards are met.
premises licence or CPC. Thus, employers and self-employed persons are required by the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, to assess the risks to their workers and any others (for example, members of the public visiting the premises) who may be affected by their business, so as to identify what measures are needed to avoid or control risks. It will not therefore be necessary to include a condition requiring such a risk assessment to be carried out. These general duties, however, will not always adequately cover specific issues that arise on the premises in connection with certain entertainments, but it is only in these cases where additional and supplementary measures are required to promote the licensing objectives that proportionate conditions will need to be attached to a licence.7

7.2.3 Avoiding standard conditions

The Act envisages that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned; this effectively rules out standardised conditions, which would ignore these individual aspects (Guidance, para 7.17). Nevertheless, there are perhaps a number of conditions that might commonly be attached to most, if not all, licences granted and these conditions are likely to continue to be attached. It would be desirable if these were formulated in a consistent manner and, with a view to advancing this objective, the Guidance contains an Annex setting out ‘pools’ of conditions for each of the licensing objectives, together with a separate Annex covering the promotion of public safety in cinemas, theatres, concert halls and similar places.8 When considering conditions in respect of any particular licence granted, an authority can select from the ‘pools’ the conditions that it feels are necessary to promote the licensing objectives, although the Guidance is at pains to point out that it is ‘important that they should not be treated as standard conditions’.9 The Annexes, however, only in part comprise ‘pools’ from which formulated conditions can be drawn for immediate inclusion in licences and certificates. In a number of instances, they do no more than indicate the nature of particular conditions that might be attached and it will be necessary for authorities to formulate the conditions themselves. Inevitably, this will lead to differently-worded conditions being used and a greater degree of inconsistency, which could have been avoided if conditions with ‘model’ wording had been included.10

7 Guidance, para 7.13. A further example is contained in para 5.53 in respect of casino and bingo clubs licensed under 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 … 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.

8 See Annexes D (Crime and Disorder), E (Public Safety), F (Theatres, Cinemas, Concert Halls and Similar places (Promotion of Public Safety)), G (Public Nuisance) and H (Protection of Children from Harm).

9 See paras 7.20 (crime and disorder), 7.31 (public safety), 7.38 (public nuisance) and 7.47 (protection of children from harm). The reference in para 7.20 is that the conditions ‘should not be applied universally irrespective of circumstances’.

10 Some of the Annexes, to a greater extent than others, contain conditions suitably formulated for immediate inclusion in licences and certificates, eg, there are more in Annex E for public safety than in Annex D for the prevention of crime and disorder.
7.2.4 Proportionality

The principle of proportionality generally means that measures taken need to bear a reasonable and proportionate relationship to their intended objectives and that any disadvantages caused must not be disproportionate to the aims pursued (or, put another way, a sledgehammer should not be used to crack a nut). It is in this sense that the term ‘proportionality’ is used in the European Convention on Human Rights in respect of measures taken to protect rights or to impose legitimate restrictions or penalties (see 3.4 above). The Guidance applies this concept to conditions to be attached to the licence. Conditions, it seems, need to be proportionate to the financial resources that the holder of the licence can reasonably be expected to devote to promoting the intended objective(s). Paragraph 7.17 provides:

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.

Although the Guidance does not say so expressly, the clear implication is that less onerous conditions should be attached for events organised by bodies such as those mentioned above. This reflects the arrangements previously adopted by some authorities for public entertainment licences, under which the standard conditions attached to annual licences were not imposed to the full extent for events held on an occasional basis by community groups and other similar bodies. The Guidance, also in para 7.17, encourages authorities to ‘be alive to the indirect costs that can arise because of conditions attached to licences’, which ‘could be a deterrent to the holding of events that are valuable to the community or for the funding of good and important causes’, and goes on to provide that authorities:

should therefore ensure that any conditions they impose are only those which are necessary for the purposes 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 and well-being of attending such events should be remain a primary objective.

As regards conditions being necessary only for the purposes of the licensing objectives, this should, of course, be the position in all cases and not just ones involving events such as those mentioned. However, views as to what may be necessary may well differ and, if regard is had to the Guidance when an authority is discharging its licensing function of attaching conditions on licences granted, it seems that a reduced level of conditions might be permissible in some cases.

A further aspect of proportionality, mentioned in para 7.19 of the Guidance, is the need to have proper regard for the history of certain events and activities:

11 See also Model National Standard Conditions for Places of Public Entertainment, 2002, London: Entertainment Technology Press, which contained (in Annex 3) ‘Standard Conditions When Premises Are Used Occasionally for Public Entertainment’. These were more limited in scope than the Standard Conditions which were of general application.
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.12

Proportionality seems to be used here in the sense that, where a previous track record suggests that the licensing objectives might be more easily achieved without the need for (many) conditions, it would be disproportionate to attach conditions that otherwise might be felt to be necessary. A converse argument, of course, would be that, in the light of the laudable way that events have previously been conducted, there should be no difficulty in complying with any conditions that might normally be attached and that there is therefore no reason why such conditions should not be attached.

7.3 CONDITIONS REGULATING HOURS

7.3.1 Conditions necessary to promote the licensing objectives

7.3.2 The hours at which licensable activities can take place might, as under the previous law relating to public entertainment, be regulated by licence conditions. Such conditions can be attached only if they are necessary to promote the licensing objectives. The particular licensing objectives that they may be considered necessary to promote are the objectives of prevention of crime and disorder (crime prevention objective) and/or the prevention of public nuisance. The times to which licensable activities are provided are unlikely to affect the licensing objectives of public safety and the prevention of harm to children. Although conditions regulating hours may be attached to licences where regulated entertainment and late night refreshment services are being provided, the need for such conditions is perhaps most likely to arise in connection with premises supplying alcohol.

Restrictions on hours for premises providing alcohol for consumption off the premises might be needed in some cases. The example given in the Guidance, para 6.3, is of shops that are known to be a focus for disturbance because youths congregate there and engage in nuisance and antisocial behaviour, including trying to pressurise shop staff to make unlawful sales of alcohol. Where representations are made by the police about applications for premises licences for such places, or in connection with existing licences, licensing authorities should consider a restriction on opening hours

12 For mandatory conditions, see ss 19–21 and 6.4.2–6.4.5 above.
as one mechanism of combating such problems. In general, however, conditions regulating hours are not likely to be needed in the vast majority of cases and para 6.2 of the Guidance recommends that premises should be able to sell alcohol during the hours in which they are normally open for trading:

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.

7.3.3 Where alcohol is supplied for consumption on the premises, the Guidance emphasises, in para 6.5, the need for flexibility in closing hours to reduce the concentrations of persons leaving licensed premises at or around the same time(s):

The Government strongly believes that fixed and artificially early closing times promote, in the case of the sale or supply of alcohol, 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, particularly between young men, 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.

The aim therefore should be to achieve a slower dispersal of people through longer opening times, and arbitrary restrictions that would undermine the principle of flexibility ought therefore to be avoided (Guidance, para 6.6). Such restrictions might take the form of ‘zoning’, that is, the setting of fixed trading hours within a designated area, or ‘staggered closing times’ with the setting of quotas for particular closing times (as where closing times of 11.00 pm, 12 midnight, 1.00 am, 2.00 am, 3.00 am, etc, may be allocated to particular premises). Both of these forms of fixed-hours restrictions are firmly rejected by the Guidance.13 Neither is seen as making any significant improvement in problems of crime and disorder or the prevention of public nuisance.14

13 Guidance, para 6.9 provides that: ‘Above all, licensing authorities should not fix predetermined closing times for particular areas.’ Paragraph 6.10 provides that: ‘Licensing authorities should also not seek to engineer “staggered closing times” by setting quotas for particular closing times.’

14 As regards zoning, this was attempted in Edinburgh for a period of 18 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 disorder and disturbance were noted following its removal’ (Guidance, para 6.7). As regards staggered closing times: ‘In the Government’s view, this would only serve to replace the current peaks of disorder and disturbance after 11.00 pm and after 2.00 am 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’ (Guidance, para 6.10).
Accordingly, in para 6.10 the Guidance promulgates the view that longer opening hours, with closing times determined by those operating licensed premises, are the best means of promoting 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.

7.3.4 Notwithstanding the expressed preference in the Guidance for flexible closing hours, it remains only guidance and it is not binding on licensing authorities. If authorities feel that a restriction on hours is necessary to prevent public nuisance or crime and disorder, they are free to impose one. It may perhaps be necessary, however, for flexible closing hours to be adopted in the first instance with a view to resolving difficulties. If authorities, when discharging their licensing function of imposing conditions on licences granted, have regard to the Guidance, as they are required to do by s 4(3)(b), it will be difficult to justify restricting hours without first having recourse to flexible hours to see whether these have any impact on the difficulties.

Whether any restriction on hours might be accompanied by a condition requiring consumption of alcohol to take place within a specified period of time is uncertain. In the absence of any such condition, it is unlikely that the restriction will have much effect. Under the previous law, there was a period of ‘drinking up’ time, specified in s 63(1) of the Licensing Act 1964, for the consumption of alcohol on licensed premises, which applied after the end of permitted hours. This operated automatically in all cases, but there is no comparable provision in the 2003 Act.15 Whilst hours at which alcohol may be sold can be restricted by conditions attached to the licence where this is necessary to promote the licensing objectives, if no condition requiring consumption within a specified period can be attached, this may well frustrate application of the hours condition and promotion of the licensing objectives. If large quantities of alcohol can be purchased before any restriction on hours becomes operative, but consumption can thereafter continue without any restriction on time, the condition restricting hours will in large measure be rendered nugatory. It is hard to imagine that this was the legislature’s intention and it is submitted that a condition requiring consumption within a (reasonable) specified period after a condition restricting hours becomes effective might justifiably be imposed. There is no reason why the period need be a uniform one, as under the previous law, and it may be reasonable to have variable periods depending on the nature, size or scale of licensable activities taking place.

7.3.5 Overriding of conditions on hours by licensing hours orders

The Act makes provision for the general relaxation of opening hours on special occasions by means of a licensing hours order made by the Secretary of State16 and in

15 As the Guidance, para 6.13 provides: “consumption” of alcohol is not a licensable activity … It is … permissible for premises to allow the consumption of previously purchased alcohol outside the hours authorised for the sale or supply of alcohol; and see 6.3.3 above.

16 Section 172(4) provides: ‘Before making an order under this section, the Secretary of State must consult such persons as he considers appropriate.’ This may perhaps envisage some form of consultation in all cases, since the provision contains no reference to the words ‘if any’ after ‘such persons’. Since any relaxation is most likely to arise in connection with the licensable activities of sale or supply of alcohol, those in the licensed trade would seem to be the most appropriate persons to be consulted.
these instances hours will be governed by those specified in the order and not by any conditions on hours that are attached to the premises licence or club premises certificate. These orders can be made by the Secretary of State for periods which mark occasions of exceptional international, national, or local significance and the relaxation in hours can be for periods of up to four days. The relaxation can be one having application generally throughout the country, which is likely to be the case for events of national or international significance, or only in particular areas, which will clearly be appropriate where an occasion is one only of exceptional local significance. Not only may orders make provision geographically, but they may also make different provision for different days during a relaxation period and different provision in respect of different licensable activities. Section 172(1)–(3) provides:

(1) Where the Secretary of State considers that a period (“the celebration period”) marks an occasion of exceptional international, national, or local significance, he may make a licensing hours order.

(2) A licensing hours order is an order which provides that during the specified relaxation period premises licences and club premises certificates have effect (to the extent that it is not already the case) as if specified times were included in the opening hours.

(3) An order under this section may—
(a) make provision generally or only in relation to premises in one or more specified areas;
(b) make different provision in respect of different days during the specified relaxation period;
(c) make different provision in respect of different licensable activities.

The scope of ‘special occasions’ under s 172 is likely to be narrower than under the previous law, by virtue of which the sale of alcohol could take place outside permitted hours under a special order of exemption (SOE). A SOE could be obtained in respect of occasions such as Bank Holidays and important wedding anniversaries, but it is not envisaged that orders will be made by the Secretary of State under s 172 in such instances. Paragraph 6.11 of the Guidance provides:

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

17 Section 172(5) provides:
In this section—
... “relaxation period” means—
(a) if the celebration period does not exceed four days, that period, or
(b) any part of that period not exceeding four days; and
“specified”, in relation to a licensing hours order, means specified in the order.

18 Section 172(5) provides:
In this section—
“opening hours” means—
(a) in relation to a premises licence, the times during which the premises may be used for licensable activities in accordance with the licence, and
(b) in relation to a club premises certificate, the times during which the premises may be used for qualifying club activities in accordance with the certificate ...
like Golden Wedding Anniversaries or 21st Birthday parties which take place at premises which do not have a premises licence or club premises certificate.

Rather it seems to be envisaged that orders under s 172 will be used in respect of future exceptional events which occur, but which have not been anticipated, for para 6.11 continues:

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.

SOEs under the previous law were confined to extending opening hours of premises for the sale of alcohol, but the power in s 172 is not so restricted. The Secretary of State is able to specify times for inclusion in the opening hours of premises for any of the licensable activities or qualifying club activities. It might be expected, however, that extensions in opening hours will most likely have application in respect of those selling or supplying alcohol.

The initiative for the making of an order may come from the Secretary of State, although it seems that any other person may approach the Secretary of State requesting an order. Given the requirement for consultation in s 172(4), if an approach is made, it will need to be made at least six months before the proposed relaxation of opening hours. It is likely, however, that the making of an order, whether in such cases or on the initiative of the Secretary of State, will be rare. The Guidance, in para 6.12, provides:

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. (Original emphasis)

7.4 CONDITIONS PROMOTING THE LICENSING OBJECTIVES

Apart from conditions regulating hours, any other conditions attached will have to be necessary to promote one or more of the licensing objectives. As indicated above, the Guidance contains, for each licensing objective, an Annex setting out ‘pools’ of conditions from which authorities might select when imposing a condition (see 7.2.3 above).

19 The power to make an order is subject to the ‘affirmative resolution procedure’, a draft of the statutory instrument has to be laid before and approved by a resolution of each House of Parliament: s 197(3)(d) and (4).
7.4.1 Prevention of crime and disorder

7.4.2 A potentially wide range of conditions might be attached in order to promote this licensing objective. As the Guidance states in para 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 pool of conditions will not therefore be able to cover every possible scenario and licensing authorities are advised to ‘look to the police as the main source of advice on these matters’.20

Whilst conditions seeking to promote this objective might be attached where any licensable activities are provided, they are more likely to be necessary for some licensable activities than others. They are perhaps unlikely to be required where entertainment, such as films and plays, takes place on premises, but they may well be needed for nightclubs and public houses providing late night alcohol and/or entertainment. The provision of close circuit television cameras (CCTV) is perhaps one of the most obvious conditions that might promote the crime prevention objective in such premises and, properly located inside and outside premises, CCTV may provide a significant deterrent to crime and disorder. Paragraph 7.25 of the Guidance states:

> 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 enable certain areas are properly covered and to ensure that there is no subsequent dispute over the terms of the condition.

A condition requiring the provision of CCTV may well be coupled with a condition requiring door supervision, which may reduce the potential for crime and disorder by seeking to prevent people who are drunk or underage (if access for children is restricted) from entering the premises.21 Similarly, a condition requiring that all glasses used on the premises for the sale of alcoholic drinks should be made of toughened glass or not allowing bottles to pass across a bar may help to prevent violence by denying assailants suitable weapons.22 Further, with a view to preventing recurrence of disorder if those responsible for causing it move on to other premises, a condition might be attached requiring communication links with local police stations to provide an early warning of potential disorder. Paragraph 7.29 of the Guidance provides:

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20 Guidance, para 7.21. Conditions should not, however, replicate licensing offences that are set out in the Act, eg by stating that a licence holder shall not permit drunkenness and disorderly behaviour on his premises (Guidance, para 7.24) nor prohibit the public display of indecent matter since such conduct is regulated by the Indecent Displays (Control) Act 1981 (Guidance, para 7.30). The position will be similar in respect of matters covered by other statutory provisions since one of the applicable general principles for the attaching of conditions is avoidance of duplication with other statutory provisions – see 7.2.2 above.

21 Where conditions relating to door supervision are attached to premises licences, s 20 requires that the licence must include a condition that individuals are licensed by the Security Industry Authority – see 6.4.5 above.

22 Guidance, para 7.27. This condition, although primarily focused on the prevention of crime and disorder, will also promote the licensing objective of public safety. It will minimise the damage done to victims when such assaults take place, because there will be no facial injuries resulting from broken glass.
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 all licensed premises and clubs.

Such a condition may be necessary and effective in some licensing authority areas, although less so in others. Much may depend on the views of the police and these, according to the Guidance, ‘should be given considerable weight’ (Guidance, para 7.29).

7.4.3 Whilst conditions such as those mentioned above may assist in preventing crime and disorder, maintenance of order on the premises will ultimately come down to the competency of the management team generally and the competency of the DPS, in particular, as the key person with responsibility for day to day management of the premises on which alcohol is sold or supplied. The premise on which the Act is based is that anyone who meets the qualifications for a personal licence is in principle a suitable person to run any premises where the sale or supply of alcohol takes place, whether this is a small off-licence or a large nightclub. Not surprisingly, therefore, para 7.28 of the Guidance indicates that authorities should not attach conditions concerning the DPS’s competence:

No conditions relating to the management competency of designated premises supervisors should normally be attached to premises licences ... 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.

Whilst the offences may ensure that prevention of disorder is kept in sharp focus, this does not necessarily mean that an unsuitable DPS will be able to prevent disorder from occurring. Whilst such a person may ultimately be replaced, this may do little to resolve difficulties in the interim period or prevent them recurring if another DPS is appointed who lacks experience of running the type of premises in question and who also turns out to be unsuitable. There must come a point when continuing difficulties with disorder on premises might justify the attachment of conditions relating to the competence of the DPS. This is recognised by para 7.28 of the Guidance:

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.

Attaching a condition, where there are continuing difficulties with premises, would not be straying outside licensing authorities’ powers and duties and this may well be an appropriate course on a review of the premises licence. The steps that a licensing
authority can take when determining an application for review include removal of the DPS and modification of the conditions of the licence (see s 52(4)(c) and (a) respectively). The premises licence might be permitted to continue in force with removal of an unsuitable DPS and a modification of the conditions so as to include one that the new DPS has some experience of running the type of premises in question.

### 7.4.4 Public safety

7.4.5 The public safety objective is concerned with the physical safety of the people using the relevant premises or place. Conditions should therefore be concerned with this and not public health, which is adequately dealt with in other legislation. Paragraph 7.32 of the Guidance states:

> 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 under 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.

Public safety may be affected by the fabric of the building or any installations in it and it was not uncommon for conditions to be attached to public entertainment licences requiring the submission of ‘safety certificates’ or ‘certificates of inspection’ for matters such as ceilings, electrical installations and boilers. Licensing authorities might continue to attach such conditions. The Guidance provides:

> 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 inspectors – 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.23

Conditions as to checks on the safety of electrical installations are, from a public safety perspective, particularly important for fire prevention, as will be a number of other conditions such as maintenance of fire fighting equipment, keeping fire exits

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23 Guidance, para 7.33. The way in which this paragraph is worded suggests that there can be conditions for checks on equipment where there is a requirement in other legislation for certificates to be possessed, but no indication is given as to whether there can be if there is no such requirement. There would seem to be no reason why conditions should not be attached in both instances if this is felt to be necessary to promote public safety.
unobstructed and the fire-retardant qualities of curtains and upholstery.\textsuperscript{24} The number of persons on the premises may also be important from a fire safety perspective since, if there is an excessive number present, persons will not safely be able to quickly disperse from the premises if evacuation were needed in the event of a fire.\textsuperscript{25} Excessive numbers may also affect public safety because of the risk of physical injury through crushing. Conditions might therefore be attached restricting numbers on the premises, so that there is a ‘safe capacity’ limit.\textsuperscript{26} In some instances, these may be unnecessary because there may be a fire certificate, which limits numbers, in respect of the premises, although 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. Where this is the case, licensing authorities should give particular weight to those representations (Guidance, para 7.34). Whether a capacity limit condition may be attached to any premises where licensable activities are taking place, or only where there are certain types of licensable activities, is likely to prove a contentious issue and is not a matter addressed by the Guidance.\textsuperscript{27}

7.4.6 Public safety may be affected not only by the fabric of the building or any installations in it, but also by the activities of those who are present on the premises. This is likely to have particular application in respect of nightclub premises and the use of drugs by some of those who frequent them. A key element of the strategy described in the ‘Safer Clubbing’ document produced by the Home Office in conjunction with the London Drug Policy Forum\textsuperscript{28} is the use of necessary and appropriate licensing conditions to control the environment at relevant premises. A checklist of the most important measures described in ‘Safer Clubbing’ is reproduced in Annex J to the Guidance.

Public safety will include the safety of all those who are permitted to come on to the premises. This will include persons with disabilities and, with a view to ensuring that operators cannot easily justify their exclusion, authorities ‘should guard against

\begin{itemize}
\item \textsuperscript{24} The 2003 Act will repeal the Cinematograph (Safety) Regulations 1955, which contained a significant number of regulations in respect of fire safety provision at cinemas. Licensing authorities and responsible authorities should therefore 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 that should be considered, as appropriate, when preparing a risk assessment to ensure necessary public safety from fire: Guidance, para 7.36. Regulations in respect of fire safety provision are reproduced as conditions on the premises licence when cinema licences are converted to premises licences under the transitional arrangements – see 13.3.4 below.
\item \textsuperscript{25} A Government spokesman, Lord McIntosh, disclosed during the course of the legislation’s passage that ‘in 2001 there were over 1,500 fires in pubs and clubs in England and Wales’: HL Deb, vol 650, col 1050, 3 Jul 2003.
\item \textsuperscript{26} Capacities attached to premises licences may in certain circumstances also be necessary in preventing crime and disorder, as overcrowded venues can increase the risks of disorder as crowds become frustrated and hostile: Guidance, para 7.30.
\item \textsuperscript{27} Paragraph 7.34 provides: ‘“Safe capacities” should only be imposed where necessary for the promotion of public safety or the prevention of disorder on the relevant premises.’ The types of licensable activities for which a capacity limit condition might be imposed has been considered earlier – see 4.2.3 above.
\item \textsuperscript{28} This document updates the ‘Dance Till Dawn Safely’ Guide produced in 1996 by the London Drug Policy Forum, ‘which proved an extremely useful document for licensing officers, club managers and promoters’ (Guidance, para 7.57). 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.
\end{itemize}
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'. An example is given in the Guidance of a condition which states 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’. Such a condition, states para 7.9, ‘can be ambiguous and be used to justify exclusion and may be ultra vires’ and conditions should therefore be ‘positively worded and assume the presence of people with disabilities’.

### 7.4.7 Prevention of public nuisance

Public nuisance is where conduct materially affects the reasonable comfort and convenience of life of a section of the public, essentially those who are in ‘the neighbourhood’ (see 4.2.6 above). A judgment will therefore have to be made by responsible authorities when making relevant representations and by the licensing authority when considering them on what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences and club premises certificates, to prevent it. This will mean focusing on the impact of the licensable activities at the specific premises on people living and working in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter (Guidance, para 7.39). As regards noise, perhaps the most likely cause of a public nuisance, conditions will normally concern steps necessary to control the levels of noise emanating from premises. Noise often concerns loud music, which 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. Accordingly, conditions to prevent this could focus on these sensitive periods if steps to control the level of noise are considered to be necessary only at particular times of the day rather than at all times. The steps required may vary in terms of sophistication and expenditure required. In some instances, relatively simple preventative requirements, such as ensuring that doors and windows are kept closed after a particular time in the evening, may suffice, whereas in other cases sound-level inhibitors on amplification equipment or sound proofing may be necessary. Conditions relating to noise nuisance, however, may in certain circumstances not be necessary where the provisions of the Environmental Protection Act 1990 and the Noise Act 1996 adequately protect those living in the vicinity of the premises in question (Guidance, para 7.42).

Conditions relating to noise can, of course, extend to matters other than music and might include, for example, any disturbance in the immediate vicinity of the premises occasioned by customers entering and leaving the premises. A condition might be included requiring the licence holder to display notices near to the exits and in

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29 Guidance, para 7.8. The paragraph goes on to provide: ‘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.’

30 Guidance, paras 7.41 and 7.39. The conditions ‘should be tailored to the style and characteristics of premises and the type of activities expected to take place there’ (Guidance, para 7.41).
adjacent car parks requesting customers to leave as quietly as possible.31 The Guidance, para 7.45 provides:

it would be perfectly reasonable for a licensing authority to impose a condition following relevant representations from a responsible authority or interested party that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night.

Such a condition is focused on the behaviour of customers within the immediate vicinity of the premises, where it is within the direct control of the licence holder, but the Guidance provides that conditions should not seek to regulate conduct outside this area:

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.32

7.4.8 Protection of children from harm

7.4.9 Conditions restricting or prohibiting entry

Conditions restricting or prohibiting the entry of children to premises where licensable activities are taking place should be attached only where ‘the 2003 Act itself imposes such a restriction or there are good reasons to restrict entry or to exclude children completely’.33 Instances of where there may be such reasons are provided in the Guidance.34 In some cases, these relate to a particular reputation that the premises may have acquired (for example, for underage drinking or drug taking or dealing) or the nature of other activities taking place on the premises (for example, where there is a strong element of gambling). In other cases, these relate to the nature of the licensable activity itself that is taking place (or one of the licensable activities), as where entertainment of an adult nature is provided.

If activities take place only at certain times, it will only be necessary for conditions to restrict entry at these times. Paragraph 7.51 of the Guidance gives the example of

31 Condition 18(b) of the Model National Standard Conditions for Places of Public Entertainment, op cit, fn 11, provides: ‘If required, clearly legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and area quietly.’

32 Guidance, para 7.45. The extent to which this view might represent any change from the previous law, set out in Lidster v Owen [1983] 1 WLR 516, is considered at 4.2.8–4.2.10 above.

33 Guidance, para 7.49, which goes on to provide: ‘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.’

34 See para 7.50. Most of these instances are also specified in para 3.37 – see 4.2.15 above. The Guidance (para 7.53) goes on to provide that 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’.
premises operating as a café bar during the day providing meals for families, but also providing entertainment with a sexual content after 8.00 pm. In such a case, conditions need only restrict entry after 8.00 pm. Similarly, gambling may take place in part of a leisure centre, but not in other parts of those premises (Guidance, para 7.51). In this instance, conditions need only restrict entry to those parts of the premises where gambling is taking place. In other circumstances, conditions may require age limitations, adult supervision (for example, 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 (Guidance, para 7.52).

7.4.10 Film exhibitions

A condition restricting the admission of children to film exhibitions has for many years been attached to film exhibition (or cinema) licences and, under s 20 and s 74, such a condition must be imposed on premises licences and club premises certificates where these authorise the exhibition of films (see 6.4.4 above and 8.4.2 below respectively). The condition will include a requirement to adhere to either the age-restriction recommendations of the British Board of Film Classification or to similar classifications imposed by local authorities themselves. Most local authorities have included a condition that films should be exhibited in accordance with age classification certificates issued by the Board, a non-statutory body set up originally by the film industry and which, as such, has no statutory powers to regulate the showing of films. The regulatory powers are vested in local authorities through the issuing of licences and for this reason authorities can, and sometimes do, adopt their own classification of films. Where an authority adopts this latter approach, para 7.55 of the Guidance recommends that a condition makes provision for submission for classification 28 days ahead of the first showing:

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 to classify it and advise the licence holder or club of the age restrictions that will apply in that instance.

Films would normally be classified by the Board or the local authority in the following way (Guidance, para 7.56):

- **U** – Universal. suitable for all.
- **PG** – Parental Guidance. some scenes may be unsuitable for young children.

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35 The Guidance, para 7.54 states that a condition must be included ‘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’.

36 The Guidance, para 7.60, however, discourages authorities from adopting this course:

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.
• 12A – Passed only for viewing by unaccompanied 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.

The particular conditions that might be attached in order to give effect to these age classifications will be a matter for the authority to decide, although the Guidance provides an example of the type of condition that might be attached:

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.37

7.4.11 Theatrical performances

Unlike film exhibitions, there is no classification system for theatrical performances and the admission of children to them is not usually restricted. Admission of children to such performances should normally be left to the discretion of the licence holder and no condition restricting access should be attached. However, theatres 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 specifically for children may also be presented at theatres and it may be necessary to consider whether a condition should be attached requiring the presence of a sufficient number of adult staff on the premises to ensure the well being of the children during any emergency (Guidance, para 7.59).

37 Guidance, para 7.57. 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: Guidance, para 7.58.
7.5 Restrictions on applications of conditions in small premises providing music and dancing

7.5.1 Introduction

A particularly contentious issue during the course of the legislation’s passage was the threat posed to the performance of music in small public houses and similar premises by the need for the entertainment to be licensed. There was apprehension, notably on the part of the Musicians’ Union, that those running such premises might be reluctant to allow entertainment to take place if a range of conditions might be imposed with the licensing of the entertainment. Under the previous law there was a limited exemption from the need to obtain a public entertainment licence where recorded music was played or live music was performed by not more than two performers on premises licensed for the sale of alcohol. This exemption, contained in s 182 of the Licensing Act 1964 (see 13.2.5 below), was removed by the 2003 Act, but amendments restricting the application of conditions on premises licences where there was live music (and dancing) on small premises were incorporated at a late stage as the Bill was nearing the completion of its passage. These amendments represented a compromise measure after an impasse was reached between the House of Lords and the House of Commons over a proposed exemption for small premises, which the former was keen to promote, but the latter was not prepared to accept. The compromise provision, to which the Government acceded with some reluctance as the Parliamentary session was drawing to a close, became s 177 of the Act and took the form of restrictions on the conditions that could be imposed.

7.5.2 Restrictions for small premises

Small premises are ones where there is a premises licence or CPC authorising ‘music entertainment’ and which have a permitted capacity of less than 200 persons. Although s 177 refers to ‘music entertainment’, this term is defined in s 177(8) so as to

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38 Section 177(7) provides: ‘This section applies in relation to a club premises certificate as it applies in relation to a premises licence …’

39 Reference to a capacity of 200 persons is contained in s 177(1)(b)(iii) and s 177(3)(b), each of which relates to different types of premises and the provision of different facilities – see 7.5.4 and 7.5.6 below. Determination of capacity is by reference to any limit imposed under a fire certificate or any recommendation made by the fire authority. Section 177(8) provides:

In this section –

“permitted capacity”, in relation to any premises, means–

(a) where a fire certificate issued under the Fire Precautions Act 1971 (c.40) is in force in respect of the premises and that certificate imposes a requirement under section 6(2)(d) of that Act, the limit on the number of persons who, in accordance with that requirement, may be on the premises at any one time, and

(b) in any other case, the limit on the number of persons who may be on the premises at any one time in accordance with a recommendation made by, or on behalf of, the fire authority for the area in which the premises are situated (or, if the premises are situated in the area of more than one fire authority, those authorities) …

Where there is no fire certificate imposing a limitation, applicants should conduct their own risk assessment as to the appropriate capacity of the premises and send their recommendation to the fire authority who will consider it and then decide what the “permitted capacity” of those premises should be: Guidance, para 7.35. Presumably, it will be necessary for operators who wish to take advantage of the provision in s 177 to include a numbers limitation in their operating schedule so that the licensing authority is aware that the restrictions on conditions will apply.
include not only the performance of live music, but also the provision of facilities enabling persons to take part in making music and the performance of dance (but not the provision of facilities enabling persons to take part in dancing). The premises are thus ones where the performance of music and/or dancing takes place and/or where music facilities are provided through the making available for use of musical instruments, for example, a piano in a public house for use by customers. ‘Music entertainment’, in short, might conveniently be described as ‘live music and dancing’. Section 177(8) provides:

In this section—

... “music entertainment” means—

(a) entertainment of a description falling within, or of a similar description to that falling within, paragraph 2(1)(e) or (g) of Schedule 1, or

(b) facilities enabling persons to take part in entertainment within paragraph (a) ...

The restrictions are on the application of conditions relating to ‘music entertainment’ that will take effect, for, when such activities are taking place, not all conditions on the premises licence or CPC relating to live music and dancing will apply. The conditions contained in the operating schedule will always apply, but not all conditions that have been imposed by the licensing authority (‘licensing authority imposed conditions’) will be operative. Conditions imposed by the licensing authority will be ones imposed in contested cases, following relevant representations, on the grant or variation of a premises licence or CPC, or on a review of the licence or certificate (whether or not following a closure order made in respect of the premises). They also include the mandatory condition that door supervisors are licensed by the Security Industry Authority, where a condition requiring door supervisors is included in the premises licence or CPC. Section 177(8) provides:

In this section—

“licensing authority imposed condition” means a condition which is imposed by virtue of section 18(3)(b) (but is not referred to in section 18(2)(a)) or which is imposed by virtue of 35(3)(b), 52(3) or 167(5)(b) or in accordance with section 21 ...

The restrictions on the application of licensing authority imposed conditions (LAI conditions) relating to live music and dancing are either that only conditions imposed to meet certain of the licensing objectives will have effect or that no conditions at all shall have effect, although in the case of a review the licensing authority can disapply s 177 so that any condition imposed on review can have effect in relation to small premises. Whether only some conditions have effect or no conditions at all have effect depends on the nature of the entertainment and the premises on which it is taking place. Three matters therefore require consideration: first, the cases when only some

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40 Section 177(7) provides:

This section applies in relation to a club premises certificate as it applies in relation to a premises licence, except that, in the application of this section in relation to such a certificate, the definition of “licensing authority imposed condition” in subsection (8) has effect as if for ‘section 18(3)(b)’ to the end there were substituted ‘section 72(3)(b) (but is not referred to in section 72(2)) or which is imposed by virtue of section 85(3)(b) or 88(3)’.
conditions have effect; secondly, the cases when none have effect; and, thirdly, when (on review) any condition might have effect.

### 7.5.3 Some but not all licensing authority imposed conditions having effect

7.5.4 Where a premises licence or CPC authorises the sale of alcohol for consumption on the premises and the provision of live music or dancing, and where the premises are used primarily for the consumption of alcohol on the premises, and where the premises have a capacity limit of up to 200, any conditions relating to the provision of the live music and dancing imposed on the licence by the licensing authority as being necessary for public safety or the prevention of crime and disorder will have effect (in addition to those contained in the operating schedule). Any conditions relating to the provision of the live music and dancing imposed on the licence by the licensing authority as being necessary for the prevention of public nuisance or the protection of children from harm, however, will not apply. Section 177(1) and (2) provides:

1. Subsection (2) applies where—
   1. a premises licence authorises—
      1. the supply of alcohol for consumption on the premises, and
      2. the provision of music entertainment, and
   2. the premises—
      1. are used primarily for the supply of alcohol for consumption on the premises, and
      2. have a permitted capacity of not more than 200 persons.

2. At any time when—
   1. the premises—
      1. are open for the purposes of being used for the supply of alcohol for consumption on the premises, and
      2. are being used for the provision of music entertainment, and
   2. subsection (4) does not apply,

any licensing authority imposed condition of the premises licence which relates to the provision of music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within subsection (5) or (6).

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41 Section 177(8) provides: “"supply of alcohol" means—
(a) the sale by retail of alcohol, or
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.”

42 Sub-section (6) makes provision for the licensing authority to disapply s 177 in cases of a review, so that any condition imposed on review can have effect in relation to small premises – see 7.5.7.
Sub-section (5) restricts the application of conditions to those imposed by the licensing authority as being necessary for public safety or the prevention of crime and disorder and provides:

A condition falls within this subsection if the premises licence specifies that the licensing authority which granted the licence considers the imposition of the condition necessary on one or both of the following grounds—

(a) the prevention of crime and disorder,
(b) public safety.

7.5.5 These restrictions, under s 177(1)(b)(i), will apply only where the premises are used ‘primarily for the supply of alcohol for consumption on the premises’. The question of ‘primary use’ has been considered earlier (see 6.1.7 and 6.3.1 above) and the effect of this requirement is that application of these restrictions, in the main, will be confined to public houses and similar premises. The provisions appear not to apply to nightclubs, as such premises seem to be used primarily for music and dancing rather than for the consumption of alcohol on the premises. Further, the restrictions will apply, under s 177(2), only where the premises are open for the supply of alcohol and are being used for the provision of live music and dancing, and when ‘subsection (4) does not apply’. Sub-section (4), as will be seen, covers cases where, during the hours of 8.00 am to midnight, the premises are being used for the provision of live unamplified music, but not for any other description of regulated entertainment (see 7.5.7 below). The restrictions in s 177(5) will therefore apply in all instances falling outside sub-s (4). These will include not only all live amplified music, but also any live unamplified music falling outside the hours of 8.00 am until midnight and any live unamplified music during those hours where any other description of regulated entertainment is also taking place.

7.5.6 No licensing authority imposed conditions having effect

Where a premises licence or CPC authorises the provision of live music and dancing and the premises have a capacity limit of 200, then, during the hours of 8.00 am and until midnight, if the premises are being used for the provision of live unamplified music, but no other description of regulated entertainment, any LAI conditions will not apply. The only conditions that will apply will be those contained in the operating schedule. Section 177(3) and (4) provides:

(3) Subsection (4) applies where—
(a) a premises licence authorises the provision of music entertainment, and
(b) the premises have a permitted capacity of not more than 200 persons.

(4) At any time between the hours of 8 a.m. and midnight when the premises—
(a) are being used for the provision of music entertainment which consists of—
(i) the performance of unamplified, live music, or
(ii) facilities for enabling persons to take part in entertainment within sub-paragraph (i), but
(b) are not being used for the provision of any other description of regulated entertainment,
any licensing authority imposed condition of the premises licence which relates to the provision of the music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within subsection (6).

No LAI conditions apply in these circumstances because of the absence of any reference (in s 177(4)) to conditions falling within sub-s (5) (which provides for the application of conditions imposed by the licensing authority as being necessary for public safety or the prevention of crime and disorder – see 7.5.4 above). The only reference is to a condition that ‘falls within subsection (6)’, which means that LAI conditions can have application only on a review. For LAI conditions not to apply, the requirements of s 177(4) will have to be met. There are two requirements. The first is that the premises are being used either for the performance of unamplified live music or there is provision at the premises of facilities for enabling persons to take part in entertainment comprising such a performance (for example, a piano that customers can play). The second is that the premises are not being used for the provision of any other description of regulated entertainment. This will mean that the requirements will not be met at any premises at which other activities (for example, dancing) take place at the same time as the unamplified live music, so consequently nightclubs will fall outside the scope of these provisions.

7.5.7 Discretion for any licensing condition having effect on review

Although LAI conditions on a grant or variation apply either only in part or not at all to small premises (as indicated in the two preceding sections), any LAI conditions on review might have application. Such conditions, whether new ones added or existing ones altered, will apply unless the condition includes a statement that s 177 does not apply to the condition. Section 177(6) provides:

A condition falls within this subsection if, on a review of the premises licence—

(a) it is altered so as to include a statement that this section does not apply to it, or
(b) it is added to the licence and includes such a statement.

The ‘default position’ therefore is that all LAI conditions on review relating to the provision of the live music and dancing will not have application. They will only have application if the condition specifically disapplies s 177, that is, provides that the restrictions on LAI conditions contained in s 177 do not have effect. Where the condition includes a statement that s 177 does not apply, the altered or added condition will be outside the exemption and will therefore have application.
CHAPTER 8

CLUBS AND CLUB PREMISES CERTIFICATES

8.1 THE NATURE AND TYPES OF CLUBS

8.1.1 There is no one universal statutory definition or generally understood meaning of the term ‘club’. As the Report of the Departmental Committee on Liquor Licensing in 1972 observed: ‘The word has a range of meanings, and precise definitions tend to be left to legislation dealing either with the criteria which have to be met by clubs for particular purposes or with specific club activities.’ Nevertheless, as Lord Denning MR stated in the Court of Appeal Tehrani v Rostron [1971] 3 All ER 790, 793: ‘The word “club” … has a meaning well understood in the law. It denotes a society of persons associated together for the promotion of some common object or objects, such as social intercourse, art, science, literature, politics or sport. In law, it is also well known that a “club” may be one of two kinds: a members’ club or a proprietary club.’ Clubs invariably have a membership fee and in the case of a members’ club the group of persons subscribe to a common fund for the benefit of the members and in the proprietary club they subscribe for the benefit of an individual or body (the proprietor).

In each of these two types of clubs, the nature of the relationship between members and the club differs and this affects the nature of the transaction when members obtain alcohol from the club. In proprietary clubs, members will have a contractual right to use the club by virtue of payment of their subscriptions to the proprietor and there will be a sale by retail of alcohol to members when a purchase is made, in much the same way as alcohol is bought in a public house. But in members’ clubs, members will be able to use the club by virtue of property rights because payment of their subscriptions will give them a joint share in the club property, which will include the club’s stock of alcohol, and no ‘sale’ of alcohol to members is regarded as taking place. Rather there is a ‘supply’ to members, that is a release to them of their property rights in the alcohol. In Graff v Evans (1882) 9 QBD 373, where the matter first seems to have been considered, the Divisional Court held that where the manager of a bona fide club supplied a member with a bottle of whisky and a bottle of beer for consumption off the premises no offence of a ‘sale by retail’ of intoxicating liquor without a justices’ licence was committed. Field J stated (at 378):

Did Graff, the manager, who supplied the liquors to Foster [the member], effect a sale by retail? I think not. A sale involves the element of a bargain. There was no bargaining here, nor any contract with Graff with respect to the goods. Foster … as a member of the club … became entitled to have ale and whisky … supplied to him as a member at a certain price. There was no contract between two persons, because Foster was a vendor as well as a buyer … Foster was as much a co-owner as a vendor. I think it was a transfer of a special property in the goods to Foster, which was not a sale …

Courts have routinely followed this approach ever since, although it is regarded as anomalous in respect of the law on the sale of goods (see Benjamin’s Sale of Goods, 6th

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1 Cmd 5154, 1972, para 16.03. The Report is usually referred to as the Erroll Report after the name of the Committee’s chairman, Lord Erroll of Hale.
Nevertheless, at least for the purposes of licensing legislation, it is well established that in members’ clubs there is a ‘supply’ of alcohol to members and not a ‘sale’. The different nature of the relationship is conveniently summarised in the following passage from the *Report of the Departmental Committee on Liquor Licensing*, Cmnd 5154, 1972, para 1.30:

Proprietary clubs are clubs in which the premises and stock belong to a proprietor or group of proprietors. If the stock of liquor belongs to the proprietor, a “sale” takes place when a member orders and pays for a drink ... In the case of “members” clubs, all the property, including the stock of liquor, belongs to the members jointly, and when a member obtains liquor, even on payment, the position is that a “supply” rather than a sale takes place.²

8.1.2 Under the previous law, contained in the Licensing Act 1964, supply of alcohol in members’ clubs would normally be made under a club registration certificate obtained under s 40 from the magistrates' court³ (although provision was made in s 55 for a club to obtain a justices’ licence for the club premises where the requirements for registration were not met, for example, because the club did not have 25 or more members, which was a requirement under s 41(2)(a)).⁴ Section 39(1) provided that no intoxicating liquor could be ‘supplied by or on behalf of a club to a member or guest’ unless the club was registered (that is, had a registration certificate) or had a justices’ licence. Thus not only was there a ‘supply’ to the member when he obtained alcohol from the club, but also a supply to the member’s guest if the member obtained alcohol for the guest. There was no release to the guest of proprietary rights since the guest had no joint share in the club property, but supply to a guest was seen as part of the transaction between the club and the member. There also seems to have been a ‘supply’ to the guest under s 39(1) in cases where the member did not obtain alcohol for the guest, but the guest purchased alcohol on his own behalf (where club rules allowed for this). No such authorisation was provided by s 49(1), which enabled the sale of intoxicating liquor in registered clubs where ‘the rules of the club provide for the admission to the premises of persons other than members and their guests and for the sale of intoxicating liquor to them by or on behalf of the club for consumption on the premises’. Since the sale to ‘them’ was to persons other than members and their guests, sale of alcohol to guests was not authorised by s 49(1) and it seems to be s 39(1) that provided the authorisation for the sale.

Under the 2003 Act, members’ clubs can obtain a CPC, which has replaced (but has broadly similar requirements to) the club registration certificate, or a premises licence, where the requirements for a CPC are not met. Section 1(2) specifies the ‘qualifying

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² See also Guidance, para 9.3, which states: ‘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.’

³ Common examples of clubs that operated under a registration certificate included Labour, Conservative and Liberal Clubs; the Royal British Legion and other ex-services clubs; working men’s clubs and various sports clubs, such as rugby and cricket clubs.

⁴ Historically, clubs, in order to sell or supply alcohol, needed a justices’ licence to do so, but provision for registration of clubs was made by the Licensing Act 1902, provided certain conditions were met. The conditions for registration were set out in s 41 of the Licensing Act 1964 and are in large measure replicated in the 2003 Act for the granting of club premises certificates (CPCs) – see 8.2.7–8.2.18 below.
club activities’ that can be carried on under a CPC as the ‘supply’ of alcohol to a member, ‘the sale by retail’ of alcohol to a guest of a member and the provision of regulated entertainment for a member and guest (see 8.2.2 below). By specifying a sale by retail of alcohol to a guest, it is clear that under the 2003 Act guests of members can purchase alcohol on their own behalf in members’ clubs.5

Members’ clubs with a registration certificate were in a privileged position under the 1964 Act and continue to be so under the 2003 Act if they obtain a CPC. The benefits associated with a CPC include an exemption from the requirement for any member or employee to hold a personal licence to supply or sell alcohol to members and guests and the absence of any requirement to specify a designated premises supervisor.6 This reflects the fact that clubs are essentially private premises to which public access is restricted and accordingly they are, in the words of Lord Davies, a Government spokesman in the House of Lords during the report stage of the Bill, ‘subject to a different regime with lighter controls’ (HL Deb, vol 645, col 482, 27 February 2003).

These benefits accrue only if certain conditions are met, so that the club is a ‘qualifying club’, entitling it to obtain a CPC. Most members’ clubs will be a ‘qualifying club’ and can obtain a CPC,7 but these conditions are unlikely to be met by proprietary clubs.8 Proprietary clubs will require a premises licence, for which there will need to be a designated premises supervisor (DPS) holding a personal licence and all supplies of alcohol will need to be made by or under the authority of a personal licence holder (see 6.4.2 above). The distinction between proprietary clubs and members’ clubs, which was important under the 1964 Act, therefore continues to be of enduring importance under the 2003 Act.

5 The 2003 Act uses the expression ‘supply of alcohol to members or guests’ as a composite description of supply to members and sale by retail to guests. For the purposes of Pt 4 of the Act, which makes provision for clubs, s 70 provides:

“supply of alcohol to members or guests” means, in the case of any club—
(a) the supply of alcohol by or on behalf of the club to, or to the order of, a member of the club, or
(b) the sale by retail of alcohol by or on behalf of the club to a guest of a member of the club for consumption on the premises where the sale takes place

and related expressions are to be construed accordingly.

6 Guidance, para 9.4. The benefits also include more limited rights of entry for the police and authorised persons, not being subject to police powers of instant closure on grounds of disorder and noise nuisance, 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. However, the previous benefit of being able to sell alcohol to children for consumption on the club premises no longer applies: Guidance, para 9.7.

7 Whilst a qualifying club can operate under a CPC, it is not precluded from obtaining a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public: Guidance para 9.6.

8 It is not impossible for a proprietary club to meet the conditions and it depends on the proprietary element. The conditions include whether the club is conducted in good faith (s 63) and this might still be the case even if a person makes a profit out of the general running of the club, although the extent of the gain is clearly relevant in determining whether it is conducted in good faith.
8.2 CLUB PREMISES CERTIFICATES FOR QUALIFYING CLUBS

8.2.1 Club premises certificates

8.2.2 A CPC is defined by s 60, which provides:

(1) In this Act “club premises certificate” means a certificate granted under this Part–
(a) in respect of premises occupied by, and habitually used for the purposes of, a club,9
(b) by the relevant licensing authority,10 and
(c) certifying the matters specified in subsection (2).

(2) Those matters are–
(a) that the premises may be used by the club for one or more qualifying club activities specified in the certificate, and
(b) that the club is a qualifying club in relation to each of those activities (see section 61).

The CPC will thus certify that the premises may be used for one or more ‘qualifying club activities’ and these are set out in Part 1 of the Act in s 1(2) as follows:

(a) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club,
(b) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place, and
(c) the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests.11

The supply of alcohol to members under para (a) can be the only ‘qualifying club activity’ (if no entertainment is provided) because club rules may provide that there can be no retail sale to guests, that is drinks can be purchased only by members. However, the sale by retail of alcohol to guests of members clearly cannot be the only ‘qualifying club activity’. It can subsist, assuming club rules allow for a sale to guests, as a ‘qualifying club activity’ only in conjunction with a supply to members. Guests can purchase alcohol only if introduced or admitted to the club by a member and cannot do so in their own right, so if the CPC does not make provision for alcohol to be supplied to members, there can be no provision for it to be sold to guests. Thus para (a) can exist as the sole ‘qualifying club activity’, but paras (a) and (b) can exist only in conjunction with each other. Paragraph (c) can also be the sole ‘qualifying club activity’.

9 This mirrors the definition of ‘club premises’ previously contained in s 39(6) of the Licensing Act 1964. However, as in the case a premises licence, a CPC can be obtained in respect of any premises as defined in s 193, ie, any place or a vehicle, vessel or moveable structure – see 6.1.2–6.1.6 above.

10 Section 68(1) provides that the ‘relevant licensing authority’ in relation to any premises is determined in accordance with this section. The relevant licensing authority will be ‘the authority in whose area the premises are situated’ (s 68(2)), except where the premises are situated in the areas of two or more licensing authorities, in which case it is ‘the authority in whose area the greater or greatest part of the premises is situated’ (s 68(3)(a)). If there is no such authority, it is the authority nominated by the applicant (s 68(3)(b) and s 68(4)). This provision is more or less identical to the provision in s 12 in respect of premises licences – see 6.3.1 above.

11 Qualifying club activities extend only to the sale or supply of alcohol and the provision of regulated entertainment. The provision of late night refreshment for members and guests is an ‘exempt supply’ under Sched 2, para 3(2) and no authorisation for this activity is needed.
activity’ or equally it can exist either with para (a) or with paras (a) and (b). In many instances, the ‘qualifying club activities’ are likely to comprise all of the three activities in s 1(2).

8.2.3 With regard to the sale of alcohol to or the provision of entertainment for guests of members, this is not confined to guests of members of the particular club as the Act provides that references to a guest of a member of a club includes references to an ‘associate member’ of a club and a guest of such a member. Section 67 provides:

1. Any reference in this Act (other than this section) to a guest includes a reference to–
   (a) an associate member of the club, and
   (b) a guest of an associate member of the club.

2. For the purposes of this Act a person is an “associate member” of a club if–
   (a) in accordance with the rules of the club, he is admitted to its premises as being a member of another club, and
   (b) that other club is a recognised club (see section 193).

Section 193 provides that a ‘recognised club’ means ‘a club which satisfies Conditions 1–3 of the general conditions in section 62’. These general conditions (of which there are five) are ones that need to be met if a club is to be a ‘qualifying club’ enabling it to obtain a CPC. These are set out in the following section of this chapter and Conditions 1–3 relate to admission to club membership, admission to the privileges of membership and the club being conducted in good faith (see 8.2.7–8.2.15 below).

8.2.4 This provision is clearly designed to ensure continuation of the reciprocal arrangements whereby members of one club can obtain admission to another associated or affiliated club, as where clubs are part of the Club & Institute Union. However, confining admission to associate members and guests, as defined, seems to narrow the category of persons who might obtain admission in two respects. First, under s 49(3) of the Licensing Act 1964 a magistrates’ court could impose conditions on a registered club restricting sales of liquor to persons who were not members of the club or guests, but by s 49(4) could not impose a condition preventing sale to persons who were members of another club if:

   (a) the other club is registered in respect of premises in the locality which are temporarily closed; or
   (b) both clubs exist for learned, educational or political objects of a similar nature; or
   (c) each of the clubs is primarily a club for persons who are qualified by service or past service, or by any particular service or past service, in Her Majesty’s forces and are members of an organisation established by Royal Charter and consisting wholly or mainly of such persons; or
   (d) each of the clubs is a working men’s club (that is to say, a club which is, as regards its purposes, qualified for registration as a working men’s club under the Friendly Societies Act 1896 and is a registered society within the meaning of that Act or of the Industrial and Provident Societies Act 1893).

Members of these clubs could thus be admitted and purchase alcohol under the previous law, but may no longer be able to do so unless their club is either a qualifying
club or a recognised club meeting general conditions 1–3 for a qualifying club. Secondly, if the rules of a registered club provided for the admission of persons other than members and guests and for the sale of liquor to them for consumption on the premises, s 49(1) permitted liquor to be sold to those persons under the authority of the registration certificate without the need for a justices’ licence. Obviously excessive use could not be made of this provision, otherwise the club would cease to be bona fide, but it did enable sales to be made on occasions to persons who were ‘visitors’ to the club. Such occasions might include when sports teams were visiting the club, when a golf club permitted members of the public to play rounds of golf on payment of a green fee, or when corporate events were held on club premises. They might also include sales in student union bars, which were operated as clubs, to holders of National Union of Student cards from institutions where the bar was not operated as a club but under an ordinary justices’ on-licence.

Since supply and sale of alcohol under a CPC can be made only to club members and guests, or associate members and guests, it seems doubtful whether sales can be made under the authority of the CPC to ‘visitors’ such as those mentioned above. It is possible, however, that sales might be made to ‘visitors’, depending on how the expression ‘guest’ is interpreted. It might be interpreted to mean not only a guest of a member of the club, but also a guest of the club itself, in which case ‘visitors’ might be admitted as a guest of the club. This appears to leave open the possibility that ‘guests’ may also include guests of the club, as well as guests of members of the club. Further, s 67(1) states that ‘reference in this Act … to a guest of a member of a club includes a reference to an associate member of the club and a guest of an associate member (see 8.2.3 above) and use of the word ‘includes’ might indicate that this is not comprehensive. Guests might therefore encompass persons other than those to whom reference is made (associated members and their guests) and could include guests of the club.

Nevertheless, there are two compelling reasons against the view that ‘guests’, in s 61(2) and s 67(1), might include guests of the club. First, the 2003 Act provides a definition of the expression ‘supply of alcohol to members or guests’ that appears in s 61(2). Section 70, which applies for the purposes of Pt 4 of the Act and which makes reference only to a guest of a member of the club, provides:

In this Part–

...
“supply of alcohol to members or guests” means, in the case of any club—

(a) the supply of alcohol by or on behalf of the club to, or to the order of, a member of the club, or

(b) the sale by retail of alcohol by or on behalf of the club to a guest of a member of the club for consumption on the premises where the sale takes place,

and related expressions are to be construed accordingly.

Thus, although s 61(2) does not make it explicit that ‘guests’ have to be guests of members of the club, this is made explicit, in relation to ‘guests’, by s 70(b). As regards s 67(1), the reference to ‘includes’ might easily be explained on the basis that the section is giving an extended meaning, beyond its normal meaning, to the expression ‘guest of a member of a club’. Thus the expression, in relation to a particular club, covers not only a guest of a member of the club (normal meaning), but also an associate member or his guest (extended meaning). If the provision in s 67(1) is read as giving an extended meaning, the reference to ‘includes’ will not extend beyond the specific instances mentioned, that is an associate member or his guest, and will not include guests of the club itself. This seems to be the more natural meaning of ‘guest of a member of a club’ in s 67(1), having regard to the wording, and does not involve ‘reading in’ to the section any other categories of ‘guest’.

Secondly, there was no suggestion under the previous law that ‘guests’ included guests of the club and that such guests could be supplied with alcohol. The Licensing Act 1964 used the same wording of ‘member or guest’ (for example, in s 39) and ‘guests’ was understood to mean only guests of members of the club. Indeed, this is apparent from s 49(1), which enabled intoxicating liquor, where club rules provided for the admission to the premises of ‘persons other than members and their guests’ (emphasis supplied), to be sold to such persons. There is a presumption, when interpreting statutes, that a statutory provision is not intended to make changes in the existing law beyond those expressly stated or arising by necessary implication from the language of the statute. There is an expressly stated change in that s 67(1) extends the meaning of ‘guest of a member of a club’ to include an associate member or his guest; but extension beyond this to also include a guest of the club does not seem to arise by necessary implication from the language of the 2003 Act. Further, if recourse is had to extrinsic material in the form of the Guidance and the White Paper as an aid to interpreting the 2003 Act, there is nothing to indicate any intended change of meaning in the term ‘guest’. Indeed, the Guidance, in para 9.10, when making reference to qualifying clubs admitting members and guests from another qualifying club (as associate members and their guests) states only that: ‘This reflects traditional arrangements where such clubs make their facilities open to members of other clubs which operate reciprocal arrangements.’

If recourse is had to parliamentary debates as an extrinsic aid, some support can be found for the view that guests of the club might be admitted under the provisions dealing with associate members and their guests. Mr Richard Caborn, the Minister for Sport and Tourism, in response to a oral question in Parliament about whether a non-invited non-qualifying club member turning up unannounced and uninvited and signed in for his green fee to play a round of golf might buy a drink at the bar afterwards, stated: ‘If the hon. Gentleman studies the Act carefully, particularly the provisions dealing with associate members and sees how we have been able to incorporate the definition of “guests” in that, it would allay his fears and those of every golfer’ (HC Deb, vol 423, col 3, 28 June 2004). No further explanation is given as
to how persons who are not members of any other club and who are ‘uninvited visitors’ are incorporated within the provisions dealing with associate members, but the Government’s view appears to be that they are and that they can be admitted to the club as ‘guests’ under s 67(1). It is submitted, however, that only limited weight should be placed on this statement. In the House of Lords, in Robinson v Secretary of State for Northern Ireland [2002] UKHL 32, Lord Hoffmann, with whose judgment other members of the House expressed agreement, stated (at para 40):

it will be very rare indeed for an Act of Parliament to be construed by the courts as meaning something different from what it would be understood to mean by a member of the public who was aware of all the material forming the background to its enactment but who was not privy to what had been said by individual members (including Ministers) during the debates in one or other House of Parliament.

As indicated above, s 67(1) might more naturally be interpreted as providing an extended meaning of the normal meaning of the expression ‘guest of a member of a club’ and it is in this sense that it might be understood by a member of the public. On this view, the provisions in s 67 dealing with associate members do not extend beyond such members and their guests and do not include guests of the club itself. It is accordingly submitted that the better view is that persons who are not members of any other qualifying club or are not their guests cannot be supplied with alcohol as ‘guests’ under the CPC.

If this view represents the correct legal position, some other means of authorisation is needed under which such persons might be admitted to the club. One possibility might be under the authority of a temporary event notice (TEN), which could be suitable for occasions where it is known some time in advance that persons will be visiting the club, for example, where sports teams might be playing at the club, although under s 107(4) there is a limit of 12 TENs per year that can be given in respect of the same premises (see 9.7.1 below). Another possibility might be for visitors to become ‘temporary members’ of the club. The 2003 Act does not define the expression ‘member’ of a club and it seems open to clubs to have different categories of ‘member’. One might be ‘ordinary members’, that is persons who are nominated for membership by a current member or who apply for membership and whose nomination or application is accepted in accordance with the rules of the club. Such members would have full voting rights and acquire a joint interest in the property of the club. Another might be ‘temporary members’, that is, any person attending a private function at the club or any person from a group or organisation visiting the club for a cultural, artistic or sporting event (for example, rugby teams, their officials and spectators). Temporary membership would last for the duration of the function or visit and temporary members would not be entitled to any voting rights or acquire any interest in the property of the club. There seems to be nothing in the 2003 Act to prevent clubs drawing such a distinction between members; the Act contains no restrictions in respect of membership or voting rights.14 Temporary members could not, however, be

14 Under the previous law, there were restrictions in respect of membership and voting rights under Sched 7 to the Licensing Act 1964, which contained provisions as to club rules. These included membership, with para 3(1) making provision for the manner of election of ordinary members and para 3(2) precluding admission of persons to membership otherwise than as ordinary members where this was likely to result in the number of members so admitted being ‘significant in proportion to the total membership’. The provisions also included the right to restrict voting in certain instances, as an exception to the general rule under para 2(4) that all members entitled to use the club premises were entitled to vote.
admitted at will, since under s 62(1) there are general conditions that a club must satisfy if it is to be a qualifying club entitled to obtain a CPC and one of these conditions under s 61(2) is that there cannot be ‘instant membership’. Members cannot enjoy the benefits and privileges of club membership until a period of two days has elapsed after they have applied for membership (see 8.2.9 below). Conferment of temporary membership might similarly be suitable for occasions where it is known some time in advance that persons will be visiting the club and only a two day period is necessary compared to 10 working days before the event for the issuing of a TEN (see s 100(7) and 9.2.6 below). However, neither means of authorisation enables a visitor to turn up on the day, pay his green fee to play a round of golf and buy a drink at the bar afterwards.

8.2.5 Qualifying clubs

8.2.6 Whichever qualifying club activities are specified in the certificate, the club will need to be a ‘qualifying club’ in relation to each of them. The conditions that need to be met for a club to be a ‘qualifying club’ are set out in s 61 and they differ according to whether the club is providing entertainment or alcohol for members and guests. General conditions in each instance need to be met, but there are additional conditions that have to be satisfied where alcohol is provided. The general and additional conditions are, broadly speaking, the same as those previously contained in s 41 of the Licensing Act 1964 for a club to qualify for a registration certificate.

Section 61 provides:

(1) This section applies for determining for the purposes of this Part whether a club is a qualifying club in relation to a qualifying club activity.

(2) A club is a qualifying club in relation to the supply of alcohol to members or guests15 if it satisfies both–

(a) the general conditions in section 62, and

(b) the additional conditions in section 64.

(3) A club is a qualifying club in relation to the provision of regulated entertainment if it satisfies the general conditions in section 62.

The supply of alcohol to members or guests under a CPC must be for consumption on the premises, although s 73 of the Act also states that a CPC authorising this can additionally authorise supply to members for consumption off the premises. Where this is the case, however, certain conditions must be attached in respect of off-sales (see 8.4.2 below). This preserves the position under the previous law where registered clubs could, under s 39(2) of the Licensing Act 1964, supply to a member for consumption off the premises, provided supply was to the member in person. Under s 39(3), a registered club could also supply to members and guests at any other premises that the club was using for a special occasion for the accommodation of members and to which access was not permitted by persons other than members and guests. This would no longer seem to be possible under the CPC since s 73(1) provides that a CPC ‘may not authorise the supply of alcohol for consumption off the premises unless it also authorises the supply of alcohol to a member of the club for consumption on those

15 The expression ‘supply of alcohol to members and guests’ is defined in s 70 – see 8.2.4 above.
premises’ (emphasis added), which indicates supply is restricted to the premises in respect of which the CPC is held.\textsuperscript{16} It may, however, be possible for there to be supply at other premises for consumption off those premises under the authority of a TEN. Such notices can make provision for supply of alcohol for consumption off the premises; indeed, under s 100(5)(e) one of the matters that a notice must specify is, where the relevant licensable activities include the supply of alcohol, whether supplies are proposed to be for consumption on the premises or off the premises, or both (see 9.2.3 below).

8.2.7 General conditions for qualifying clubs

8.2.8 Section 62(1) provides: ‘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’ and the section then goes on to set out five conditions in sub-ss (2)–(6):

(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.

8.2.9 Admission to membership

Conditions 1 and 2 are clearly intended to prevent clubs qualifying for a CPC where club rules permit ‘instant membership’, with members able to enjoy immediately the benefits and privileges of club membership. A period of two days must elapse between application or nomination for membership and admission to membership (Condition 1) and, even if persons can become ‘instant members’ without prior application or nomination, the same period must elapse before the privileges of membership are made available (Condition 2). The use of the phrase ‘two days’ leaves it uncertain whether an interval of two whole days is required or whether parts of a day might count towards the two day period. If parts of a day are to count, there would be an interval of two days if (say) a person applied for membership just before midnight on a Monday and was admitted to membership just after midnight on the following day.

\textsuperscript{16} It may be that a club can obtain a CPC in respect of more than one set of premises – see 8.3.1 below – although in this instance supply will still be at premises in respect of which a CPC is held and not at other premises.
Wednesday. Perhaps it may have been better to use the phrase ‘two whole days’ or ‘48 hours’ for the avoidance of doubt. However, s 62(2) and (3) replicate the provisions in s 41(1)(a) and (b) of the Licensing Act 1964 and no difficulties in practice seem to have arisen under the previous legislation from use of the ‘two days’ terminology.17

8.2.10 Good faith

8.2.11 Condition 3 requires that the club is established and conducted in good faith as a club and s 63(1) provides that various matters, as specified in s 63(2), may be taken into account in determining the question of good faith. These matters, previously contained in s 41(3) of the Licensing Act 1964, 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.

If the licensing authority is not satisfied that the club is established and conducted in good faith in accordance with these provisions, it must give notice to the club, with reasons for its decision. Section 63(3) provides:

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.18

8.2.12 One common situation that might appear to fall within para (a) is a ‘brewery tie’ arrangement whereby a club agrees, in return for a loan or grant from a brewery, to take all or most of its alcoholic drinks from the brewery. This is certainly, on the face of it, an arrangement restricting the club’s freedom of purchase of alcohol, but whether a club with such an arrangement is conducted in good faith seems not to have been judicially determined. Whether such an arrangement is conducted in good faith may depend on the degree of restriction and the extent to which the club remains an independent entity during the course of the ‘tie’. If a loan is for some specific purpose (for example, extension of club premises) and repayable within a fixed period, after which the ‘tie’ arrangement comes to an end, the club is more likely to be regarded as being conducted in good faith. Conversely, it is less likely if a general ‘open-ended’ payment is made. Even if a ‘tie arrangement’ (or any other restricting arrangement)

17 As a Government spokesman, Lord Davies stated in the House of Lords during the committee stage of the Bill when an amendment to change the period to 48 hours was being considered, ‘The two-day requirement has lasted for many years. It is well attested to and it works without difficulty. We have not had substantial representations that it should be changed’ (HL Deb, vol 643, col 364, 17 January 2003).
18 Presumably, in accordance with the general requirements for giving notice, the notice must be given forthwith and in writing, although no specific provision in the Regulations seems to cover the giving of notice in this instance.
points towards a lack of good faith, the ‘tie’ might be outweighed by the other factors in paras (b)–(e) indicating the presence of good faith.

The requirement, in para (b), that club assets might be applied otherwise than for the benefit of the club or for charitable, benevolent or political purposes, is clearly designed to ensure that assets are not applied for the benefit of others, perhaps in particular a proprietor who might be using the club as a ‘front’ for his own purposes. It is possible, however, that some common arrangements in genuine members’ clubs might be regarded as contravening this provision, for example, where spouses of club stewards are permitted to run the food catering side of the club for their own benefit and profit. On the other hand, this could be seen as assets being used for the benefit of the club, since it amounts to the employment of a professional expertise that the club itself may be unable to supply. Whether there is contravention in any particular instance may, again, be a question of degree and any contravention may similarly be outweighed by factors in the other paragraphs indicating the presence of good faith.

8.2.13 Paragraphs (c) and (d) relate to club finances, which, in view of the joint ownership of club property by members in a genuine members’ club (see 8.1.1 above), is a matter of particular interest to the members. This is unlike the case of a proprietary club, where property is owned by the proprietor and there is a much less compelling case for financial accountability to the membership. Information appertaining to club finances and its availability to club members is therefore a significant yardstick by which to measure whether a club is a members’ or proprietary club.

Paragraph (e) provides that the nature of the premises occupied by the club may be taken into account when considering the question of good faith. ‘Nature’ of the premises suggests physical or structural layout and it is hard to see how this might affect whether a club is conducted in good faith, except perhaps the ability of the premises to provide sufficient demarcation between areas used by the public and areas reserved for members. If the premises were such that access to the club could not be controlled or there could be free movement of the public into areas comprising the club, this might indicate that the premises were not being properly run in good faith as a club. This instance apart, it would seem to be the use to which the premises are put and the way in which they are conducted as a club that would affect the question of good faith rather than the nature of the premises.19

19 The provision in para (e) has existed in licensing legislation since the registration of clubs was first introduced by s 28(2) of the Licensing Act 1902 but the Parliamentary debates to that Act give no indication of how it was envisaged that the nature of the premises might affect good faith. The provision was introduced by the Home Secretary as an amendment to the Bill at the third reading stage, along with a requirement that the supply of alcohol must be under the control of the members. The amendment was introduced without discussion, with the Home Secretary remarking that its object was ‘to deal with clubs established simply for the sale of liquor, and for the purpose of profit to those who supplied the liquor’ and it was ‘directed against what were called bogus clubs’ (Parl Debs (Fourth series), vol 110, cols 849 and 850, 4 July 1902).
8.2.14 Number of members

Condition 4 is that the club has at least 25 members, a requirement that can be traced back to when registration of clubs was first introduced by the Licensing Act 1902 (see s 29(1)(a)) and one which was presumably designed to rule out registration for very small clubs.

8.2.15 Supply of alcohol

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. This means that the bar will need to be run and operated by the club rather than by some third party under, for example, a franchise arrangement whereby a sum of money is paid to the club in return for the right to operate the bar and keep the profits.

8.2.16 Additional conditions for qualifying clubs

Section 64 sets out three conditions which must be satisfied for a club to supply alcohol as a qualifying club. Section 64 provides:

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.

8.2.17 Management by elected committee

Additional Condition 1 requires that purchase and supply of alcohol by the club is managed either by the general body of the members in a general meeting or by an elected committee. Where clubs have a significant number of members, and they need at least 25 members in order to satisfy Condition 4 of the general conditions for a qualifying club (see 8.2.14 above), management of the club in a general meeting of members is difficult and it is much more common for management to be undertaken by a committee. It is not necessary that all members of this ‘management committee’
are elected members, that is elected by members of the club, but, for a committee to manage the purchase and supply of alcohol, its members must, under s 64(2)(c), be ‘elected by the members of the club’. Thus, if the ‘management committee’ is wholly elected by the members it can manage the purchase and supply of alcohol; but, if not, a separate committee (in all probability a subcommittee of the ‘management committee’, sometimes called a ‘wine committee’) will be needed. Under the previous law, in s 41(2)(c) of the Licensing Act 1964, purchase and supply of alcohol had to be managed by an ‘elective committee’ and there were various requirements relating to election of the committee that were necessary for a registration certificate to be obtained, but these requirements no longer apply under the 2003 Act. The only requirements that apply are those set out in s 64(2).

8.2.18 Beneficial arrangements

Additional condition 2 precludes any arrangements for a person receiving, at the expense of the club, a benefit from purchases of alcohol by the club and additional condition 3 precludes any arrangements for a person deriving any pecuniary benefit from the supply of alcohol by the club to members or guests. The aim of these provisions would seem to be, respectively, to prevent possible links between the club management and a particular supplier, and to ensure a proprietor is not obtaining a financial benefit for himself by using a members’ club as a ‘front’.

8.2.19 Special provision for certain societies and institutes

8.2.20 Special provision is made by the 2003 Act, first, for clubs which are registered as Industrial and Provident Societies and Friendly Societies, and secondly, for Miners’ Welfare Institutes to obtain CPCs. As regards the former, which principally cover working men’s clubs, the requirement in s 64(2) for the purchase and supply of alcohol to be managed by a committee elected by the members is waived. By virtue of s 65(2) this requirement is taken to be satisfied if purchase and supply is under the control of the members or of a committee appointed by the members. This enables such societies to obtain a CPC where a committee has been appointed, rather than elected, by the members. This was similarly the case under the previous law – see s 42(1)(a) of the Licensing Act 1964.

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20 These were contained in Sched 7, para 4, which set out the meaning of ‘elective committee’. These additional requirements included the committee being elected to office by the rest of the members for a period of not less than one year or more than five years, elections to the committee being held annually and a committee being treated as an elective committee if at least two thirds of the members were elected by members of the club (although this did not apply in the case of a committee with a membership of less than four or a committee concerned with the purchase and supply of intoxicating liquor, where all members had to be elected). This latter requirement is replicated in s 64(2)(c) of the 2003 Act.

21 This was similarly the case under the previous law – see s 42(1)(a) of the Licensing Act 1964.
(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 shall 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 55 whether an incorporated friendly society is a qualifying club in relation to a qualifying club activity, the society shall 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).

8.2.21 As regards Miners’ Welfare Institutes, these can be treated as clubs by s 66, again without the need for an elected committee. Certain conditions need to be met and these can include an institute being managed by a committee or board consisting of persons appointed or nominated from within the coal industry. When an institute is treated as a club, it can obtain a CPC if it complies with the conditions needed to be a ‘qualifying club’ and, for these purposes, an institute is taken to satisfy some of the general conditions in s 62 and all of the additional conditions in s 64. Section 66 provides:

(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 shall 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.

8.3 APPLICATIONS FOR CLUB PREMISES CERTIFICATES

8.3.1 Generally

Section 71(1) provides: ‘A club may apply for a club premises certificate in respect of any premises which are occupied by, and habitually used for the purposes of, the club.’ The reference here to ‘any premises’ may mean any single premises or any number of premises. If it means the latter, then a club could apply for a CPC for more than one set
of premises. This was certainly possible under the previous law.\textsuperscript{22} There is nothing to indicate that s 71(1) is intended to change the previous law and its wording is wide enough to encompass this possibility. However, unlike the previous provision, s 71(1) is ambiguous in its wording and it is possible that it may be narrowly construed so that CPCs may apply only in respect of a single premises.

Unlike in the case of premises licences, no provision is made for the issuing of provisional statements in respect of club premises that are being or about to be constructed, altered or extended.\textsuperscript{23} Admittedly, it may be less likely to be used than in the case of premises licences, but it is not readily apparent why this procedure should not be available in respect of club premises. In other respects, however, application is very similar to that in respect of premises licences.\textsuperscript{24}

8.3.2 Form, notices and fees

Applications for CPCs, under s 71(2), are made to the relevant licensing authority\textsuperscript{25} and under s 71(3) are subject to regulations made (a) under s 91 in respect of the form of applications and any notices that need to be given, and (b) under s 92 in respect of fees to accompany applications and notices.\textsuperscript{26} Under s 91, regulations may prescribe the form of the application or notice, the manner in which it is to be made or given and any information and documents that must accompany it. Regulation 18 and Sched 9 to the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, SI 2005/42 (LA 2003 (PL and CPC) Regs 2005) specify the form the application must take and the information that it must contain and, under reg 17 and Sched 9, on or before making the application, the club must make a declaration as to its qualifying status and provide certain supporting information. Notices in respect of an application can include the publicising of it and in this respect s 71(6) provides:

Regulations may–

(a) require an applicant to advertise the application within the prescribed period–

(i) in the prescribed form, and

(ii) in a manner which is prescribed and is likely to bring the application to the attention of the interested parties likely to be affected by it,

(b) require an applicant to give notice of the application to each responsible authority, and such other persons as may be prescribed within the prescribed period,

\textsuperscript{22} Specific provision was made for a club to be registered for more than one set of premises by s 52 of the Licensing Act 1964 which provided: ‘A single registration certificate may relate to any number of premises of the same club …’ Use of this provision was made, for example, where student union bars operated under a registration certificate (see 8.2.4 above) and where bars were located in several different premises.

\textsuperscript{23} For provisional statements for premises licences, see 6.8 above.

\textsuperscript{24} The Guidance, para 9.11, provides:

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 application can be read for the purposes of this Chapter and club premises certificates, qualifying clubs and applicants.

\textsuperscript{25} For the meaning of ‘relevant licensing authority’, see s 68 and 8.2.2 above.

\textsuperscript{26} The regulations are ones made by the Secretary of State: s 193.
(c) prescribe the period during which interested parties and responsible authorities may make representations to the relevant licensing authority about the application.

This provision is comparable to that in s 17(5) in respect of premises licences and the advertising and notice requirements are set out in regs 25–26 of the LA 2003 (PL and CPC) Regs 2005 (see 2.4.2 above).

Section 92 contains various provisions in respect of the fees payable and under reg 6(1) and Sched 2 to the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 (LA 2003 (Fees) Regs 2005) the application fees payable for a CPC application are the same as for a premises licence application, except that such applications do not attract increased (multiplier) fees or additional fees (see 6.3.1 above). Under reg 7(1) this is also the position in respect of payment of an annual fee and under reg 7(2) responsibility to discharge the duty to pay the annual fee is placed on the club secretary.

### 8.3.3 Accompanying documentation

Applications must be accompanied by various documents as required by s 71(4), which provides:

An application under this section must also be accompanied by—

(a) a club operating schedule,

(b) a plan of the premises to which the application relates, in the prescribed form, and

(c) a copy of the rules of the club.

The club operating schedule has to set out various matters, including the qualifying club activities to be covered by the certificate, the times it will be used for these activities and other times it will be open, whether any supply of alcohol will be for consumption on and off the premises or only on the premises, and the steps proposed to promote the licensing objectives. Section 71(5) provides:

A “club operating schedule” is a document which is in the prescribed form, and includes a statement of the following matters—

(a) the qualifying club activities to which the application relates (“the relevant qualifying club activities”),

(b) the times during which it is proposed that the relevant qualifying club activities are to take place,

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27 Regulations may require applications to be accompanied by a fee and may prescribe the amount of the fee (s 92(1)). Regulations may also require the holder of a premises licence to pay the relevant licensing authority an annual fee (s 92(2)), may impose liability for the making of the payment of the annual fee on the secretary or such other officers or members of the club as may be prescribed, and may prescribe the amount of the annual fee and the time at which any such fee is due (s 92(3)). Any annual fee owed to a licensing authority may be recovered as a debt due to the authority from any person liable to make the payment (s 92(4)).

28 Under reg 7(3), the annual fee is ‘due and payable each year on the anniversary of the date of the grant of the club premises certificate’, which is the same as for premises licence applications under reg 5(6).

29 For the form of the plan and the information that it must contain, see 2.4.2 above.
any other times during which it is proposed that the premises are to be open to members and their guests,

(d) where the relevant qualifying club activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or both on and off the premises,

(e) the steps which it is proposed to take to promote the licensing objectives, and

(f) such other matters as may be prescribed.

In terms of requirements, the club operating schedule is broadly comparable to the operating schedule that applicants are required to submit for a premises licence (see 6.3.3 above) and differs in only two respects. One is that there is no requirement for the provision of information in respect of the person who will be specified as the premises supervisor relating to the supply of alcohol since this has no application in the case of clubs and the other is that there is no requirement for inclusion of a statement as to the period the applicant wishes the CPC to have effect, if this is a limited period, since no provision is made in the Act for a CPC to be of limited duration.30

8.4 DETERMINATION OF APPLICATIONS FOR CLUB PREMISES CERTIFICATES

8.4.1 Mandatory grants

The position as regards determination of applications is similar to that in respect of premises licences (see 6.4 above). If the application requirements have been met and no relevant representations received,31 s 72(2) provides:

The authority must grant the certificate in accordance with the application, subject only to (a) such conditions as are consistent with the club operating schedule accompanying the application, and (b) any conditions which must under section 73(2) to (5) or 74 be included.

The requirement for conditions to be consistent with the club operating schedule is comparable to the requirement for conditions to be consistent with the operating schedule accompanying a premises licence application, a requirement which has been considered in Chapter 6.32 Section 73(2)–(5) contains three conditions that must be attached in respect of off-sales of alcohol where a CPC authorises supply of alcohol for consumption off the premises as well as consumption on the premises:33

(2) A club premises certificate which authorises the supply of alcohol for consumption off the premises must include the following conditions.

30 Nevertheless, reg 35 and Sched 13, Pt A, which make provision for the form of the CPC, require inclusion of the dates of the CPC where it is time limited – see 8.6.2 below.

31 For the meaning of ‘relevant representations’ and the position where these have been received, see 8.4.4–8.4.5 below.

32 See 6.4.7 above. Authorities can similarly, within the same CPC, impose different conditions on different parts of the premises and in relation to different licensable activities: s 72(10).

33 Authorisation of the supply of alcohol to a member of a club is the qualifying club activity under s 1(2)(a) and the CPC must authorise supply for consumption on the premises although it can also authorise supply for consumption off the premises – see s 73(1), which provides: ‘A club premises certificate may not authorise the supply of alcohol for consumption off the premises unless it also authorises the supply of alcohol to a member of the club for consumption on those premises.’
The first condition is that the supply must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises.

The second condition is that any alcohol supplied for consumption off the premises must be in a sealed container.

The third condition is that any supply of alcohol for consumption off the premises must be made to a member of the club in person.

Section 74 requires a mandatory condition, where the qualifying club activities include the exhibition of films, for the admission of children to exhibitions to be restricted in accordance with film classification recommendations. These recommendations can be those of the ‘film classification body’, the British Board of Film Classification, or of the licensing authority itself if it operates its own classification system. Section 74 provides:

(1) Where a club premises certificate authorises the exhibition of films, the certificate must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

(2) Where the film classification body is specified in the certificate, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

(3) Where–

- the film classification body is not specified in the certificate,
- or the relevant licensing authority has notified the club which holds the certificate that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

(4) In this section–

“children” means persons aged under 18; and

“film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39).

As well as these mandatory conditions, there are certain conditions that an authority is prohibited from attaching. These are set out in ss 75–76. Section 75 prohibits the imposition of conditions preventing the sale by retail of alcohol to or the provision of regulated entertainment for associate members of the club and their guests, where the rules of the club make provision for this. Section 75 provides:

(1) Where the rules of a club provide for the sale by retail of alcohol on any premises by or on behalf of the club to, or to a guest of, an associate member of the club, no condition may be attached to a club premises certificate in respect of the sale by retail of alcohol on those premises by or on behalf of the club so as to prevent the sale by retail of alcohol to any such associate member or guest.

(2) Where the rules of a club provide for the provision of any regulated entertainment on any premises by or on behalf of the club to, or to a guest of, an associate member of the club, no condition may be attached to a club premises certificate in respect of the provision of any such regulated entertainment on those premises by

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34 For the British Board of Film Classification, see 1.3.8 above.
35 For associate members and guests, see 8.2.3 above.
or on behalf of the club so as to prevent its provision to any such associate member or guest.

Section 76 applies only where the CPC authorises the performance of plays and prohibits the imposition of conditions as to the nature of plays or the manner of their performance.\textsuperscript{36} It provides:

(1) In relation to a club premises certificate which authorises the performance of plays, no condition may be attached to the certificate as to the nature of the plays which may be performed, or the manner of performing plays, under the certificate.

(2) But subsection (1) does not prevent a licensing authority imposing, in accordance with section 72(2) or (3)(b), 85(3)(b) or 88(3), any condition which it considers necessary on the grounds of public safety.

\subsection*{8.4.4 Relevant representations and discretion}

The position as regards determination of applications is again similar to that in respect of premises licences (see 6.4.8 \textit{et seq} above). Under s 72(3)(a) the authority must hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and under para 8 of Sched 1 to the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44 (LA 2003 (Hearings) Regs 2005) the hearing must be held within 20 working days beginning with the day after the end of the period during which representations may be made as prescribed under s 71(6)(c), which itself, under reg 22(b) of the LA 2003 (PL and CPC) Regs 2005, is 28 consecutive days after the day on which the application is given to the authority. Under reg 6(4) and para 8 of Sched 2, notice of the hearing must be given to the club and persons who made relevant representations no later than 10 working days before the day or the first day on which the hearing is to be held.\textsuperscript{37}

\subsection*{8.4.5 Meaning of relevant representations}

Relevant representations are defined in s 72(7) and (8) and have the same meaning as for premises licences (see 6.4.9 above):

(7) For the purposes of this section, “relevant representations” means representations which–

(a) are about the likely effect of the grant of the certificate on the promotion of the licensing objectives, and

(b) meet the requirements of subsection (8).

(8) The requirements are–

(a) that the representations are made by an interested party or responsible authority in accordance with regulations under section 71(6)(c),

(b) that they have not been withdrawn, and

\textsuperscript{36} This is comparable to the provision in s 22 in respect of premises licences – see 6.4.6 above.

\textsuperscript{37} As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 8, the club must be given the relevant representations with the notice of hearing.
(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

8.4.6 Representations about the likely effect of the grant of the certificate on the promotion of the licensing objectives: s 72(7)(a)

The position is the same as in respect of premises licences (see 6.4.10–6.4.11 above).

8.4.7 Persons entitled to submit relevant representations: s 72(7)(b) and (8)(a)

The position is the same as in respect of premises licences, with s 69(3) and (4) making identical provision to s 13(3) and (4) for premises licences (see 6.4.12–6.4.18 above).

8.4.8 Representations within the prescribed period: s 72(7)(b), s 72(8)(a) and s 71(6)(c)

Representations by an interested party or responsible authority must be made ‘in accordance with regulations under section 71(6)(c)’, which provides that regulations may prescribe the period within which relevant representations may be made. The period prescribed by reg 22(b) of the LA 2003 (PL and CPC) Regs 2005 is 28 consecutive days starting on the day after the day on which the application given to the authority by the applicant. The position in respect of representations received outside the prescribed period is the same as for premises licences (see 6.4.19 above).

8.4.9 Representations not withdrawn nor frivolous or vexatious: s 72(7)(b) and (8)(b)(c)

The position is the same as in respect of premises licences (see 6.4.20–6.4.22 above).

8.5 GRANT OR REFUSAL OF A CLUB PREMISES CERTIFICATE – TAKING STEPS NECESSARY TO PROMOTE THE LICENSING OBJECTIVES

8.5.1 Except in cases where no relevant representations have been received (in which case the authority must grant the CPC), whether a CPC is granted or refused will be determined by what the authority considers necessary to promote the licensing objectives. A hearing must be held to consider relevant representations (unless there is agreement that this is unnecessary) and then, having regard to the representations, there are a number of steps open to the authority one or more of which it might take

38 Where a determination is made that representations are frivolous or vexatious, s 72(9) requires that the authority ‘must notify the person who made them of the reasons for the determination’. Under reg 31 of the LA 2003 (PL and CPC) Regs 2005, notification must be in writing as soon as is reasonably practicable and in any event before the determination of the application to which the representations relate.
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Section 72(3) and (4) provides:

(3) Where relevant representations are made, the authority must—

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and

(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are—

(a) to grant the certificate subject to—

(i) the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and

(ii) any conditions which must under section 73(2) to (5) or 74 be included in the certificate;

(b) to exclude from the scope of the certificate any of the qualifying club activities to which the application relates;

(c) to reject the application.

Section 72(3)(b) only requires the authority to ‘have regard’ to the representations and the authority might take into account matters other than those raised in the relevant representations when deciding what is necessary to promote the licensing objectives (see 6.5.1 above). It is not necessary that any of the steps mentioned in sub-s (4) be taken since s 72(3)(b) refers to the authority taking such of the steps ‘if any’ as it considers necessary for the promotion of the licensing objectives. If none of the steps are considered necessary, the authority can grant the CPC in the terms sought by the applicant subject only to such conditions as are consistent with the club operating schedule accompanying the application in accordance with s 72(2)(a). The conditions imposed on the grant of the CPC in such a case will thus be the same as if no relevant representations had been received and the authority had been obliged to grant the CPC.

8.5.2 Apart from rejecting the application and refusing a CPC, the authority can grant the CPC subject to conditions and/or with the exclusion of one or more of the licensable activities for which application has been made in accordance with any or all of the three steps mentioned in s 72(4)(a)–(b). As regards the attachment of conditions, the CPC can be granted subject to conditions consistent with the club operating schedule, but modified to such extent as the authority considers necessary for the promotion of the licensing objectives, again with any mandatory conditions under s 73(2)–(5) or s 74 if applicable (see 8.4.2 above). As regards conditions being ‘modified’, s 72(6) provides:

For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are modified if any of them is altered or omitted or any new condition is added.

39 The requirement to take such steps is subject to s 72(5), which provides: ‘Subsections (2) and (3)(b) are subject to section 73(1) (certificate may authorise off-supplies only if it authorises on-supplies).’
Further, as in the case of a mandatory grant, authorities can, under s 72(10), impose different conditions on different parts of the premises and in relation to different licensable activities (see 8.4.2 above).

Where considering the imposition of conditions, it may be that authorities should be more circumspect than in the case of premises licences and take a stricter approach to the imposition of conditions. This seems to follow from para 9.13 of the Guidance, which provides:

The Secretary of State wishes to emphasise that non-profit making clubs have made 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.

That conditions should not be imposed unless ‘strictly necessary’ perhaps suggests a higher threshold than for premises licences, where conditions need only be ‘necessary’. It is not easy to see how this will operate in practice, as in each instance the licensing authority must be acting to promote the licensing objectives. Perhaps if the imposition of a condition is considered ‘marginal’, it might be included on a premises licence, but be excluded in the case of a club.40

8.6 NOTIFICATION OF GRANT OR REFUSAL AND ISSUING OF THE CLUB PREMISES CERTIFICATE AND SUMMARY

8.6.1 The position in respect of notification is the same as in respect of premises licences (see 6.6 above). Section 77 makes identical provision for CPCs as s 23 does for premises licences and provides:

(1) Where an application is granted under section 72, the relevant licensing authority must forfwith–

(a) give a notice to that effect to–

(i) the applicant,

(ii) any person who made relevant representations in respect of the application, and

(iii) the chief officer of police for the police area (or each police area) in which the premises are situated, and

40 Conditions relating to sex equality should not be included, since ‘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 ... Club premises certificates are not an appropriate vehicle for securing gender equality’ (Guidance, para 9.14).
(b) issue the club with the club premises certificate and a summary of it.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1)(a) must specify the authority’s reasons for its decision as to the steps (if any) to take under section 72(3)(b).

(3) Where an application is rejected under section 72, the relevant licensing authority must forthwith give a notice to that effect, stating its reasons for that decision, to–

(a) the applicant,

(b) any person who made relevant representations in respect of the application, and

(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(4) In this section “relevant representations” has the meaning given in section 72(6).41

8.6.2 Where granted, the CPC and a summary of it will be in a form prescribed in regulations by the Secretary of State. Section 78 makes provision to this effect and sets out the basic requirements that those regulations must include as to the content of the certificate. Section 78 provides:

(1) A club premises certificate and the summary of such a certificate must be in the prescribed form.

(2) Regulations under subsection (1) must, in particular, provide for the certificate to–

(a) specify the name of the club and the address which is to be its relevant registered address, as defined in section 184(7);42

(b) specify the address of the premises to which the certificate relates;

(c) include a plan of those premises;43

(d) specify the qualifying club activities for which the premises may be used;

(e) specify the conditions subject to which the certificate has effect.

Regulation 35 and Pt A of Sched 13 to the LA 2003 (PL and CPC) Regs 2005 provide for the certificate to specify, in addition to the above-mentioned matters, the dates in cases where the CPC is time limited (although s 71(5) in fact makes no provision for inclusion in a club operating schedule of a statement as to the period for which the applicant wishes the CPC to have effect – see 8.3.3 above), the times at which qualifying club activities may take place, the opening hours of the club and whether supply of alcohol is for consumption on and off or just on the premises. Regulation 36 and Pt B of Sched 12 provide for the summary to be printed on paper of a size equal or larger than A4 and to specify all matters mentioned above (except for a plan) and, in addition, to state whether access to the club premises by children is restricted.

41 The reference in the Act to s 72(6) is incorrect. It should read s 72(7).

42 The ‘relevant registered address’, in s 184(7), will be the address given in the record for the certificate that is in the register kept, under s 8, by the licensing authority that granted the certificate.

43 As to the plans forming part of the certificate, see 2.4.2 above.
8.6.3 In the event that the CPC or summary is lost, stolen, damaged or destroyed, s 79 enables the club to obtain a copy, in the same form as it existed immediately before loss etc, on payment of a fee (which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is £10.50):

(1) Where a club premises certificate or summary is lost, stolen, damaged or destroyed, the club may apply to the relevant licensing authority for a copy of the certificate or summary.

(2) Subsection (1) is subject to regulations under section 92(1) (power to prescribe fee to accompany application).

(3) Where an application is made in accordance with this section, the relevant licensing authority must issue the club with a copy of the certificate or summary (certified by the authority to be a true copy) if it is satisfied that–

(a) the certificate or summary has been lost, stolen, damaged or destroyed, and

(b) where it has been lost or stolen, the club has reported the loss or theft to the police.

(4) The copy issued under this section must be a copy of the club premises certificate or summary in the form in which it existed immediately before it was lost, stolen, damaged or destroyed.

(5) This Act applies in relation to a copy issued under this section as it applies in relation to an original club premises certificate or summary.

The section simply indicates that ‘the club’ may apply for any copy, without any indication as to who will make the application, but presumably the club will do so through its secretary.

8.7 DURATION OF CLUB PREMISES CERTIFICATE

8.7.1 Indefinite duration and exceptions

A CPC, once granted, will generally remain in force indefinitely. The circumstances in which it will not do so are when it is withdrawn, lapses on surrender or is suspended. Section 80 provides:

(1) A club premises certificate has effect until such time as–

(a) it is withdrawn under section 88 or 90, or

(b) it lapses by virtue of section 81(3) (surrender).

(2) But a club premises certificate does not have effect during any period when it is suspended under section 88.

In this respect, the CPC is similar to the premises licence, except that a premises licence can cease to remain in force for other reasons in addition to those mentioned above (see 6.7 above). These other reasons – the licence being granted only for a limited period and lapse due to some incapacity on the part of the licence holder – do not have application in the case of CPCs.
8.7.2 Withdrawal of club premises certificate

8.7.3 A CPC can be withdrawn in two circumstances. One is where it is withdrawn under s 88 following an application for review (see 8.10.8 below) and the other is where it is withdrawn under s 90 because the club has ceased to meet the qualifying conditions for a CPC. Where the club ceases to be a qualifying club in relation to some qualifying club activity, it is no longer entitled to a CPC and the authority must give the club a notice withdrawing the certificate in relation to that activity.45 Section 90(1) provides:

Where–

(a) a club holds a club premises certificate, and

(b) it appears to the relevant licensing authority that the club does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates (see section 61),

the authority must give a notice to the club withdrawing the certificate, so far as relating to that activity.

The authority must give notice if it ‘appears’ that the club does not satisfy the qualifying conditions. The section does not say that the authority has to be ‘satisfied’ that the qualifying conditions are not met before notice is given, but it submitted that notice should not be given unless the authority is so satisfied. Notwithstanding that the wording of the section seems to indicate that the onus on the authority is not a particularly heavy one, the authority should be satisfied on a balance of probabilities before notice is given. This is the normal standard of proof required in civil proceedings and there seems no justification for any lesser standard having application here. Withdrawal of a CPC is a significant interference with property rights which are afforded protection under Art 1 of Protocol 1 of the European Convention on Human Rights (see 3.6 above). It may be that, in the absence of proper proof substantiating withdrawal as necessary because the qualifying conditions are no longer met, the interference is not justified as a control of use of the property in the general interest and is a violation of the right under Art 1 of Protocol 1.

8.7.4 With a view to ascertaining whether or not a club satisfies the qualifying conditions, powers of entry, search and seizure are conferred on a constable (but not an authorised officer). These can be exercised within one month of a justice of the peace issuing a warrant and enable any documents relating to the business of the club to be seized. Section 90(5) and (6) provides:

(5) Where a justice of the peace is satisfied, on information on oath, that there are reasonable grounds for believing–

(a) that a club which holds a club premises certificate does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates, and

(b) that evidence of that fact is to be obtained at the premises to which the certificate relates,

44 It is not obvious why the term ‘withdrawn’ is used for CPCs, rather than ‘revoked’, which is used in s 26 for premises licences.

45 The conditions for being a qualifying club are set out in s 61 – see 8.2.6 above.
he may issue a warrant authorising a constable to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant, and search them.

(6) A person who enters premises under the authority of a warrant under subsection (5) may seize and remove any documents relating to the business of the club in question.

Section 90 does not expressly indicate at what point withdrawal takes effect – whether this is from the date of the notice or whether it might be from some later date specified by the authority. However, it may be implicit from s 90(2), which provides for withdrawal to take effect after three months from the date of the notice in cases where the club has fewer members than required, that in other cases withdrawal would be effective from the date of the notice. Section 90(2) seems to be expressed by way of an exception, suggesting that the general rule is withdrawal on notice. As to the exception, it is clearly a pragmatic one, since club membership can obviously fluctuate over time. Membership may dip below the minimum required only for a relatively short period of time before thereafter rising above the minimum. Requiring the notice not to take effect for three months means that there will be no withdrawal if, by the end of the three months, membership has risen to at least the minimum required. It will take effect only if the membership remains below that minimum. Section 90(2) provides:

Where the only reason that the club does not satisfy the conditions for being a qualifying club in relation to the activity in question is that the club has fewer than the required number of members, the notice withdrawing the certificate must state that the withdrawal—

(a) does not take effect until immediately after the end of the period of three months following the date of the notice, and

(b) will not take effect if, at the end of that period, the club again has at least the required number of members.

This provision does not prevent an authority from giving a further notice of withdrawal under the section at any time (s 90(4)). If, during the currency of a notice given in accordance with s 90(2), it is discovered that the club does not satisfy another qualifying condition, a further notice might be given and under this withdrawal might have immediate effect. This would effectively supersede the notice given in accordance with s 90(2).

In the event of any dispute, no provision is made for any hearing to take place to determine whether or not the club has ceased to meet the qualifying conditions for a CPC, although a right of appeal to the magistrates’ court is provided (see para 14 of Sched 5; and 12.5.6 below).

8.7.5 Lapse of CPC on surrender

A CPC will lapse if the club voluntarily surrenders it. Surrender is by way of a notice of surrender to the licensing authority, accompanied by the return of the CPC or a

46 The numbers required are 25: s 62(5) – see 8.2.8 above.
47 Section 90(3) provides: ‘The references in subsection (2) to the required number of members are references to the minimum number of members required by condition 4 in section 62(5) (25 at the passing of this Act).’
statement of reasons why this cannot be done, for example because the CPC has been lost. As with premises licences, no provision is made for payment of a fee or for notice of surrender to be given to other persons (see 6.7.4 below). Section 81 provides:

1. Where a club which holds a club premises certificate decides to surrender it, the club may give the relevant licensing authority a notice to that effect.

2. The notice must be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate.

3. Where a notice is given in accordance with this section, the certificate lapses on receipt of the notice by the authority.

Unlike in the case of premises licences, no provision is made for reinstatement of the CPC.48 Nor is it apparent who may surrender the CPC, for s 81(1) refers only to surrender by ‘a club which … decides to surrender it’. Certainly there could be surrender where there is a formal resolution at a club committee meeting to surrender the CPC and a club officer is mandated to give notice of surrender to the authority, but it is not clear whether anything less than this will suffice.

8.7.6 Suspension of club premises certificate

This is covered in 8.10.9 below.

8.8 AMENDING THE CLUB PREMISES CERTIFICATE

8.8.1 Once a CPC has been granted, the secretary of the club is under a duty to notify the licensing authority of any change in the name of the club or any alteration made to club rules. The notice given must be accompanied by the appropriate fee (which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is £10.50) and the CPC for the changes to be recorded on it. Section 82(1)–(3) provides:

1. Where a club–
   (a) holds a club premises certificate, or
   (b) has made an application for a club premises certificate which has not been determined by the relevant licensing authority,

   the secretary of the club must give the relevant licensing authority notice of any change in the name, or alteration made to the rules, of the club.

2. Subsection (1) is subject to regulations under section 92(1) (power to prescribe fee to accompany application).

3. A notice under subsection (1) by a club which holds a club premises certificate must be accompanied by the certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate.

The licensing authority is required under s 82(4) to amend the CPC to record any such change, but the amendment cannot change the premises to which it relates. That such a change cannot be made seems implicit in s 82(1), since notification is confined to changes to the club name or club rules, but s 82(5) nevertheless contains an express provision to this effect. Section 82(4) and (5) provides:

48 For reinstatement of a premises licence under s 50, see 6.11.12 above.
(4) An authority notified under this section of a change in the name, or alteration to the rules, of a club must amend the club premises certificate accordingly.

(5) But nothing in subsection (4) requires or authorises the making of any amendment to a club premises certificate so as to change the premises to which the certificate relates (and no amendment made under that subsection to a club premises certificate has effect so as to change those premises).

8.8.2 Failure by the club secretary to notify the authority of the change within 28 days following the day on which it is made is a criminal offence, for which the maximum penalty is a level 2 fine on the standard scale. Section 82(6)–(7) provides:

(6) If a notice required by this section is not given within the 28 days following the day on which the change of name or alteration to the rules is made, the secretary of the club commits an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

The period of time for notification (28 days) is more precise (and almost certainly longer) than in the case of premises licences, where under s 33(1) notification of changes has to be given ‘as soon as is reasonably practicable’ (see 6.7.5 above). Whilst perhaps more generous in this respect, s 82 is less so with regard to the offence of failing to notify. Liability seems to be strict, with no provision made for any defence of reasonable excuse. The defence of reasonable excuse is provided in s 33(6) for failure by a premises holder to comply with requirements to notify changes of his name and address and that of the designated premises supervisor, but s 82(6) contains no such provision. It is difficult to see why a reasonable excuse should provide a defence in one case, but not the other, and neither Explanatory Note 143 to s 82 nor the Guidance gives any indication as to why this is the case.

8.8.3 In addition to notifying the licensing authority of any change of name or club rules, the club may notify the authority of any change in the club’s relevant registered address. This is the address given in the record for the certificate, which is in the register kept under s 8 by the licensing authority that granted the certificate.49 Notification is mandatory if the club ceases to have authority to use this address and in each case a fee is payable (which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is £10.50). Section 83(1)–(3) provides:

(1) A club which holds a club premises certificate may give the relevant licensing authority notice of any change desired to be made in the address which is to be the club’s relevant registered address.

(2) If a club which holds a club premises certificate ceases to have any authority to make use of the address which is its relevant registered address, it must as soon as reasonably practicable give to the relevant licensing authority notice of the change to be made in the address which is to be the club’s relevant registered address.

(3) Subsections (1) and (2) are subject to regulations under section 92(1) (power to prescribe fee to accompany application).

Although the section does not specify who is responsible for notifying the authority, this will presumably be the club secretary as it is he who will be criminally liable for failure to notify under s 83(2). Section 82(6)–(7) provides:

49 For the register kept under s 8, see 2.4.14–2.4.17 above.
(6) If a club fails, without reasonable excuse, to comply with subsection (2) the secretary commits an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

The notice must be accompanied by the CPC (or a statement of reasons why this cannot be produced) for the change to be recorded on it by the authority. Section 83(4)–(5) provides:

(4) A notice under subsection (1) or (2) must also be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate.

(5) An authority notified under subsection (1) or (2) of a change to be made in the relevant registered address of a club must amend the club premises certificate accordingly.\(^{50}\)

8.9 VARIATION OF CLUB PREMISES CERTIFICATES

8.9.1 Applications for variation

Application for variation might include seeking either a variation of the conditions or a variation of the CPC itself in some way, such as a change in the licensable activities. It might also include variation of the plan of the premises on the basis that this is part of the CPC (see 2.4.2 above). The application is subject to the same fee as for the grant of a CPC (see 8.3.2 above), must be accompanied by the CPC (or, if this cannot be provided, a statement of the reasons why this cannot be produced) and provision is made for advertising applications. Section 84 provides:

(1) A club which holds a club premises certificate may apply to the relevant licensing authority for variation of the certificate.

(2) Subsection (1) is subject to regulations under—

(a) section 91 (form etc of applications);

(b) section 92 (fees to accompany applications).

(3) An application under this section must also be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to provide the certificate.

(4) The power to make regulations under subsection (6) of section 71 (advertisement etc of application) applies in relation to applications under this section as it applies in relation to applications under that section.

Regulation 19 and Sched 10 to the LA 2003 (PL and CPC) Regs 2005 specify the form the application shall take and the information that it must contain and regs 25–26 prescribe the advertisement requirements (see 2.4.2 above).

\(^{50}\) Section 83(8) provides: ‘In this section “relevant registered address” has the meaning given in section 184(7).’ For the provision in s 184(7), see 2.4.22 above.
8.9.2 Determination of applications

8.9.3 The position here will be the same as in respect of premises licences.\(^{51}\) Section 85 makes for CPCs identical provision to s 35 for premises licences and provides:

1. This section applies where the relevant licensing authority—
   a. receives an application, made in accordance with section 84, to vary a club premises certificate, and
   b. is satisfied that the applicant has complied with any requirement imposed by virtue of subsection (4) of that section.

2. Subject to subsection (3) and section 86(4), the authority must grant the application.

3. Where relevant representations are made, the authority must—
   a. hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
   b. having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

4. The steps are—
   a. to modify the conditions of the certificate;
   b. to reject the whole or part of the application;

and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.

5. In this section “relevant representations” means representations which—
   a. are about the likely effect of the grant of the application on the promotion of the licensing objectives, and
   b. meet the requirements of subsection (6).

6. The requirements are—
   a. that the representations are made by an interested party or responsible authority within the period prescribed under section 71(6)(c) by virtue of section 84(4),
   b. that they have not been withdrawn, and
   c. in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

\(^{51}\) See 6.9.3–6.9.5 above. The provision is comparable to s 34 for variation of premises licences, except that there can be no variation of the designated premises supervisor or the time for having effect, since neither of these is applicable in the case of CPCs. Under reg 5 and Sched 1, para 9 of the LA 2003 (Hearings) Regs 2005 the holding of the hearing under s 85(3)(a) must be within 20 working days and under reg 6(4) and Sched 2, para 9, notice of the hearing must be given to the club and persons who made relevant representations no later than 10 working days before the day or the first day on which the hearing is to be held. As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 9, the club must be given the relevant representations with the notice of hearing.
Subsections (2) and (3) are subject to sections 73 and 74 (mandatory conditions relating to supply of alcohol for consumption off the premises and to exhibition of films).

8.9.4 There are also similar supplementary provisions in s 86, comparable to those in s 36 for premises licences, which preclude an authority from making a substantial variation in respect of the premises, but enable the authority to vary the CPC so that different conditions apply to different parts of the premises and in respect of different licensable activities. Section 86(6) and (7) provides:

(6) A club premises certificate may not be varied under section 85 so as to vary substantially the premises to which it relates.

(7) In discharging its duty under subsection (2) or (3)(b) of that section, a licensing authority may vary a club premises certificate so that it has effect subject to different conditions in respect of—
(a) different parts of the premises concerned;
(b) different qualifying club activities.

8.9.5 Notification of decision

Supplementary provision on notification, similar to s 36 for premises licences, is made for CPCs by s 86. Thus the authority must notify its decision to the applicant, the police and any person who made relevant representations and, where the authority decides to grant the variation, persons who made relevant representations must be given reasons for the decision and the notice must specify the time when the variation is to take effect. Section 86(1)–(3) provides:

(1) Where an application (or any part of an application) is granted under section 85, the relevant licensing authority must forthwith give a notice to that effect to—
(a) the applicant,
(b) any person who made relevant representations in respect of the application, and
(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1) must specify the authority’s reasons for its decision as to the steps (if any) to take under section 85(3)(b).

(3) The notice under subsection (1) must specify the time when the variation in question takes effect.

52 See s 36(6) and (7); and 6.9.5 above.

53 These provisions, contained in s 86(6) and (7), are comparable to those in s 34(6) and (7). This is except in respect of the provision in s 36(6) which precludes an authority from varying a premises licence so as to extend the period of its duration, which is inapplicable in the case of CPCs.

54 Notice must be given forthwith on making the determination and the notice must be accompanied by information regarding the right of a party to appeal against the determination of the authority: regs 28–29 of the LA 2003 (Hearings) Regs 2005. For the meaning of ‘forthwith’, see 6.6.2 above.

55 Section 86(8) provides: ‘In this section “relevant representations” has the meaning given in section 85(5).’
That time is the time specified in the application or, if that time is before the applicant is given the notice, such later time as the relevant licensing authority specifies in the notice.

Where the authority decides not to grant the variation, similar notification of its decision is required. This includes giving notice to any person whose representations were determined to be frivolous or vexatious. Section 86(4) and (5) provides:

(4) Where an application (or any part of an application) is rejected under section 85, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to—

(a) the applicant,

(b) any person who made relevant representations, and

(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(5) Where the relevant licensing authority determines for the purposes of section 85(6)(c) that any representations are frivolous or vexatious, it must give the person who made them its reasons for that determination.

8.10 REVIEW OF CLUB PREMISES CERTIFICATES

8.10.1 Application

8.10.2 An application for review can be initiated by an interested party, a responsible authority or a member of the club. As with reviews of premises licences, the licensing authority itself cannot institute a review, although the relevant section of the local authority dealing with environmental health may (as a responsible authority) do so. Applications might be made at any time and regulations must require the applicant to give notice to the club and each responsible authority, and for advertisement (in this instance by the authority rather than the applicant) and for the making of representations within a prescribed period of time. Section 87(1)–(3) provides:

(1) Where a club holds a club premises certificate—

(a) an interested party,

(b) a responsible authority, or

(c) a member of the club,

may apply to the relevant licensing authority for a review of the certificate.

(2) Subsection (1) is subject to regulations under section 91 (form etc of applications).

(3) The Secretary of State must by regulations under this section—

56 Although there is no provision in the Guidance indicating that licensing authorities may not initiate their own reviews for CPCs, there is for premises licences (see Guidance, para 5.100 and 6.12.3 above) and the position must be the same for CPCs.

57 Section 89 provides that, where a local authority is both the responsible authority and the relevant licensing authority, it may, in its capacity as a responsible authority, apply under s 87 for a review of any premises licence and may, in its capacity as licensing authority, determine that application. This is the same as in the case for premises licences – see s 53 and 6.12.3 above.
(a) require the applicant to give a notice containing details of the application to the club and each responsible authority within such period as may be prescribed;

(b) require the authority to advertise the application, and invite representations relating to it to be made, to the authority;

(c) prescribe the period during which representations may be made by the club, any responsible authority and any interested party;

(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

Regulation 20 and Sched 8 to the LA 2003 (PL and CPC) Regs 2005 specify the form the application shall take and the information that it must contain. Under reg 29, the applicant must give a copy of the application, along with any accompanying documents, to the club and each responsible authority on the same day as he gives the review application to the licensing authority. Under regs 38–39, the application for review must be advertised by the licensing authority, as in the case of reviews of premises licences (see 6.12.3 above). Under reg 22(b), representations may be made during a period of 28 consecutive days after the day on which the application is given to the authority.

8.10.3 An application for review may be rejected (without a hearing and determination) if the authority is satisfied that the ground of review is not relevant to the licensing objectives or, if made by an interested party or club member, is frivolous, vexatious or repetitious. Section 87(4) provides:

The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied—

(a) that the ground is not relevant to one or more of the licensing objectives, or

(b) in the case of an application made by a person other than a responsible authority, that—

(i) the ground is frivolous or vexatious, or

(ii) the ground is a repetition.

Rejection because the ground is frivolous or vexatious is similar to a licensing authority rejecting relevant representations for these reasons, which has been considered earlier. Rejection on the ground of repetition has also been considered earlier, in relation to reviews of premises licences, and the position is similar in relation to the review of CPCs. Section 87(5) provides:

For this purpose a ground for review is a repetition if—

(a) it is identical or substantially similar to—

(i) a ground for review specified in an earlier application for review made in respect of the same club premises certificate and determined under section 88, or

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58 As in the case of premises licences (see 6.12.3 above), no provision is made for the payment of a fee by an applicant for review.

59 See 8.4.9 above, referring to 6.4.20–6.4.22 above where this matter is considered in detail in relation to the grant of premises licences.

60 See 6.12.4 above. The provision in s 87(5) is comparable to that in s 52(5) for premises licences, except that it does not include representations being identical or substantially similar to those made on an application for a provisional statement since provisional statements have no application in the case of clubs.
(ii) representations considered by the relevant licensing authority in accordance with section 72, before it determined the application for the club premises certificate under that section, and

(b) a reasonable interval has not elapsed since that earlier application or that grant.

The meaning of ‘substantially similar’ and ‘reasonable interval’ have been considered in relation to reviews of premises licences (in 6.12.5 above) and presumably will have a similar meaning in relation to the review of CPCs.

Where a ground of review is rejected on the ground that it is frivolous, vexatious or repetitious, reg 32 of the LA 2003 (PL and CPC) Regs 2005 requires that notification in writing is given as soon as reasonably practicable to the person making the application.

8.10.4 If an application for review is rejected, the authority must notify the applicant of its decision. The reason for rejection will be self-evident if it is on the ground that it is repetitious, but reasons must be given if it is rejected on the ground that it is frivolous or vexatious. Section 87(6) provides:

Where the authority rejects a ground for review under subsection (4)(b), it must notify the applicant of its decision and, if the ground was rejected because it was frivolous or vexatious, the authority must notify him of its reasons for making that decision.

An application may, of course, seek review on a number of grounds, only some of which may be considered irrelevant, frivolous, vexatious and/or repetitious. In this case, an application may be rejected only to the extent that it is so considered and will need in other respects to be determined. Accordingly, s 87(7) provides:

The application is to be treated as rejected to the extent that any of the grounds for review are rejected under subsection (4).

Accordingly, the requirements imposed under subsection (3)(a) and (b) and by section 88 (so far as not already met) apply only to so much (if any) of the application as has not been rejected.

8.10.5 Determination of applications

8.10.6 The position will be the same as in respect of premises licences (see 6.12.6–6.12.12 above). Where an application for review has been made in accordance with s 87, under para 10 of Sched 1 to the LA 2003 (Hearings) Regs 2005 a hearing must be held within 20 working days to consider it and any relevant representations received following advertisement of the application under s 87(3)(b). Under reg 6(4) and para 10 of Sched 2, notice of the hearing must be given to the club, persons who made relevant representations and the person who has made the review application no

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61 Notice must be given forthwith on making the determination and the notice must be accompanied by information regarding the right of a party to appeal against the authority’s determination: regs 28–29 of the LA 2003 (Hearings) Regs 2005. For the meaning of ‘forthwith’, see 6.6.2 above.
later than 10 working days before the day or the first day on which the hearing is to be held.\textsuperscript{62} Section 88(1) and (2) provides:

(1) This section applies where–

(a) the relevant licensing authority receives an application made in accordance with section 87,

(b) the applicant has complied with any requirement imposed by virtue of subsection (3)(a) or (d) of that section, and

(c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section.

(2) Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

To constitute ‘relevant representations’, representations will, by virtue s 88(7), need to be relevant to one or more of the licensing objectives – see s 4(2) and 4.2 above – and meet the requirements set out in s 88(8). These relate to the persons entitled to make representations making them within the prescribed time period, which under reg 22(b) of the LA 2003 (PL and CPC) Regs 2005 is 28 consecutive days starting on the day after the day on which the application was given to the authority, and there is the usual provision for relevant representations not to be considered where they have been withdrawn or when they are regarded as frivolous or vexatious. Section 88(7) and (8) provides:

(7) In this section “relevant representations” means representations which–

(a) are relevant to one or more of the licensing objectives, and

(b) meet the requirements of subsection (8).

(8) The requirements are–

(a) that the representations are made by the club, a responsible authority or an interested party within the period prescribed under section 87(3)(c),

(b) that they have not been withdrawn, and

(c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

8.10.7 As to the persons entitled to make representations, s 88(7) includes, on the one hand, the club whose CPC is being reviewed and, on other hand, responsible authorities or interested parties. No mention is made, however, of representations by a club member, although a club member is entitled to apply for a review. The ground on which a club member may seek a review may well be relevant to one or more of the licensing objectives. If, for instance, there was a change in the nature of the entertainment provided by the club, which became increasingly of an adult variety, a member might seek a review of the CPC for conditions to be modified in order to protect children from harm (for example, by prohibiting their access to certain areas). It may be that the authority is able to consider representations by a club member, where such representations are relevant to the licensing objectives, but it is less clear whether a club member is entitled, as is an interested party and a responsible authority, to have his representations considered. The club member’s representations will not be ‘relevant representations’ that the authority is obliged to consider since they will not

\textsuperscript{62} As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 10, the club must be given the relevant representations with the notice of hearing.
comply with the requirement in s 88(8)(a) (unless the member, as a person living in the vicinity of the premises, is an interested party). The club member will not therefore be a ‘party to the hearing’ under the LA 2003 (Hearings) Regs 2005 and will not have the rights afforded to such parties at the hearing, including the right to have his representations considered (see 2.4.13 above). This is unless the view is taken that exclusion of representations by a club member from s 88(8)(a) was not deliberate, but an oversight, in which case the words ‘or a club member’ might be read into s 88(8)(a) to give effect to the legislature’s intention. If this is done, the club member’s representations will become ‘relevant representations’ that the authority is obliged to consider. If this is not done, the authority nevertheless might exercise a discretion to admit the representations in the same way that it might do so for late representations received outside the prescribed period of time of consecutive 28 days (see 6.4.19 above). It remains to be seen whether or not such words will be read into the section.

It may also be that the same words should be read into s 88(8)(c), which makes provision for representations by an interested party to be discounted if the authority considers them to be frivolous or vexatious, but not for the discounting of any such representations made by a club member. Where a ground of review by a person, other than a responsible authority, is considered by the authority to be frivolous or vexatious (or a repetition), the application can be rejected without a hearing under s 87(4)(b)(ii), which means rejection without a hearing can occur where the review was sought by either an interested party or a club member (see 8.10.3 above). If a ground advanced by a club member might be considered frivolous or vexatious and dismissed in advance of a hearing, it would be illogical if representations for consideration at a hearing could not be discounted if they were similarly so regarded. This will be the case, however, unless the words ‘or a club member’ are also read into s 88(8)(c).

8.10.8 When determining the application, the authority must take one of a number of steps that it considers necessary to promote the licensing objectives (see s 4(2) and 4.2 above). Section 88(3)–(5) provides:

(3) The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are–
(a) to modify the conditions of the certificate;
(b) to exclude a qualifying club activity from the scope of the certificate;
(c) to suspend the certificate for a period not exceeding three months;
(d) to withdraw the certificate;
and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.

(5) Subsection (3) is subject to sections 73 and 74 (mandatory conditions relating to supply of alcohol for consumption off the premises and to exhibition of films).

Once steps are taken and a determination is made, the authority’s decision does not, however, have immediate effect. It takes effect only when the period for making an appeal has expired or, if an appeal is lodged, when the appeal is ‘disposed of’ (which presumably will include cases of both withdrawal and determination of the appeal). Section 88(11) provides:
A determination under this section does not have effect—
(a) until the end of the period given for appealing against the decision, or
(b) if the decision is appealed against, until the appeal is disposed of.

8.10.9 It is not necessary that any of the steps mentioned in sub-s (4) are taken since s 88(3) refers to the authority taking such of the steps ‘if any’ as it considers necessary for the promotion of the licensing objectives. If none of these steps are considered necessary, the authority can decide to take no action. Alternatively, it may be that some informal action, such as issuing a warning or guidance, can be taken, a step which seems possible for premises licences (see 6.12.8 above), and there is no reason why the position should be any different in relation to CPCs. If the authority decides to modify the conditions of the CPC or to exclude a licensable activity from the scope of the certificate, it seems that it may do so either permanently or for a temporary period up to three months. Section 88(6) provides:

Where the authority takes a step mentioned in subsection (4)(a) or (b), it may provide that the modification or exclusion is to have effect only for such period (not exceeding three months) as it may specify.

Since the authority ‘may’ make provision for a temporary exclusion for up to three months under this subsection, but is not obliged to do so since the section is not expressed in mandatory terms, it seems open to an authority to permanently exclude a qualifying club activity. If the exclusion is temporary, however, it must not be for a longer period than three months. Suspension, similarly, can be for a period of up to three months, although not for any longer period. Presumably if an authority feels a three months’ suspension period is inadequate to promote the licensing objectives, the appropriate course would be to withdraw the CPC.

When taking steps to promote the licensing objective of preventing the commission of crime, the position will be similar to that in respect of premises licences. The Guidance makes it clear that only steps necessary in connection with the premises licence should be taken for the promotion of the crime prevention objective63 and for clubs this will mean taking only steps necessary in connection with the CPC.

8.10.10 Notification of decision

The authority must notify its decision, with reasons, to the club, the applicant, any person who made relevant representations and the police. It must also notify, with reasons, any interested party whose representations were discounted as frivolous or vexatious.64 Section 88(9) and (10) provides:

(9) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must give the person who made them its reasons for that determination.

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63 Guidance, para 5.113; and see 6.12.9 above. The further guidance provided in para 5.115, that certain criminal activity should be treated particularly seriously, will also presumably apply – see 6.12.10 above.

64 Where an application for review is rejected because the ground is frivolous, vexatious or a repetition, reg 32 of the LA 2003 (PL and CPC) Regs 2005 requires written notification to be given as soon as reasonably practicable to the person making the application for a review. For the meaning of ‘forthwith’, see 6.6.2 above.
(10) Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to–
(a) the club,
(b) the applicant,
(c) any person who made relevant representations, and
(d) the chief officer of police for the police area (or each police area) in which the premises are situated.

8.11 UPDATING AND PRODUCTION OF CLUB PREMISES CERTIFICATE

8.11.1 Updating of club premises certificate

Where modifications are made to a CPC, for example where it is varied or amended following a review, the authority must update the CPC and, if necessary, issue a new summary of it. Section 93(1) provides:

Where–
(a) the relevant licensing authority, in relation to a club premises certificate, makes a determination or receives a notice under this Part, or
(b) an appeal against a decision under this Part is disposed of,
the relevant licensing authority must make the appropriate amendments (if any) to the certificate and, if necessary, issue a new summary of the certificate.

In order for the authority to make the modifications, it may be necessary for the CPC to be returned to the authority and the authority can require the club secretary to produce it or the appropriate part of it within 14 days of being notified of the need to do so. Section 93(2) provides:

Where a licensing authority is not in possession of the club premises certificate, it may, for the purpose of discharging its obligations under subsection (1), require the secretary of the club to produce the certificate to the authority within 14 days from the date on which the club is notified of the requirement.

Failure to comply, without reasonable excuse, with the requirement to produce the CPC or appropriate part is a summary offence punishable by a fine not exceeding level 2 on the standard scale. Section 93(3) and (4) provides:

(3) A person commits an offence if he fails, without reasonable excuse, to comply with a requirement under subsection (2).
(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
8.11.2 Production of club premises certificate

8.11.3 The club secretary is under a duty to keep at the premises and produce the CPC or a certified copy of it whenever the premises are being used for licensable activities. He must ensure that the CPC or certified copy is kept in the custody or control of himself, any member of the club or any person who works at the premises for the purpose of the club; that the person having custody or control has been nominated by him in writing; and that he has given a notice to the relevant licensing authority identifying that person. The nominated person is responsible for ensuring that a summary of the CPC or certified copy, together with a notice indicating the position held at the premises by the nominated person, must be prominently displayed at the premises. Section 94(1)–(4) provides:

1. This section applies whenever premises in respect of which a club premises certificate has effect are being used for one or more qualifying club activities authorised by the certificate.
2. The secretary of the club must secure that the certificate, or a certified copy of it, is kept at the premises in the custody or under the control of a person ("the nominated person") who—
   a. falls within subsection (3),
   b. has been nominated for the purpose by the secretary in writing, and
   c. has been identified to the relevant licensing authority in a notice given by the secretary.
3. The persons who fall within this subsection are—
   a. the secretary of the club,
   b. any member of the club,
   c. any person who works at the premises for the purposes of the club.
4. The nominated person must secure that—
   a. the summary of the certificate or a certified copy of that summary, and
   b. a notice specifying the position which he holds at the premises, are prominently displayed at the premises.

8.11.4 It might be expected, and clearly would be desirable, for the summary and notice to be prominently displayed at the same place in the premises, although there is no requirement to this effect in s 94(4). It will presumably therefore meet the terms of the section if the summary and notice were to be (prominently) displayed in different parts of the premises. Failure by the club secretary to comply, without reasonable excuse, with the requirement under s 94(2) is a summary offence, as is a failure by the nominated person to comply, without reasonable excuse, with the requirement under

65 Section 95 makes provision for certified copies: s 94(12). A certified copy is a copy certified to be a true copy by the relevant licensing authority, a solicitor or notary, or a person of a prescribed description: s 95(1). Any certified copy produced in accordance with a requirement under s 94(7) for a person having custody or control of the CPC to produce it for examination by a constable or authorised officer must be a copy of the document in the form in which it exists at the time: s 95(2). A document which purports to be a certified copy is to be taken to be such a copy unless the contrary is shown: s 95(3).

66 The summary is a reference to the summary issued under s 77 – see 8.6.1 above – or, where one or more summaries have been subsequently issued under s 93 following updating of the licence, the most recent summary to have been so issued: s 94(11). As to the certified copy, see previous footnote.
s 94(4). In both instances, the offence is punishable by a fine not exceeding level 2 on the standard scale. Section 94(5) and (6) provides:

(5) The secretary commits an offence if he fails, without reasonable excuse, to comply with subsection (2).

(6) The nominated person commits an offence if he fails, without reasonable excuse, to comply with subsection (4).

A constable or authorised person may require the nominated person to produce the CPC or certified copy for inspection, the authorised person being required to produce evidence of his authorisation if requested to do so, and a failure to produce the CPC or certified copy, without reasonable excuse, is a summary offence punishable by a fine not exceeding level 2 on the standard scale. Section 94(7)–(10) provides:

(7) A constable or an authorised person may require the nominated person to produce the club premises certificate (or certified copy) for examination.

(8) An authorised person exercising the power conferred by subsection (7) must, if so requested, produce evidence of his authority to exercise the power.

(9) A person commits an offence if he fails, without reasonable excuse, to produce a club premises certificate or certified copy of a club premises certificate in accordance with a requirement under subsection (7).

(10) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

8.12 PRE-DETERMINATION INSPECTIONS OF PREMISES

8.12.1 Section 96 confers a power on constables and authorised persons (see 8.11.4 above) on production on request of their authorisation, to enter premises, prior to determination of an application to grant, vary or review a CPC. Section 96(1) and (2) provides:

(1) Subsection (2) applies where–

(a) a club applies for a club premises certificate in respect of any premises,

(b) a club applies under section 84 for the variation of a club premises certificate held by it, or

(c) an application is made under section 87 for review of a club premises certificate.

(2) On production of his authority–

(a) an authorised person, or

(b) a constable authorised by the chief officer of police, may enter and inspect the premises.

The section gives no indication of the purpose(s) for which a constable or authorised officer may enter, unlike the comparable provision in s 59(2) relating to premises licences, which specifies that the power of entry is to assess the likely effect on the

67 Section 94(10) provides: ‘A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.’

68 ‘Authorised person’ has an identical meaning as in respect to premises licences in Pt 3 of the Act. The definition in s 69(2), for clubs, is the same as in s 13(2) for premises licences, on which see 6.14.2 above.
promotion of the licence objectives of the grant (see 6.14.1 above). Although it seems implicit that entry will be for these purposes, it is not apparent why there is no express provision to this effect, as there is in s 59, and for the avoidance of doubt it might have been better if there had been.

8.12.2 There are more constraints placed on constables and authorised officers in respect of the right to enter and inspect premises with CPCs than with premises licences. First, there is no comparable provision to s 59(4) for premises licences, under which constables and authorised persons may use reasonable force to gain entry in cases of an application for review (see 6.14.2 above). Secondly, whilst for premises licences entry and inspection can take place at any reasonable time before the determination of a relevant application, for clubs, it must be not more than 14 days after (that is, within 14 days of) the making of the application and at least 48 hours’ notice must be given. Section 96(3) and (4) provides:

(3) Any entry and inspection under this section must take place at a reasonable time on a day—
(a) which is not more than 14 days after the making of the application in question, and
(b) which is specified in the notice required by subsection (4).

(4) Before an authorised person or constable enters and inspects any premises under this section, at least 48 hours’ notice must be given to the club.

It is not indicated to whom notice must be given, but presumably it is to the club secretary. Given the compressed timescale within which entry and inspection must take place, the Act makes provision for a seven day extension, on application by a responsible authority. However, this can be granted only where, despite taking reasonable steps, it was not possible for the inspection to take place within the time allowed. Section 96(7) and (8) provides:

(7) The relevant licensing authority may, on the application of a responsible authority, extend by not more than 7 days the time allowed for carrying out an entry and inspection under this section.

(8) The relevant licensing authority may allow such an extension of time only if it appears to the authority that—
(a) reasonable steps had been taken for an authorised person or constable authorised by the applicant to inspect the premises in good time, but
(b) it was not possible for the inspection to take place within the time allowed.

8.12.3 It is an offence to obstruct an authorised person exercising the power of entry, an offence punishable summarily by a fine not exceeding level 2 on the standard scale. Section 96(5) and (6) provides:

(5) Any person obstructing an authorised person in the exercise of the power conferred by this section commits an offence.

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

69 This reflects the fact that clubs’ activities ‘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’ (Guidance, para 9.13).
Unlike in the comparable provision in s 59(5) for premises licences (see 6.14.2 above), there is no reference to a mental element in s 96. Section 59(5) makes it an offence to ‘intentionally’ obstruct, but this word is absent from s 96(5), suggesting that the offence may be one of strict liability. In the case of a constable who is obstructed, a person commits an offence under the general provision of obstructing a constable in the course of his duties under s 91 of the Police Act 1996 only if he ‘wilfully’ obstructs. It seems illogical if a mental element is required for obstruction of a constable, as it clearly is because of the reference to ‘wilfully’, but not for obstruction of an authorised officer. Nor is it apparent why an authorised officer needs to be ‘intentionally’ obstructed when entering and inspecting in the case of premises licence application, but not in the case of a CPC application. It is submitted that s 96(5) should be interpreted so as to require a mental element (by invoking the presumption that statutes creating a criminal offence require a blameworthy state of mind (mens rea) on the part of the defendant) and the word ‘intentionally’ should be read into the section.

8.12.4 Finally, s 97 confers other powers of search on a constable, including the power to use reasonable force if necessary, where he has reason to believe an offence in connection with the supply of controlled drugs has been, is being, or is about to be, committed there or there is likely to be a breach of the peace there:

(1) Where a club premises certificate has effect in respect of any premises, a constable may enter and search the premises if he has reasonable cause to believe–

(a) that an offence under section 4(3)(a), (b) or (c) of the Misuse of Drugs Act 1971 (c.38) (supplying or offering to supply, or being concerned in supplying or making an offer to supply, a controlled drug) has been, is being, or is about to be, committed there, or

(b) that there is likely to be a breach of the peace there.

(2) A constable exercising any power conferred by this section may, if necessary, use reasonable force.

Section 97 confers express authority to enter and search for these purposes without a warrant, although it may be that such a power exists by virtue of s 17(6) of the Police and Criminal Evidence Act 1984. Although s 17(5) of that Act abolishes the common law power to enter premises without a warrant, s 17(6) provides that this does not affect any power of entry to deal with or prevent a breach of the peace, and the Court of Appeal has held, in McLeod v Commissioner of Police for the Metropolis [1994] 4 All ER 553, that this power extends to any type of premises, including private premises. As Neill LJ stated (at 560), ‘if the police reasonably believe that a breach of the peace is likely to take place on private premises, they have power to enter those premises to prevent it’ and a constable might therefore enter club premises in pursuance of this power, quite apart from the express authority conferred by s 97. Nevertheless, it would be preferable to rely on the express provision in s 97, since there remains an element of doubt as to whether s 17(6) supports the Court of Appeal’s conclusion in McLeod.70

CHAPTER 9

TEMPORARY ACTIVITIES:
TEMPORARY EVENT NOTICES

9.1 INTRODUCTION

9.1.1 Part 5 of the Act provides a system of permitted temporary activities, under which licensable activities can be carried out on a temporary basis (for a period not exceeding 96 hours) without the need for a premises licence or a club premises certificate (CPC). These activities can take place on any premises, which under s 193 means any place, vehicle, vessel or moveable structure (see 6.1.2–6.1.6 above), by the authority of a temporary event notice (TEN) given by an individual, a ‘premises user’, to the relevant licensing authority.1 No permission is required from the licensing authority and, in general, only the police may intervene with a view to preventing such an event going ahead or to modify arrangements for it.2 The TEN is subject to various restrictions (including ones on maximum numbers attending at any one time, that being less than 500) and limits attaching to the number of events, with different limits applying depending on whether or not the person carrying out the licensable activities holds a personal licence and the frequency of the use of the premises.3 Where the requirements for obtaining a TEN cannot be met, as where events exceed 96 hours or the maximum numbers are 500 or more, then it will be necessary for a premises licence to be obtained, even if the event is only for a ‘one-off’ single occasion.

The circumstances in which a personal licence holder may need to obtain a TEN might include where he wishes to carry out one or more licensable activities at premises not covered by a premises licence relating to those activities. This could arise if he wishes to run a temporary bar for a wedding at a venue not licensed for the sale

1 The ‘relevant licensing authority’ is defined in s 99, which provides: ‘In this Part references to the “relevant licensing authority”, in relation to any premises, are references to—
(a) the licensing authority in whose area the premises are situated, or
(b) where the premises are situated in the areas of two or more licensing authorities, each of those authorities.’

In the case of premises situated in the areas of two or more licensing authorities, the position differs from that in respect of premises licences and CPCs. A TEN needs to be given to each of the authorities, whereas for premises licences and CPCs application is made to one or other of the authorities in accordance with s 12(3) and s 71(3) respectively – see 6.3.1 above and 8.3.2 above. This is because, in the words of Lord McIntosh, a Government spokesman in the House of Lords, a TEN is ‘merely a notification … [and] it seems to be virtually no burden for it to go to more than one authority at the same time’, whereas for premises licences and CPCs ‘the requirements … are fairly onerous … [and] it would be onerous for the applicant to have to go to more than one authority’ (HL Deb, vol 643, col 381, 17 January 2003).

2 ‘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’ (Guidance, para 8.2). For the limits set on the number of events, see 9.7.1 below. Police intervention is on the ground that allowing the event to go ahead will undermine the crime prevention objective – see 9.5 below.

3 Explanatory Note 163. If these limits on the number of notices are exceeded, then the licensing authority can intervene, but not otherwise: Guidance, para 8.2. Because of these limitations on numbers, along with limitations on the length of time (96 hours), the maximum aggregate duration of the periods covered by TENs at any individual premises (15 days) and the scale of the event in terms of the maximum number of persons attending at any one time (less than 500), the system of TENs is ‘characterised by an exceptionally light touch bureaucracy’: Guidance, paras 8.2 and 8.4.
of alcohol⁴ or to provide live music in premises licensed for the sale of alcohol, but not for the provision of entertainment.⁵ Individuals who do not hold a personal licence might wish to obtain a TEN to enable them to carry out one or more of the licensable activities at any premises, regardless of whether or not they are covered by a premises licence relating to those activities. This could include running a bar and providing a band at a party to celebrate a 50th wedding anniversary or any similar event.⁶ It could equally include various public events for raise funding, at which licensable activities take place, staged on behalf of charities, community and voluntary groups, schools, churches and hospitals.⁷

9.1.2 In order for the TEN to have effect, and for the activity to become a permitted temporary activity, there are various conditions that need to be complied with. These include requirements in respect of the giving of the notice; its acknowledgement by the licensing authority and notification of the police; and the notice not having been withdrawn or being subject to the issuing of a counter notice, either following a police objection or because the permitted limits have been exceeded. Section 98 provides:

(1) A licensable activity is a permitted temporary activity by virtue of this Part if—
(a) it is carried on in accordance with a notice given in accordance with section 100, and
(b) the following conditions are satisfied.
(2) The first condition is that the requirements of sections 102 (acknowledgement of notice) and 104(1) (notification of police) are met in relation to the notice.
(3) The second condition is that the notice has not been withdrawn under this Part.
(4) The third condition is that no counter notice has been given under this Part in respect of the notice.

If one or more of these conditions is not met, then it would seem that the licensable activity will not be a permitted temporary activity. The rationale for the conditions seems to be that it would be wrong for the event to proceed where these conditions have not been complied with. If a counter-notice has been issued, there will be

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4 Under the previous legislation, a situation such as this would have been covered by an occasional licence granted under s 180 of the Licensing Act 1964. An occasional licence could be obtained by the holder of a justices’ on-licence authorising the sale by him of intoxicating liquor at a place other than his licensed premises for a period not exceeding three weeks.

5 This is an example given in the Guidance, para 8.9, which provides other illustrations: ‘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.’

6 Explanatory Note 164. Under the previous legislation, a situation such as this, running the bar, might have been covered by an occasional permission granted under the Licensing (Occasional Permissions) Act 1983, which provided authorisation for the sale of intoxicating liquor for a period of up to 24 hours. As regards the band, no public entertainment licence would have been needed since the wedding anniversary would not be open to the public, and no licence would have been needed under the Private Places of Entertainment (Licensing) Act 1967 (if the local authority had adopted the provisions of that Act), unless the entertainment was provided with a view to private gain.

7 Guidance, para 8.6, which acknowledges that premises users such as these ‘will not have commercial backgrounds or ready access to legal advice’ and authorities ‘should therefore ensure that local publicity about the system of temporary permitted activities is clear and understandable and should strive to keep the arrangements manageable and user-friendly for these groups’.
justifiable reasons why the event should not take place, either that the holding of the event will undermine the crime prevention objective or the requisite number of temporary events has already been held either by the premises user or in respect of the premises. If the TEN has been withdrawn, the premises user will thereby have indicated his intention not to go ahead with the event. If there has been a failure to notify the police under s 104(1), the police will have been denied any opportunity to decide whether to issue a counter-notice on the ground that allowing the event to go ahead will undermine the crime prevention objective. In all these instances it would be wrong for the event to take place, but it is less clear that this is the case where there has been a failure by the licensing authority to acknowledge receipt of the notice in accordance with s 102. If the licensing authority had not been notified of the event, it might be wrong for the event to take place as the authority would have been denied any opportunity to decide whether the requisite number of temporary events had already been held, but s 102 is not concerned with the authority being notified. It is concerned with the authority acknowledging receipt once it has received notice.

9.1.3 Nevertheless, it would seem that, if there is a failure by the authority to acknowledge the notice as required by s 102, the first (part of the first) condition in s 98(2) will not be met. This will mean that the licensable activity will not be a permitted temporary activity and the premises user will be unable to carry it on as such in accordance with the notice. The effect of this appears to be that an authority can prevent a temporary event from taking place as a permitted temporary activity simply by not acknowledging the notice. Obviously this would frustrate the legislative purpose of introducing TENs and it must be assumed that Parliament did not intend this to be the case. However, it is difficult to see how this can be avoided if the provision in s 98(2), that ‘the requirements of sections 102 (acknowledgement of notice) … are met in relation to the notice’, is given its ordinary meaning.

Courts do, of course, depart from the ordinary meaning of words when interpreting statutory provisions and can do so, as Lord Blackburn stated in River Wear Commissioners v Adamson (1877) App Cas 743, 764–65, when the ordinary meaning of words will produce ‘an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification’.8 His Lordship went on to say (at 765) that in such a case the court will be justified in ‘putting on them some other significance, which, though less proper, is one which the Court thinks the words will bear’. The possible frustration of the legislative purpose may be seen as a ‘great inconvenience’ and it may perhaps be possible to put some significance on the words in s 98(2), other than their ordinary meaning. The requirements of s 102 might be considered to be met not only where there has been an actual acknowledgement of the notice by the authority, but also where an authority is in a position to acknowledge receipt by returning to the premises user one notice of the two that it has received. Unless this or some other ‘creative’ interpretation is given to the provision in s 98(2), the provision has the potential to restrict considerably the scope of TENs under the 2003 Act.

8 This is the so-called ‘golden rule’ of statutory interpretation.
9.2 REQUIREMENTS IN RESPECT OF THE GIVING OF THE NOTICE

9.2.1 Persons entitled to give notice

Only an individual aged 18 or over who proposes to use premises for one or more of the licensable activities during a period not exceeding 96 hours, designated by the Act as the ‘premises user’, is entitled to give a TEN. Section 100(1)–(3) provides:

(1) Where it is proposed to use premises for one or more licensable activities during a period not exceeding 96 hours, an individual may give to the relevant licensing authority notice of that proposal (a “temporary event notice”).

(2) In this Act, the “premises user”, in relation to a temporary event notice, is the individual who gave the notice.

(3) An individual may not give a temporary event notice unless he is aged 18 or over.

9.2.2 Form and content of notice

9.2.3 The TEN must be in a form prescribed in regulations by the Secretary of State and contain various details about the proposed event. These details include information about the licensable activities and the times at which they will take place; the total length of the event (which must not exceed 96 hours); the maximum numbers (which must be less than 500) that will be allowed on the premises at any one time; whether any alcohol supplied will be for consumption on or off the premises or both (in all such cases the notice must make it a condition that supplies are made by or under the authority of the premises user); and any matters prescribed. Section 100(4)–(6) provides:

(4) A temporary event notice must be in the prescribed form and contain–

(a) a statement of the matters mentioned in subsection (5),

(b) where subsection (6) applies, a statement of the condition mentioned in that subsection, and

(c) such other information as may be prescribed.

(5) Those matters are–

(a) the licensable activities to which the proposal mentioned in subsection (1) relates (“the relevant licensable activities”),

(b) the period (not exceeding 96 hours) during which it is proposed to use the premises for those activities (“the event period”)

(c) the times during the event period when the premises user proposes that those licensable activities shall take place,

(d) the maximum number of persons (being a number less than 500) which the premises user proposes should, during those times, be allowed on the premises at the same time,

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9 At the time of writing, no such regulations have been made. The intention seems to be that the regulations will be made at a time closer to the second appointed day which it is anticipated will probably be in or about November 2005 – see 13.1 below.
(e) where the relevant licensable activities include the supply of alcohol,\(^{10}\)
    whether supplies are proposed to be for consumption on the premises or off the premises, or both, and

(f) such other matters as may be prescribed.\(^{11}\)

(6) Where the relevant licensable activities include the supply of alcohol, the notice must make it a condition of using the premises for such supplies that all such supplies are made by or under the authority of the premises user.

9.2.4 The original ‘event period’ specified was a period not exceeding 72 hours, the rationale for which seems to have been that it would include a whole bank holiday weekend, a popular time at which festivals and concerts might be held. However, the period was subsequently extended during the course of the legislation’s passage to one not exceeding 96 hours. This will effectively enable an event to take place on four consecutive days, although s 100(5)(b) does not expressly require the 96 hour period to be a continuous one. It does not specify a ‘continuous’ period not exceeding 96 hours, which leaves it open to the possible interpretation of a period of proposed premises use for licensable activities that, in total, does not exceed 96 hours. It is conceivable that an event may not involve a licensable activity on a Sunday, perhaps for religious reasons, but licensable activities may take place on the preceding Friday and Saturday and the following Monday and Tuesday. If the licensable activities can take place for a period not exceeding 96 hours in total, there will be compliance with s 100(5)(b), but, if the period of 96 hours needs to be a continuous one and is the maximum length of time within which licensable activities can take place, there will not. Explanatory Note 168 is not conclusive, but suggests a continuous period, stating: ‘the total length of the event … must not exceed 96 hours.’ Similarly, the requirement in s 100(5)(c) for the notice to contain a statement of the times during the event period when the premises user proposes that those licensable activities shall take place is also not conclusive, for it might be used to support either interpretation. It seems more probable that the 96 hour period was intended to be a continuous one, representing the total length of the event, and it is submitted that this is how the section should be interpreted. This would be consistent with the position under the previous law in respect of occasional permissions. Under s 1 of the Licensing (Occasional Permissions) Act 1983, permission authorising the sale of alcohol could be granted ‘during a period not exceeding twenty four hours’ and this was interpreted by the Divisional Court, in *R v Bromley Licensing Justices ex p Bromley Licensed Victuallers’ Association* [1984] 1 All ER 794, to mean a continuous period of 24 hours.

The figure in s 100(5)(d) of (less than) 500 for the maximum number of persons seems to have been a fairly arbitrary one. It appears to have been regarded as a ‘reasonable figure’, although different views on it were expressed in the consultation period. As a Government spokesman, Lord McIntosh, observed during the committee stage of the Bill in the House of Lords (HL Deb, vol 643, col 385, 17 January 2003):

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10 Section 100(9) provides: ‘In this section “supply of alcohol” means—
   (a) the sale by retail of alcohol, or
   (b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.’

11 It appears that the Secretary of State does not currently intend to prescribe any further requirements: Guidance, para 8.7.
... we have set a limit of 500 people. In our consultation, some people wanted the limit to be higher; others wanted it to be lower... events of more than 500 people – particularly those with significantly more – are of a size close to events that cause disturbance... We must find a figure. Five hundred may not be exactly the right one, but the police and others have suggested that it is a reasonable figure.

The time period of 96 hours and the maximum permitted number of persons of less than 500 are ones that may be subject to subsequent change, for the Secretary of State has the power by order to alter the period and numbers. Section 100(8) provides:

   The Secretary of State may, by order–
   (a) amend subsections (1) and (5)(b) so as to substitute any period for the period for the time being specified there;
   (b) amend subsection (5)(d) so as to substitute any number for the number for the time being specified there.

9.2.5 Period of notice

9.2.6 The TEN must be given to the authority at least 10 working days before the event. It must be submitted in duplicate – this is to enable the authority to acknowledge receipt of the notice by marking and returning one copy to the premises user – and accompanied by the prescribed fee, which under reg 8 and Sched 6 to the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 is £21. Section 100(7) provides:

   The temporary event notice–
   (a) must be given to the relevant licensing authority (in duplicate) no later than ten working days before the day on which the event period begins, and
   (b) must be accompanied by the prescribed fee.

The period of 10 working days – essentially a two week period, since a ‘working day’ means Monday to Friday (excluding bank holidays, Christmas Day and Good Friday) – is relatively short. Further, it is not clear whether the 10 day period begins to run from the time of receipt by the authority of the notice or from the time of the giving of the notice. There will in fact be a period of 10 working days if time begins to run from receipt, although there may not be if time runs from the giving of the notice. What constitutes the giving of notices is prescribed by s 184, which has effect in relation to any document required or authorised by or under the Act to be given to any person. Where notice is given to the licensing authority, the document containing the notice must be given ‘by addressing it to the authority and leaving it at or sending it by post’ to the principal office of the authority or another office at which the authority is

12 The power to make such regulations is subject to the ‘affirmative resolution procedure’, ie, a draft of the statutory instrument has to be laid before and approved by a resolution of each House of Parliament: s 197(3)(b) and (4).

13 Section 193 provides: ‘“working day” means 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 (c.80) in England and Wales.’ Ten working days’ notice means ‘ten working days exclusive of the day on which the event is to start’ (Guidance, para 8.11).

14 The period proposed in the White Paper, five days, was even shorter: Time for Reform: Proposals for the Modernisation of Our Licensing Laws, Cm 4696, 2000, para 57.

15 Although the section refers to ‘documents’ and not ‘notices’, it is apparent from the marginal note to the section (‘Giving of notices etc’) that it is intended to cover the latter – see 2.4.19–2.4.22 above.
willing to accept documents (s 184(2); and see 2.4.19 above). If notice is given by
sending the document by post, it may be some time before it is received particularly if
second class post is used, which complies with s 184, as there is no requirement for it
to be sent by first class post, recorded delivery or registered post. Given the short
period of notice involved for TENs, it may be better if s 184 is regarded as prescribing
only the methods of giving notice and not additionally the time from which the notice
is considered to have effect.

9.2.7 The 10 working day period may not give rise to difficulties where a notice is
unchallenged – the authority will simply have to acknowledge the notice in such a
case within the period – but might do where the police decide to give an objection
notice. The police, to whom a copy of the notice must also be given within the same 10
working days’ period, have 48 hours within which to object (see 9.5.1 below). If the
police do object, the authority must hold a hearing to consider the objection (and then
decide whether it is necessary, for the promotion of the crime prevention objective, to
give the premises user a counter-notice). This will not leave much time for a hearing to
be convened for the matter to be considered by a subcommittee of the authority.16
Under reg 5 and para 11 of Sched 1 to the Licensing Act 2003 (Hearings) Regulations
2005, SI 2005/44 (LA 2003 (Hearings) Regs 2005), the hearing must be commenced
within seven working days beginning with the day after the end of the period within
which the police may object, and under reg 26(1)(c) the authority must make its
determination at the conclusion of the hearing. Nevertheless, unless the hearing is
commenced in the early part of this period, the parties will not be able to exercise any
right of appeal in respect of the subcommittee’s decision, for Pt 3 of Sched 5, para
16(6), provides: ‘no appeal may be brought later than five working days before the day
on which the event period specified in the temporary event notice begins.’17 In short,
the timescale is a very compressed one.

The Explanatory Notes to s 100 acknowledge 10 working days to be the minimum
specified period18 and envisage a longer period being given in most cases (‘it is
anticipated that in most circumstances greater notice will be given’). The assumption
seems to be that, in the spirit of co-operation, a longer period than that required will be
given. As the Guidance states in para 8.11:

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.19

The Guidance goes on to provide in para 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

16 The Guidance, para 3.63, recommends that such cases are heard by a subcommittee – see
2.4.12 above. A hearing need not be held if the parties agree that this is unnecessary:
s 105(2)(a).
17 Under para 16(2), the premises user can appeal if the authority issues a counter-notice and
under para 16(3) the police can appeal if the authority refuses to do so – see 12.6 below.
18 Explanatory Note 169. The Guidance contains a similar acknowledgement in para 8.10: ‘Ten
working days is the minimum possible notice that may be given.’
19 It goes on to provide: ‘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.’
to contact local police licensing officers at the earliest possible opportunity about their proposals.

However, whether a longer period is given is entirely down to the person giving notice. There will be compliance with the requirements of s 100 if 10 working days’ notice is given and, whatever the encouragement or exhortations by the licensing authority, there is no power to extend the period.

Although on each occasion at least 10 working days notice must be given, where a person intends holding more than one TEN, there is nothing to prevent simultaneous notification of multiple events at a single time. This is provided that the final event is at least 10 working days away.20

9.2.8 Minimum period between events by a premises user at the same premises

9.2.9 An additional requirement with which a premises user needs to comply is that a minimum period of 24 hours has elapsed since the last notice was given in respect of the same premises by him or another person who has some involvement with (is related to, associated with or in business with) him. This requirement, in s 101, prevents a premises user holding from numerous consecutive events not only where notice is given in his own name, but also where it is given in the name of someone with whom he is closely associated, as a means of avoiding an application for a premises licence (Explanatory Note 171 and Guidance, para 8.22). A TEN that does not comply with the minimum 24 hour period is void. Section 101(1) provides:

A temporary event notice (“notice A”) given by an individual (“the relevant premises user”) is void if the event period specified in it does not—

(a) end at least 24 hours before the event period specified in any other temporary event notice given by the relevant premises user in respect of the same premises before or at the same time as notice A, or

(b) begin at least 24 hours after the event period specified in any other such notice.

9.2.10 For the purposes of determining whether there is a contravention of s 101, a TEN is treated in certain circumstances as having been given by a premises user where it is given by another individual. This is where it has been given by an individual who is an ‘associate’ of the premises user, which includes spouses, certain other close relatives or their spouses, or an agent or employee or their spouse, or by an individual who is ‘in business’ with the premises user. Whilst this goes some way towards preventing consecutive events being staged by an individual premises user, this limitation may not, in practice, prove to be particularly effective for it might easily be circumvented by TENs given by friends of the individual. Further, a TEN is regarded as given in respect of the same premises if the premises in question includes or forms part of the premises in respect of which a TEN has already been given. Thus two TENs, each given in respect of different parts of premises, will be regarded as given in

20 Paragraph 8.10. The Guidance goes on to give the example of an individual personal licence holder wishing to exhibit and sell beer at a series of country shows and who 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.’ Quaere whether, where multiple applications are made, a fee is payable per event or per application.
respect of the same premises. On the other hand, where a premises user gives a TEN and it is withdrawn or a counter-notice is given in respect of it, this is discounted when calculating the minimum period. Section 101(2)–(4) provides:

(2) For the purposes of subsection (1)–
(a) any temporary event notice in respect of which a counter notice has been given under this Part or which has been withdrawn under section 103 is to be disregarded;
(b) a temporary event notice given by an individual who is an associate of the relevant premises user is to be treated as a notice given by the relevant premises user;
(c) a temporary event notice (“notice B”) given by an individual who is in business with the relevant premises user is to be treated as a notice given by the relevant premises user if–
(i) that business relates to one or more licensable activities, and
(ii) notice A and notice B relate to one or more licensable activities to which the business relates (although not necessarily the same activity or activities);
(d) two temporary event notices are in respect of the same premises if the whole or any part of the premises in respect of which one of the notices is given includes or forms part of the premises in respect of which the other notice is given.

(3) For the purposes of this section an individual is an associate of another person if he is–
(a) the spouse of that person,
(b) a child, parent, grandchild, grandparent, brother or sister of that person,
(c) an agent or employee of that person, or
(d) the spouse of a person within paragraph (b) or (c).

(4) For the purposes of subsection (3) a person living with another as that person’s husband or wife is to be treated as that person’s spouse.

The scope of an ‘associate’ is quite wide, covering not only an individual’s spouse and his close relatives, agents or employees, but also the spouse of those persons and anyone with who those persons are living in a husband–wife relationship. The section gives no indication of when an individual is ‘in business’ with a premises user, but the wording suggests that both would need to have some sort of proprietary interest in the business (for example, as partners). Simply being employees in the same business would not seem to suffice, although the position may perhaps be different if both were employed in some senior capacity and had some managerial control over the business. It is necessary that each notice relates to one or more licensable activities with which the business is concerned, although they need not necessarily be the same activities, in order for both notices to be treated as given by the premises user. Thus, if the premises user were ‘in business’ with an individual and the business was a restaurant providing late night refreshment, live music and the sale of alcohol, a TEN given by the premises user for the sale of alcohol at premises will be void if it follows on from a TEN, for either the playing of live music or the provision of late night refreshment, given in respect of the same premises by the individual; but if the TEN

\[21\] Quaere whether this will include a person living in a single-sex relationship with the premises user.
given by the individual relates to dancing at the premises, the TEN given by the premises user will not be void. This is because under s 101(2)(c)(ii) both TENs do not relate to one or more licensable activities to which the business relates. Only the TEN given by the premises user for the sale of alcohol does.

9.3 ACKNOWLEDGMENT BY THE LICENSING AUTHORITY

9.3.1 The licensing authority must acknowledge the TEN by returning to the premises user one of the duplicate notices received. This must be done within a specified period, which, if the notice was received on a working day, is the end of the following working day and, if received on a non-working day, is the end of the second working day after the day on which it was received. Acknowledgment, which must be in a prescribed form (see 9.2.3 above), is not, however, necessary if the authority has already given a counter-notice to the premises user, indicating that the prescribed number of events would be exceeded if the event in respect of which notice has been given were to take place. Section 102 provides:

(1) Where a licensing authority receives a temporary event notice (in duplicate) in accordance with this Part, it must acknowledge receipt of the notice by sending or delivering one notice to the premises user–
   (a) before the end of the first working day following the day on which it was received, or
   (b) if the day on which it was received was not a working day, before the end of the second working day following that day.

(2) The authority must mark on the notice to be returned under subsection (1) an acknowledgement of the receipt in the prescribed form.

(3) Subsection (1) does not apply where, before the time by which the notice must be returned in accordance with that subsection, a counter notice has been sent or delivered to the premises user under section 107 in relation to the temporary event notice.

9.3.2 The section requires, if not a more or less instantaneous acknowledgment, then at least a quick response. A notice needs to be sent out by the end of the following working day. It is not clear, however, what the effect of failure to comply with these requirements will be, either as far as the licensing authority or the premises user is concerned. The section provides no sanction against the licensing authority for a failure to comply, although the failure might perhaps prevent the premises user from staging the event as a temporary permitted activity as one of the necessary conditions is that the requirements of this section are met (see s 98(2) and 9.1.2 above). Nor can a failure to comply preclude the giving of a counter-notice by the police, since this follows from the police being given a copy of the TEN and is independent of acknowledgement by the licensing authority. It is difficult therefore to see what effect a failure to comply can have.

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22 The first working day is treated, to all intents and purposes, as the day of receipt, when s 102(1)(b) applies.
Once the authority has acknowledged the TEN by returning to the premises user one of the duplicate notices received, the premises user then has authorisation to stage the temporary event. When the temporary event takes place, however, it must be in accordance with the restrictions imposed by the authorisation and, if these are not adhered to, the event will be unauthorised. Paragraph 8.15 of the Guidance states:

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.

9.4 WITHDRAWAL OF THE NOTICE

A premises user can withdraw a TEN at any time up to 24 hours before the event is due to take place by giving a notice to this effect to the licensing authority. Once withdrawn, the notice does not count towards the limit on the number of TENs that may be submitted by an individual during a calendar year (Explanatory Note 173). Section 103 provides:

(1) A temporary event notice may be withdrawn by the premises user giving the relevant licensing authority a notice to that effect no later than 24 hours before the beginning of the event period specified in the temporary event notice.

(2) Nothing in section 102 or sections 104 to 107 applies in relation to a notice withdrawn in accordance with this section.

9.5 POLICE OBJECTIONS

9.5.1 Giving an objection notice

A copy of the TEN must be given to the police at least 10 working days before the beginning of the event period and, if the police are of the view that allowing the event to proceed would undermine the crime prevention objective, they must give an objection notice to the premises user and the licensing authority, giving reasons for their decision. Section 104(1) and (2) provides:

(1) The premises user must give a copy of any temporary event notice to the relevant chief officer of police no later than ten working days before the day on which the event period specified in the notice begins.

(2) Where a chief officer of police who receives a copy notice under subsection (1) is satisfied that allowing the premises to be used in accordance with the notice would undermine the crime prevention objective, he must give a notice stating the reasons why he is so satisfied (an “objection notice”):

(a) to the relevant licensing authority, and

(b) to the premises user.

Again, the provisions of s 184 will have application in respect of the giving of notice and, in cases of notice given to a person other than a licensing authority, s 184(3)
provides that this can be ‘by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address’. As in the case of notice given to the licensing authority, it is unclear whether the 10 working days’ period runs from receipt or from the giving of the notice (see 9.2.6 above).

The police must give the objection notice no later than 48 hours after receipt of the copy of the notice. There is, however, no requirement to give an objection notice if the police have received a copy of a counter-notice from the licensing authority to the effect that the permitted limits attaching to the number of events have been exceeded. An objection notice, which may lead to the licensing authority giving a counter-notice, would be rather pointless in such a case once a counter-notice had already been given. Section 104(3) and (4) provides:

(3) The objection notice must be given no later than 48 hours after the chief officer of police is given a copy of the temporary event notice under subsection (1).

(4) Subsection (2) does not apply at any time after the relevant chief officer of police has received a copy of a counter notice under section 105 in respect of the temporary event notice.

The period of 48 hours does not give the police long to decide whether or not to make an objection and speedy contact will need to be made with the premises user if any concerns are to be discussed informally. The objection notice has to be given no later than 48 hours after the police are ‘given’ a copy of the TEN and, as indicated above, this can be done under s 184(3) by posting the copy of the TEN to the police. The period of time surely cannot begin to run from when the copy is put in the post. If it does, it is conceivable (and perhaps likely if second class post is used) that the 48 hour period will have elapsed before the police actually receive the copy of the TEN. This can be avoided if ‘given’ (a copy of the TEN) is interpreted in this provision to mean ‘received’ and the notice provisions in s 184 are regarded as not having application. In the event that the police do not (or are not able to) intervene, they will, however, still be able to rely on their powers of closure (see 11.12–11.14 below) should disorder or noise nuisance disturbance subsequently arise (Guidance, para 8.16).

9.5.2 Scope for use

9.5.3 The most important purpose of an objection notice, according to para 8.16 of the Guidance, ‘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’. As to the cases where an objection notice might be given, para 8.16 seems to envisage it being the larger events:

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

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24 This is on the basis that s 184 prescribes only the methods of giving notice and not additionally the time from which the notice is considered to have effect – see 9.2.6 above. Even if this is the case, it is still possible in some instances that the police may have less than 48 hours’ notice, eg, if a copy of the TEN were delivered over a weekend to a police station that was unmanned at weekends.
small social, community, charitable or sporting events) should not give rise to the use of these police powers.

9.5.4 There is likely to be only a single objection notice where these powers are exercised because the premises will be located in only one police area, but there may be two or more objection notices where premises straddle an area or areas. As previously mentioned (see 9.1.1 above), in such a case a TEN needs to be given to each authority and the police in each area are entitled to give an objection notice. Section 104(5) provides:

In this section “relevant chief officer of police” means—

(a) where the premises are situated in one police area, the chief officer of police for that area, and

(b) where the premises are situated in two or more police areas, the chief officer of police for each of those areas.

Objections are confined to those put forward by the police and the only relevant ground is the crime prevention objective. No provision is made for objections by other interested parties, such as residents living in the area (who may be unaware of the events due to the absence of any requirement for advertisement) or ‘responsible authorities’ such as the fire authority or the environmental health department of the local authority. Nor is the environmental impact on the area or any safety concern a relevant ground for objection. In some cases where TENs are given, the TENs will be by premises licence holders who wish to use their premises temporarily for events involving licensable activities that may not be covered by their licence, such as the sale of alcohol. The premises will at least be known to the licensing authority and it may be assumed that they will have met certain minimum safety requirements before the licence was granted; but where events are staged by those not holding a premises licence, the premises, and the extent to which they might meet safety requirements, may be unknown to the authority.

An attempt to widen the grounds of objection to include all the licensing objectives (not just the crime prevention objective) and to extend it to interested parties and responsible authorities was resisted by the Government at the committee stage in the House of Lords. Lord McIntosh, a Government spokesman, stated (HL Deb, vol 643, col 390, 17 January 2003):

Is that what we want for school fêtes, weddings, church fundraisers and discos in the village hall? Why should people be asked to jump through these additional hoops? There is no need to expand the number of bodies needed to scrutinise temporary event notices. There is no reason to widen the grounds. As long as the police are satisfied with the proposals and they meet the appropriate conditions on permitted limits, there should be no additional bureaucracy.25

25 The first question posed clearly invites and anticipates a response in the negative. However, if the question were re-phrased as, ‘Is that what we want for four day music festivals attended by nearly five hundred people held on premises of which the local authority has no knowledge’, the response may well be different.
The amendment was resisted on the ground that the crime prevention objective was quite wide and that, in any event, the police have the power to close down for up to 24 hours premises for which a TEN has been given ‘where they are a source of noise, nuisance and disorder likely to threaten public safety’.

9.6 COUNTER-NOTICE OR MODIFICATION OF NOTICE FOLLOWING POLICE OBJECTION

9.6.1 If the police object, the licensing authority must hold a hearing to determine whether or not it accepts the police objections. Regulation 5 and para 11 of Sched 1 to the LA 2003 (Hearings) Regs 2005 provide that the hearing must be held within seven working days beginning with the day after the end of the period within which the police may give notice under s 104(2). The end of the period within which the police may give notice is, under s 104(3), 48 hours after the premises user has given them a copy of the TEN (see 9.5.1 above). Under reg 6(2)(b), and para 11 of Sched 2, notice of the hearing must be given to the premises user and the police no later than two working days before the day or the first day on which the hearing is to be held. If the objections are accepted, the authority must issue a counter-notice; but at any point between the police receiving a copy of the TEN from the premises user and the licensing authority hearing, the police and premises user may agree to modify the TEN in order that it meets the crime prevention objective. When TENs are modified, the notice of objection by the police is withdrawn and the modified notice then has effect. Counter-notices and modifications are dealt with by ss 105 and 106 respectively and each is considered below.

9.6.2 Counter-notice

9.6.3 Unless the authority, the police and the premises user agree that it is unnecessary, the authority must hold a hearing and give the premises user a counter-notice if it considers it necessary for the promotion of the crime prevention objective. Section 105(1) and (2) provides:

(1) This section applies where an objection notice is given in respect of a temporary event notice.

26 ‘Anyone who is concerned about the restriction to prevention of crime should bear in mind that that is a wide definition. If there were any suggestion that there was a threat to children from underage drinking or grooming by paedophiles, that would be covered by prevention of crime. The police could intervene on those grounds. That is wide enough’ (Lord McIntosh at HL Deb, vol 643, col 391, 17 January 2003).

27 See ibid cols 385–86. This power exists by virtue of the provision in s 161 – see 11.13 below.

28 Explanatory Note 176. Where the objection notice is withdrawn following modification, or for any other reason, the authority is not required to hold a hearing and consider whether to issue a counter-notice. Nor is it required to do so if it has given the premises user a counter-notice to the effect that the permitted limits attaching to the number of events have been exceeded. Section 105(6) provides: ‘This section does not apply–

(a) if the objection notice has been withdrawn (whether by virtue of section 106 or otherwise), or

(b) if the premises user has been given a counter notice under section 107.’
(2) The relevant licensing authority must—
(a) hold a hearing to consider the objection notice, unless the premises user, the chief officer of police who gave the objection notice and the authority agree that a hearing is unnecessary,\(^29\) and
(b) having regard to the objection notice, give the premises user a counter notice under this section if it considers it necessary for the promotion of the crime prevention objective to do so.

Paragraph 8.16 of the Guidance makes it clear that the authority is confined in the hearing to consideration of the crime prevention objective and it cannot uphold an objection notice on other grounds, such as public nuisance. Further, para 8.13 provides that authorities may not attach any terms, limitations or restrictions on the carrying on of licensable activities at temporary events. This suggests an ‘all or nothing’ approach is needed on the part of the authority.

If the authority decides to give the premises user a counter-notice, this must be accompanied by a notice stating the reasons for its decision, with copies of both notices being given to the police. If a counter-notice is not given, the premises user and the police must be given notice of the decision.\(^30\) There is, however, no requirement imposed on the authority to give reasons to the police as to why their objection has not given rise to a counter-notice. Nevertheless, the authority will be under a duty to give reasons under Art 6(1) of the European Convention on Human Rights since the right to a fair hearing under this Article extends to the giving of reasons (see 3.5.9 above).

Section 105(3) provides:

The relevant licensing authority must—
(a) in a case where it decides not to give a counter notice under this section, give the premises user and the relevant chief officer of police notice of the decision, and
(b) in any other case—
(i) give the premises user the counter notice and a notice stating the reasons for its decision, and
(ii) give the relevant chief officer of police a copy of both of those notices.

9.6.4 Section 105 contains no provision as to the form that a counter-notice under the section should take, unlike s 107 (counter-notices where permitted limits are exceeded), sub-s (7) of which provides: ‘A counter notice under this section must be in the prescribed form and given to the premises user in the prescribed manner.’ Nor does s 105 specify at any point what the effect is of giving a counter-notice, although Explanatory Note 175 provides a clear statement of the intended effect:

If the authority accepts the police objection it must issue a counter notice to the premises user in which case the event cannot proceed.\(^31\)

\(^29\) ‘In this section “objection notice” and “relevant chief officer of police” have the same meaning as in section 104’: s 105(7).

\(^30\) Notice must be given forthwith on making the determination and the notice must be accompanied by information regarding the right of a party to appeal against the determination of the authority: regs 28–29 of the LA 2003 (Hearings) Regs 2005. For the meaning of ‘forthwith’, see 6.6.2 above.

\(^31\) The Guidance mentions intended effect only obliquely, with a reference in para 8.2 to the police being able to ‘intervene to prevent such an event’.
Explanatory Notes are to facilitate understanding of the legislation, but do not form part of the Act and have not been endorsed by Parliament, as the Introduction section to all Explanatory Notes makes clear. Recourse might be had to the Explanatory Notes when interpreting an Act’s provisions, although it is not necessary to do so here as the absence of any reference in s 105 to the effect of the counter-notice might be explained by the provision in s 98(4). This provides that one of the conditions for a temporary permitted activity to take place is that no counter notice has been given in respect of the notice. The effect of the counter-notice is therefore to negate one of the conditions necessary for a temporary permitted activity to take place, which will mean that the event cannot proceed.

9.6.5 The authority must have made a decision on whether to give a counter-notice, and give the notices as required by s 105(3), at least 24 hours before the specified event period. Section 105(4) provides:

A decision must be made under subsection (2)(b), and the requirements of subsection (3) must be met, at least 24 hours before the beginning of the event period specified in the temporary event notice.

As with the effect of giving a counter-notice, s 105 does not specify the effect of failing to comply with this requirement, although again a clear statement of the intended effect is provided by Explanatory Note 175. This states: ‘Any decision or counter notice must be issued to the premises user at least 24 hours before the specified event period. A failure to do so will result in the premises user being able to proceed with the event.’ Less clear is whether a failure to give to the police a copy of the counter-notice and/or notice stating the reasons for the authority’s decision will have the same result. Arguably it should not do so, for if the premises user has been given a counter-notice, he will know that the licensing authority and the police oppose the holding the event and that he should not proceed with it. If he has not himself been given the notice, it is reasonable to assume that his TEN is effective and he is entitled to proceed with staging the event.

That a counter-notice may be given up to 24 hours before an event is due to begin does not leave much time for a premises user to cancel arrangements that may have been made or to notify those who had planned to perform at, or attend, the event. As in the case of the period of notice given to the licensing authority and the police (10 working days), and the period for the police to give an objection notice (48 hours), it is unclear whether the period here of 24 hours runs from receipt or from the giving of the notice (see 9.2.6 and 9.5.1 above). Since the giving of notice can be complied with under s 184(3) by posting the copy of the counter-notice to the premises user, the period of time must surely begin to run from receipt of the counter-notice.

32 In Westminster City Council v National Asylum Support Service [2002] UKHL 38, para 5, Lord Steyn stated, obiter: ‘Insofar as the Explanatory Notes cast light on the objective setting or contextual scene of the statute, and the mischief at which it is aimed, such materials are … admissible aids to construction …’, although his Lordship went on to say at para 6: ‘What is impermissible is to treat the wishes and desires of the Government about the scope of the statutory language as reflecting the will of Parliament. The aims of the Government in respect of the meaning of clauses as revealed in Explanatory Notes cannot be attributed to Parliament. The object is to see what is the intention expressed by the words enacted.’ Although no other members of the House of Lords in the case made reference to the use of Explanatory Notes, the House has since acknowledged, in R v Montila [2005] 1 All ER 113, para 35, that it ‘has become common practice for their Lordships to ask to be shown the explanatory notes when issues are raised about the meaning of words used in an enactment’.
9.6.6 In cases where premises straddle two or more licensing authority areas, each (or all) of the authorities will need to act jointly, for s 105(5) provides:

Where the premises are situated in the area of more than one licensing authority, the functions conferred on the relevant licensing authority by this section must be exercised by those authorities jointly.

This means that a joint hearing will need to be held to consider any police objections and decide whether a counter-notice should be issued. This may be complicated by the fact that, if the premises are situated in two (or more) police areas, the police in each area can give an objection notice, which may result in a notice being given by the police in one (or more) area(s), but not in the other(s). If there are competing views by the police as to whether allowing the premises to be used for the event would undermine the crime prevention objective, this may make it more difficult for the authorities to decide whether to give a counter-notice. Whether or not the authorities do decide to give one, there will have to be joint notification given to the premises user and the police in accordance with s 105(3) and compliance with the 24 hour period in s 105(4) (see 9.6.3 and 9.6.4 above). It is not clear whether ‘functions … exercised … jointly’ for the purposes of s 105(5) will require each authority to give notification independently or whether notification given by one authority acting on behalf of the other(s) will suffice. It is perhaps as well that this situation is unlikely to arise very often in practice.

9.6.7 Modification of TEN

9.6.8 Where the police have given an objection notice, they can, in agreement with the premises user, make alterations to the TEN so that it meets the crime prevention objective and return it to him. This can be done at any stage before a hearing is held to consider the objection notice. Section 106(1) and (2) provides:

(1) This section applies where a chief officer of police has given an objection notice in respect of a temporary event notice (and the objection notice has not been withdrawn).

(2) At any time before a hearing is held or dispensed with under section 105(2), the chief officer of police may, with the agreement of the premises user, modify the temporary event notice by making changes to the notice returned to the premises user under section 102.

This is sound in principle, but the method adopted for making the alterations is not. The method ought to be for the police to make alterations to the copy of the TEN that they have received under s 104(1), for this then to be returned to the premises user, and for a copy of the modified TEN to be given to the licensing authority. Instead, s 106(2)

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33 This is provided the licensing authority has not given the premises user a counter-notice under s 107 to the effect that the permitted limits attaching to the number of events have been exceeded. Section 106(6) provides: ‘This section does not apply if a counter notice has been given under section 107.’

34 Guidance, para 8.18, provides: ‘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.’

35 ‘Objection notice’ has the same meaning as in s 104(2): s 106(7) – see 9.5.1 above.
requires the police to modify the TEN ‘by making changes to the notice returned to the premises user under section 102’. This will be difficult to do for two reasons. First, the notice under s 102 is an acknowledgment of notice sent out *by the authority* on its receipt of the TEN. It will be one of the duplicate TENs sent to the authority, which it is returning to the premises user, duly marked, as an acknowledgement of receipt of his TEN. It is true that the police will have exactly the same document, since a copy will have been sent to them under s 104(1), but the police do not return the TEN under s 102. They are not therefore in any position to make changes to it, except perhaps by communicating the modifications to the licensing authority so that it can make the necessary changes.

A second difficulty is that, in all probability, the TEN will have been returned by the authority to the premises user under s 102 ahead of any modifications that the police might want to make following the objection notice. If the TEN was received on a working day, the authority must under s 102(1) return it by the end of the following working day and, if received on a non-working day, by the end of the second working day after that day (see 9.3 above). By the time of its return, the police may not even have given an objection notice – they have, under s 104(3), until 48 hours after the premises user has given them a copy of the TEN (see 9.5.1 above) – let alone have considered whether the TEN should be modified in agreement with the premises user. It is possible that, if the police give an objection notice more or less immediately, following which there is contact with the premises user and agreement to modify, the authority may not at this point have returned the TEN under s 102; but it is much more likely that the TEN will have been returned before the police decide to make any modifications since, once an objection notice has been given by the police, modifications can be made at any time thereafter up until the time of the hearing.

9.6.9 The solution to these difficulties would seem to be for the police to modify their copy of the TEN and to give a copy of the modified TEN to both the premises user and the licensing authority. Whilst this does not accord with s 106(2) as far as the premises user is concerned, that section simply says that the police ‘may’ modify the TEN by making changes to the notice returned to the premises user under s 102. If this procedure is regarded as directory only and not mandatory, it will be open to the police to adopt the alternative method of modification indicated and it is submitted that this is how the section should be interpreted.

The effect of modifying the TEN is that the notice of objection by the police is withdrawn and the modified TEN has effect. Section 106(3) provides:

Where a temporary event notice is modified under subsection (2)–

(a) the objection notice is to be treated for the purposes of this Act as having been withdrawn from the time the temporary event notice is modified, and

(b) from that time–

(i) this Act has effect as if the temporary event notice given under section 100 had been the notice as modified under that subsection, and

36 There is compliance with s 106 as far as giving a copy of the modified TEN to the licensing authority is concerned, for the police are required to do this under s 106(4). Section 106(4) provides: ‘A copy of the temporary event notice as modified under subsection (2) must be sent or delivered by the chief officer of police to the relevant licensing authority before a hearing is held or dispensed with under section 105(2).’
(ii) to the extent that the conditions of section 98 are satisfied in relation to the unmodified notice they are to be treated as satisfied in relation to the notice as modified under that subsection.

In cases where premises straddle two or more police areas, the TEN can be modified only where the police in each area agree to the modification. Section 106(5) provides:

Where the premises are situated in more than one police area, the chief officer of police may modify the temporary event notice under this section only with the consent of the chief officer of police for the other police area or each of the other police areas in which the premises are situated.

Presumably the police that modify the TEN will have the responsibility for complying with the requirement in s 106(4) that a copy of the modified TEN is given to the licensing authority.

9.7 COUNTER-NOTICE WHERE PERMITTED LIMITS HAVE BEEN EXCEEDED

9.7.1 The permitted limits

Section 107, by prescribing limits that apply in respect of the number of TENs that can be held in any one calendar year, contains safeguards to protect the system of temporary permitted activities from being abused. It requires the licensing authority to issue a counter-notice on receipt of a TEN when these limits are exceeded. Different limits apply depending on whether the person giving a TEN holds a personal licence, and there are also limits in respect of the number of temporary events that can be held on the same premises. An individual who does hold a personal licence can give 50 TENs a year, whereas an individual who does not can give only five. Further, no more than 12 TENs can be given for any one premises within the year and these cannot cover a period of more than 15 days. This will mean that an individual who does not hold a personal licence may (but need not) give all of his (five) TENs in respect of the same premises, but a personal licence holder will need to give them in respect of a number of different premises if he is to use the maximum number of 50 that is permitted. Section 107(1)–(5) provides:

(1) Where a licensing authority—
   (a) receives a temporary event notice (“notice A”) in respect of any premises (“the relevant premises”), and
   (b) is satisfied that subsection (2), (3), (4) or (5) applies, the authority must give the premises user (“the relevant premises user”) a counter notice under this section.

(2) This subsection applies if the relevant premises user—
   (a) holds a personal licence, and
   (b) has already given at least 50 temporary event notices in respect of event periods wholly or partly within the same year as the event period specified in notice A.

(3) This subsection applies if the relevant premises user—
   (a) does not hold a personal licence, and
(b) has already given at least five temporary event notices in respect of such event periods.

(4) This subsection applies if at least 12 temporary event notices have already been given which—
(a) are in respect of the same premises as notice A, and
(b) specify as the event period a period wholly or partly within the same year as the event period specified in notice A.

(5) This subsection applies if, in any year in which the event period specified in notice A (or any part of it) falls, more than 15 days are days on which one or more of the following fall—
(a) that event period or any part of it,
(b) an event period specified in a temporary event notice already given in respect of the same premises as notice A or any part of such a period.

Where TENs are given to the same licensing authority, the authority will know how many it has received and will be aware of whether or not the permitted limits have been reached, since each authority must keep a register which will contain a record of each TEN received by it (s 8(1)(b); and see 2.4.15 above). No difficulties will therefore arise in respect of the permitted limits in s 107(4) and (5) for premises since the TENs will all be given to the same authority, at least where the premises correspond exactly in respect of each TEN given. It will be more problematic, however, to ascertain whether the permitted limits have been reached where this is not the case. Under s 100(1), the premises user may give the licensing authority a TEN where ‘it is proposed to use premises for one or more licensable activities’ and by s 193 ‘“premises” means any place’. When giving a TEN it seems open to a premises user to specify what constitutes the ‘premises’ where the licensable activity is to take place. In respect of buildings, this might be the complete building if all of it is being used, but, if only a certain room is being used, it might be only that room.37 Thus, premises users may give TENs in respect of parts only of buildings.38 Where this is the case, it will need to be ascertained whether the permitted limit of 12 applies in respect of each room or part of the premises or whether it applies to the premises as a whole. If the expression ‘same premises’ in s 107(4) is interpreted to mean ‘same part of the premises’, then, taking the premises as a whole, many TENs may be given in respect of them. Premises with several rooms may, in part, be in more or less constant use for licensable activities under the authority of TENs. If, however, the expression ‘same premises’ in s 107(4) is interpreted to mean ‘part of the same premises’, then there will be maximum of 12 TENs for the premises as a whole. Certainly the former interpretation is a much more expansive one than the latter and might facilitate a much greater use of TENs. Whether this would be in accordance with Parliament’s intention is less clear and it remains to be seen which interpretation will be preferred.

37 The position may be similar in respect of open spaces, such as parks, where only part of the area may be used.
38 This certainly seems to be envisaged by s 101 (which specifies a minimum period of 24 hours between event periods specified by a premises user), for s 101(2)(d) provides: ‘two temporary event notices are in respect of the same premises if the whole or any part of the premises in respect of which one of the notices is given includes or forms part of the premises in respect of which the other notice is given.’
Difficulties may also arise in respect of the permitted limits in s 105(2) and (3) for individuals. Individuals may give TENs to a number of different authorities, which may make it difficult to ascertain when the permitted limits have been reached. A central register\(^{39}\) or a central database to which licensing authorities have access might solve the problem, but, in the absence of either, the only course would seem to be to require a person giving a TEN to disclose how many previous TENs he has given. The authorities, however, will obviously be dependent on the honesty of the notice giver when he discloses how many previous TENs he has given.

### 9.7.2 Calculating the permitted limits

#### 9.7.3 The relevant number of events is calculated by reference to a calendar year – s 107(13)(b) provides that, for the purposes of the section, “‘year’ means calendar year” – and provision is made in respect of events which straddle two years. Provided an event falls partly within one year, it will count towards the relevant number of events for that year. This is clear from the references to ‘wholly or partly’ in para (b) of the above provisions in s 107(2) and (4).\(^{40}\) Further, it will also count towards the relevant number of events for the following year, for s 107(6) provides:

> If the event period in notice A straddles two years, subsections (2), (3) and (4) apply separately in relation to each of those years.

However, for calculation purposes, any TEN in respect of which the authority has given a counter-notice, either following an objection notice from the police or because the permitted limits are exceeded, is not included. Section 107(9) provides:

> In determining whether subsection (2), (3), (4) or (5) applies, any temporary event notice in respect of which a counter notice has been given under this section or section 105 is to be disregarded.

Where a counter-notice has been given under s 105 following an objection notice from the police, the temporary event will be unable to proceed, and it is right therefore that this should not be included for calculation purposes in the number of events that can take place over the course of the year. An individual may, for example, have given only one TEN and held one temporary event at the beginning of the year when he receives a counter-notice to his second TEN preventing him from holding the proposed event. The second TEN will not count and the individual will be able to give another 49 or four TENs over the remaining part of the year, depending on whether he is or is not a personal licence holder (see 9.7.1 above).

#### 9.7.4 Disregarding, for calculation purposes, a counter-notice given because the permitted limits are exceeded is likely to have application where the permitted limits relate to premises rather than individuals. If an individual has reached his permitted limit and a counter-notice has been given, then any TENs given by him thereafter will obviously result in another counter-notice. There will be no subsequent temporary events that he can hold for which the counter-notice can be disregarded for calculation purposes.
purposes, as he has already reached his limit. The only exception would seem to be
where a counter-notice is given in respect of an event that straddles two years. In this
case, for the purposes of calculating the number of events for the second year, the
event in question would be disregarded and the individual could give his 50 or five
TENs for that year. In the case of premises, however, once the permitted limit of 12
TENS has been reached, a counter-notice must be issued if any further TEN is given in
respect of those premises. The individual giving the further TEN may well be below
his personal limit and still have a number of TENs left that he can give before the end
of the year.\(^{41}\) When calculating the number left in such a case, the event in respect of
which the counter-notice was given will not be taken into account.

A further factor to be taken into account when calculating an individual’s
permitted limits is whether any TENs have been given by someone who is (closely)
associated with or in business with that individual. It will be recalled that, under s 101,
the minimum 24 hour period between temporary events held on the same premises
applies not only to events held by the premises user, but also to events held by another
person who is associated with or in business with that user (see 9.2.8–9.2.10 above).
Events given by that other person are treated as events given by the premises user for
the purposes of s 101 and the position is similar when calculating the number of
permitted events under s 107. Section 107(10) provides:

\[
\text{In determining for the purposes of subsection (2) or (3) the number of temporary event}
\text{notices given by the relevant premises user—}
\]
\[(a) \text{ a temporary event notice given by an individual who is an associate of the}
\text{relevant premises user is to be treated as a notice given by the relevant premises}
\text{user;}
\]
\[(b) \text{ a temporary event notice (“notice B”) given by an individual who is in business}
\text{with the relevant premises user is to be treated as a notice given by the relevant}
\text{premises user if—}
\]
\[(i) \text{ that business relates to one or more licensable activities, and}
\]
\[(ii) \text{ notice A and notice B relate to one or more licensable activities to which the}
\text{business relates (but not necessarily the same activity or activities).}
\]

For these purposes, ‘an associate’ has the same meaning as in s 101, that is, a spouse,
certain other close relatives or their spouses, and an agent or employee or their
spouse.\(^ {42}\)

9.7.5 Giving the counter-notice

The counter-notice must be in prescribed form (see 9.2.3 above) and given to the
premises user in the prescribed manner and, as in the case of counter-notices following
police objections, must be given at least 24 hours before the event period specified in
the TEN. Section 107(7) and (8) provides:

\(^{41}\) This could be so whether or not the individual is a personal licence holder. It is more likely
where he is, since a personal licence holder can give 50 TENs a year, but an individual who is
not a licence holder may have given none (or only some) of the five TENs that constitutes the
limit for the premises.

\(^{42}\) Section 107(13)(d) provides: ‘subsections (3) and (4) of section 101 (meaning of “associate”) apply
as they apply for the purposes of that section.’ As to what might constitute being ‘in
business’, see 9.2.10 above.
(7) A counter notice under this section must be in the prescribed form and given to the premises user in the prescribed manner.

(8) No such counter notice may be given later than 24 hours before the beginning of the event period specified in notice A.

The question of counter-notices being given 24 hours before the specified event period has been considered in relation to counter-notices given under s 105 (see 9.6.2–9.6.6 above) and the position will be the same for counter notices under s 107 where the permitted limits are exceeded.

9.8 KEEPING AND PRODUCTION OF NOTICE

9.8.1 The premises user is under a duty to keep at the premises the TEN whenever the premises are being used for licensable activities. The TEN must be kept in the custody or control of himself or a person working at the premises who he has nominated, and a copy of the TEN, together with a notice indicating the position held at the premises by the nominated person, must be prominently displayed at the premises. Section 109(1)–(3) provides:

(1) This section applies whenever premises are being used for one or more licensable activities which are or are purported to be permitted temporary activities by virtue of this Part.

(2) The premises user must either–

   (a) secure that a copy of the temporary event notice is prominently displayed at the premises, or

   (b) meet the requirements of subsection (3).

(3) The requirements of this subsection are that the premises user must–

   (a) secure that the temporary event notice is kept at the premises in–

      (i) his custody, or

      (ii) in the custody of a person who is present and working at the premises and whom he has nominated for the purposes of this section, and

   (b) where the temporary event notice is in the custody of a person so nominated, secure that a notice specifying that fact and the position held at the premises by that person is prominently displayed at the premises.

It might be expected, and clearly would be desirable, for the copy of the TEN and notice to be prominently displayed at the same place in the premises, although neither s 109(2) nor (3) impose any requirement to this effect. It will presumably therefore meet the terms of the section if the TEN and notice were to be (prominently) displayed in different parts of the premises. Failure to comply, without reasonable excuse, with the requirement to prominently display or to keep the TEN at the premises is a summary offence punishable by a fine not exceeding level 2 on the standard scale (s 109(4)(9)).

43 There is no requirement that such nomination be in writing, as there is in the case of premises licences (see s 57(2)(b) and 6.13.3 above).
9.8.2 A constable or authorised officer may require the person having custody or control of the TEN to produce it for inspection, the authorised person being required to produce evidence of his authorisation if requested to do so, and a failure to produce it, without reasonable excuse, is a summary offence punishable by a fine not exceeding level 2 on the standard scale. Section 109(5)–(9) provides:

(5) Where–
(a) the temporary event notice is not displayed as mentioned in subsection (2)(a),
and
(b) no notice is displayed as mentioned in subsection (3)(b),
a constable or authorised officer may require the premises user to produce the temporary event notice for examination.

(6) Where a notice is displayed as mentioned in subsection (3)(b), a constable or authorised officer may require the person specified in that notice to produce the temporary event notice for examination.

(7) An authorised officer exercising the power conferred by subsection (5) or (6) must, if so requested, produce evidence of his authority to exercise the power.

(8) A person commits an offence if he fails, without reasonable excuse, to produce a temporary event notice in accordance with a requirement under subsection (5) or (6).

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

The power of inspection is restricted to a constable and ‘authorised officer’. An ‘authorised officer’ will be an officer of the licensing authority and the power of inspection is not open to a wider range of ‘authorised persons’ as it is in the case of premises licences.44

9.8.3 In the event that the acknowledgment of the TEN is lost, stolen, damaged or destroyed, s 110 makes provision for the premises user to obtain a copy of the notice, in the same form as it existed immediately before it was lost, stolen, damaged or destroyed, on payment of a fee. Under reg 8 and Sched 6 to the Licensing Act 2003 (Fees) Regulations 2005, the fee is £10.50 and a copy of the notice can be obtained only if application is made no more than one month after the end of the event period specified in the TEN. Section 110 provides:

(1) Where a temporary event notice acknowledged under section 102 is lost, stolen, damaged or destroyed, the premises user may apply to the licensing authority which acknowledged the notice (or, if there is more than one such authority, any of them) for a copy of the notice.

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44 Section 109(10) provides: ‘In this section “authorised officer” has the meaning given in section 108(5); and s 108(5) provides: “In this section “authorised officer” means—
(a) an officer of the licensing authority in whose area the premises are situated, or
(b) if the premises are situated in the area of more than one licensing authority, an officer of any of those authorities, authorised for the purposes of this Act.’

The exclusion of the power of inspection for other persons, such as environmental health officers or fire authority officers, reflects the fact that such persons are not able to object or make representations as they are in the case of premises licences.
(2) No application may be made under this section more than one month after the end of the event period specified in the notice.

(3) The application must be accompanied by the prescribed fee.

(4) Where a licensing authority receives an application under this section, it must issue the premises user with a copy of the notice (certified by the authority to be a true copy) if it is satisfied that—
   (a) the notice has been lost, stolen, damaged or destroyed, and
   (b) where it has been lost or stolen, the premises user has reported that loss or theft to the police.

(5) The copy issued under this section must be a copy of the notice in the form it existed immediately before it was lost, stolen, damaged or destroyed.

(6) This Act applies in relation to a copy issued under this section as it applies in relation to an original notice.

9.9 RIGHT OF ENTRY WHERE NOTICE IS GIVEN

A right of entry, where a TEN is given, to assess its likely effect on the promotion of the crime prevention objective is conferred by s 108. The right is conferred on a constable and ‘authorised officer’ (on production of authorisation on request) and is broadly comparable to the right conferred on constables and authorised persons by s 59 for premises licences (see 6.14 above). Section 108(1) and (2) provides:

(1) A constable or an authorised officer may, at any reasonable time, enter the premises to which a temporary event notice relates to assess the likely effect of the notice on the promotion of the crime prevention objective.

(2) An authorised officer exercising the power conferred by this section must, if so requested, produce evidence of his authority to exercise the power.

There are, however, a number of differences between the right under this provision and that under s 59. First, the right is confined to constables and authorised officers, whereas for s 59 the right extends to the wider range of authorised persons. Secondly, no provision is made for the use of reasonable force for gaining entry, as it is (in s 59(4)) for premises licences. Thirdly, the right of entry under s 59 is expressly confined to entry ‘before the determination of a relevant application’, although there is no comparable provision in s 108 of entry having to occur prior to the temporary event taking place. It may, nevertheless, be implicit that entry must be before the event, since the purpose of entry is to assess the likely effect of the TEN on the promotion of the crime prevention objective and likely effect will relate to what might happen before the event rather than once it is taking place.

Section 108(3) provides: ‘A person commits an offence if he intentionally obstructs an authorised officer exercising a power conferred by this section.’

Obstruction of a constable exercising the power will similarly constitute an offence, although falling

45 Section 108(4) provides: ‘A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.’
within the general provision of obstructing a constable in the course of his duties under the Police Act 1996.46

9.10 CONCLUSION

The system of temporary permitted activities, through which authorisation for licensable activities can be obtained by the giving of a TEN, seeks to cover a wide spectrum of activities. These range from, at one extreme, four day music concerts attended by up to 499 people, to, at the other extreme, small single day events such as school fêtes and wedding receptions held in village halls or similar premises. The system regulating these events should, according to para 8.2 of the Guidance, be ‘characterised by an exceptionally light touch bureaucracy’. The system does not facilitate a lighter touch in the case of the latter events than in the case of the former and, in essence, promotes a ‘one size fits all’ approach. It is, as Lord McIntosh, a Government spokesman, observed during the committee stage of the Bill in the House of Lords, ‘a very deregulatory measure’ (HL Deb, vol 643, col 386, 17 January 2003). ‘It goes’, he went on to say, ‘as far as we think it is safe and reasonable to go in view of the protection of local people’. It remains to be seen whether he is right.

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46 See s 89(2) of the Police Act 1996, which provides: ‘Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale, or to both.’
CHAPTER 10

PERSONAL LICENCES

10.1 INTRODUCTION

Part 6 of the Act establishes a regime for the supply of alcohol to be regulated by the granting of personal licences to individuals. The personal licence relates only to the sale of alcohol, not to the provision of regulated entertainment or late night refreshment services, and is required only in respect of sale or supply of alcohol under a premises licence. A personal licence may be sought by any individual whether or not they have current employment or business interests associated with the use of the licence. It is not linked to particular premises and the licensing of individuals, separately from the licensing of premises, permits the movement of licence holders from one set of premises to another. However, a personal licence holder may become associated directly with particular premises covered by a premises licence by being made the ‘designated premises supervisor’ (DPS) for those premises. The DPS is a personal licence holder who is the nominated individual responsible for the day-to-day running of the licensed premises (see 6.4.2 above). There may be other individuals at the licensed premises holding a personal licence apart from the DPS, although it will not be necessary for all staff to hold personal licences. However, under s 19(3), all supplies of alcohol under a premises licence must be made by or under the authority of a personal licence holder. A personal licence does not, however, authorise its holder to supply alcohol anywhere, but only from premises having a premises licence (Explanatory Note 184), although a personal licence holder may supply alcohol elsewhere under the authority of a temporary event notice (see 9.1.1 above).

A personal licence is issued for 10 years in the first instance and there will be a statutory presumption in favour of renewal if the licence holder has not been subject to penalties under licensing law. The initial grant of a personal licence will also be subject to the possession of an accredited qualification. However, during the transitional period, existing holders of justices’ licences for the sale of alcohol will not be required to obtain an accredited qualification (see 13.15.1 below). Rather, there will be a general presumption that a personal licence will be granted automatically, except in limited circumstances where the police have made representations that to do so would undermine the crime prevention objective. As well as being able to object in this instance, the police and licensing authorities also have powers under the Act to deal with errant personal licence holders (Explanatory Note 183; and see 10.8 and 10.9 below).

10.2 MEANING OF PERSONAL LICENCE

A personal licence is a licence granted by a licensing authority to an individual permitting him to sell alcohol by retail or to supply alcohol by or on behalf of a club to...
club members. In the latter instance, this will relate to supply of alcohol in clubs holding a premises licence since no personal licence is needed where alcohol is supplied in clubs holding a club premises certificate (see 8.1.2 above). Section 111 provides:

(1) In this Act “personal licence” means a licence which—
(a) is granted by a licensing authority to an individual, and
(b) authorises that individual to supply alcohol, or authorise the supply of alcohol, in accordance with a premises licence.

(2) In subsection (1)(b) the reference to an individual supplying alcohol is to him—
(a) selling by retail alcohol, or
(b) supplying alcohol by or on behalf of a club to, or to the order of, a member of the club.

10.3 APPLICANTS FOR PERSONAL LICENCES

Application can be made only by an individual and not by a company or corporate body. Section 117(1) provides:

An individual may apply—
(a) for the grant of a personal licence, or
(b) for the renewal of a personal licence held by him.

An application can also be made by an individual only if he does not already hold a personal licence or does not have an outstanding application for a personal licence awaiting determination. An individual is permitted to hold only one personal licence and, once an application has been made for a licence, no further application can be made until the initial application has been determined or withdrawn. Further, any licence granted is void if it transpires that the individual already holds a personal licence. Section 118 provides:

(1) An individual who makes an application for the grant of a personal licence under section 117 (“the initial application”) may not make another such application until the initial application has been determined by the licensing authority to which it was made or has been withdrawn.

(2) A personal licence is void if, at the time it is granted, the individual to whom it is granted already holds a personal licence.

10.4 APPLICATIONS FOR PERSONAL LICENCES

10.4.1 The relevant licensing authority

Application for the grant of a personal licence must normally be made to the authority for the area in which the applicant is ordinarily resident, although, if for some reason a person is not ordinarily resident in an authority’s area, for example, a person has no fixed abode or is ordinarily resident abroad, application can be made to any licensing authority. Section 117(2) provides:
An application for the grant of a personal licence—
(a) must, if the applicant is ordinarily resident in the area of a licensing authority, be made to that authority, and
(b) may, in any other case, be made to any licensing authority.

As to when a person will be ‘ordinarily resident’ in an area, the meaning of this phrase has been considered by the House of Lords in the context of s 1(1) of the Education Act 1962, under which local authorities are under a duty to bestow awards for designated courses to students who were ‘ordinarily resident’ within their areas. In *Shah v Barnet London Borough Council* [1983] 1 All ER 226, 235, Lord Scarman stated:

Unless … it can be shown that the statutory framework or the legal context in which the words are used requires a different meaning, I unhesitatingly subscribe to the view that ‘ordinarily resident’ refers to a man’s abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being, whether of short or long duration.

There would seem to be no reason to give the phrase any different meaning in s 117(2).

The authority granting the personal licence then becomes the ‘relevant licensing authority’ as far as the personal licence holder is concerned. It will thereafter continue to have responsibility for the licence and application will need to be made to it for renewal of the licence at 10 year periods. Section 117(3) provides: ‘An application for the renewal of a personal licence must be made to the relevant licensing authority.’

Once the licence is granted, the licensing authority that issued it remains the relevant licensing authority for it, 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. The holder of the licence is required by the Act to notify the licensing authority of all changes of name or address. These changes will be recorded by the licensing authority. The holder is also required to notify the licensing authority of any convictions for relevant offences 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. These measures ensure that a single record will be held of the holder’s history in terms of licensing matters. In order to make these records available to licensing authorities, the Government, in conjunction with licensing authorities, is considering the development of a central database which will, among other things, include details of all personal licence holders (Guidance, para 4.16).

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3 Section 112 provides: ‘For the purposes of this Part the “relevant licensing authority”, in relation to a personal licence, is the licensing authority which granted the licence.’

4 The personal licence has effect for an initial period of 10 years and is thereafter renewable for further periods of 10 years – see s 115(1) and, for determination of renewal applications, 10.6 below.

5 Guidance, para 4.15. The requirements for notification of change of name and address are contained in s 127, and for convictions in ss 123 and 131–32 – see 10.11.2 below, and 10.8 and 10.9 below respectively. The Guidance goes on to provide: ‘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’ (para 4.15).
10.4.2 Form, notices and accompanying documentation

Application is subject to regulations made under s 133 in respect of the form etc of applications and fees to accompany applications and notices. Section 133(1) and (2) provides:

(1) In relation to any application under section 117 or notice under this Part, regulations may prescribe—
   (a) its form,
   (b) the manner in which it is to be made or given, and
   (c) the information and documents that must accompany it.

(2) Regulations may also—
   (a) require applications under section 117 or 126 or notices under section 127 to be accompanied by a fee, and
   (b) prescribe the amount of the fee.

Regulation 6(1) and Sched 1 to the Licensing Act 2003 (Personal Licences) Regulations 2005, SI 2005/41 (LA 2003 (Personal Licences) Regs 2005) prescribe the form of the application for the grant of a licence and the information that it shall contain. Under reg 7(1), the documents that must accompany an application are two photographs of the applicant (one of which must be endorsed), a certificate or search results on criminal convictions obtained within the last month and a declaration in respect of criminal convictions for relevant or foreign offences (see 10.5.4–10.5.12 below). Regulation 7(1) provides:

(a) two photographs of the applicant, which shall be—
   (i) taken against a light background so that the applicant’s features are distinguishable and contrast against the background,
   (ii) 45 millimetres by 35 millimetres,
   (iii) full face uncovered and without sunglasses and, unless the applicant wears a head covering due to his religious beliefs, without a head covering,
   (iv) on photographic paper, and
   (v) one of which is endorsed with a statement verifying the likeness of the photograph to the applicant by a solicitor, notary, a person of standing in the community or any individual with a professional qualification; and

(b) either—
   (i) a criminal conviction certificate issued under section 112 of the Police Act 1997,
   (ii) a criminal record certificate issued under section 113A of the Police Act 1997 or

6 Notices relate to various matters such as notifying the licensing authority of changes of name and address or convictions incurred – see 10.11.2 below, and 10.8 and 10.9 below respectively.

7 Applications under s 126 are ones for a replacement licence where the original has been lost, stolen, damaged or destroyed and notices under s 127 concern changes of name and address – see 10.7.2 and 10.11.2 below respectively.

8 The information required includes personal details, licensing qualification (if applicable), and previous and outstanding personal licence applications, along with that required by reg 7(1) – see below.
(iii) the results of a subject access search under the Data Protection Act 1998 of the Police National Computer by the National Identification Service, and

in any case such certificate or search results shall be issued no earlier than one calendar month before the giving of the application to the relevant licensing authority, and

(c) a declaration by the applicant, in the form set out in Schedule 3, that either he has not been convicted of a relevant offence or a foreign offence or that he has been convicted of a relevant offence or a foreign offence accompanied by details of the nature and date of the conviction and any sentence imposed on him in respect of it.

As regards persons entitled to endorse the photograph, a ‘person of standing in the community’ under reg 2 ‘includes a bank or building society official, a police officer, a civil servant or a minister of religion’. It seems unlikely that any bank or building society employee will suffice for these purposes since such persons might be employed in a very junior capacity and would not be equated with a ‘person of standing in the community’. Clearly it will include persons such as managers or assistant managers of branches, although it is less clear how far this might extend below this level of employee. Similarly, it seems unlikely that any person employed as a civil servant will satisfy this test and at least some degree of seniority might be expected. Police officers, unless perhaps at probationary level, and ministers of religion, however, might ordinarily be expected to meet the criteria. As regards an individual with a ‘professional qualification’, this will obviously include persons working in areas regulated by professional bodies, for example, doctors, accountants, teachers, barristers and solicitors although it is uncertain whether it will extend beyond such professions.

As regards certificates and search results on criminal convictions, one of three documents to accompany the application will suffice. First, a criminal conviction certificate (often referred to as ‘basic disclosure’), which shows all convictions held at national level that are not ‘spent’ under the Rehabilitation of Offenders Act 1974 (see 10.5.14 below), but not ‘spent’ convictions or cautions, can be obtained from the Criminal Records Bureau by anyone on payment of the required fee. Secondly, a criminal record certificate, which can be either a standard criminal record certificate or an enhanced criminal record certificate, can be obtained from the Criminal Records Bureau, although only by a ‘registered body’ in accordance with s 120 of the Police Act 1997 as these certificates also include details of ‘spent’ convictions and cautions. Local authorities will be registered bodies under the Act as they discharge functions where such details may need to be disclosed. The standard certificate includes details of ‘spent’ convictions and any cautions held at national level and is available in respect of posts or for purposes that are exceptions to the Rehabilitation of Offenders Act 1974. The enhanced certificate is issued for work that involves regularly caring for, training, supervising or being in sole charge of persons under the age of 18 or vulnerable adults.

9 Under reg 8(1), a similar declaration in the form set out in Sched 3 is required when an application is made under Sched 4 for a new premises licence by the holder of a justices’ licence within the period 7 February 2005 to 6 August 2005 – see 13.15.1 below.

10 Quaere whether it will include the first-mentioned author of this work and persons who have obtained the University of Birmingham’s Certificate of Higher Education in Licensing Law, which is recognised by the Institute of Licensing as entitling persons to membership of the Institute.
In addition to the information contained in the standard certificate, it includes information from local police records, including relevant non-conviction information. Thirdly, under s 7 of the Data Protection Act 1998 data subjects have a right of access to any personal data held by a data controller. Information in respect of criminal convictions is personal data and the police are a ‘data controller’ in respect of information that they hold on individuals (‘data subjects’). This information can be obtained from the police, on request, by means of a data access search. Any one of these three documents can accompany the personal licence application.

For renewals, the form of the application and the information that the application shall contain are prescribed by reg 6(2) and Sched 2. The accompanying documentation required by reg 6(2) is the same as that set out in reg 7 above. As the applicant already has a licence, no copy of his licensing qualification is needed, although the application needs to be accompanied by the personal licence or a statement of reasons if this cannot be produced. Section 117(4) provides:

Where the application is for renewal of a personal licence, the application must be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence.

The applicant is also required, under para 3 of Sched 2, to confirm that he does not hold any other personal licences other than the one submitted for renewal since under s 118 only one personal licence can be held (see 10.3 above). In addition, in the case of a renewal application, it is also necessary for the application to be lodged within a two month period beginning three months before the licence’s expiry. Section 117(6) provides:

An application for renewal may be made only during the period of two months beginning three months before the time the licence would expire in accordance with section 115(1) if no application for renewal were made.\(^{11}\)

Under the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 (LA 2003 (Fees) Regs 2005), the application fee for the grant and renewal of a personal licence is £37.

10.5 DETERMINATION OF APPLICATIONS FOR PERSONAL LICENCES

The Act draws a distinction between cases where certain qualifications criteria are met and where a licence must be issued (mandatory grants) and cases where these criteria are not met. Where they are not met, in some cases the licensing authority must reject the application and refuse to grant a licence (mandatory refusals). In other cases where the criteria are not met, the licensing authority must notify the police who can then decide whether to object. If there is no objection, the authority must grant the licence and, if there is objection, the authority must hold a hearing to decide whether or not to grant a licence (discretionary grants). Where no police objection is received, para 3.63

\(^{11}\) If the licence expires before the application for renewal has been determined by the licensing authority, the licence continues to have effect until a decision is made – see s 119 and 10.6.2 below.
of the Guidance recommends delegation to officers and, where representations are received, delegation to a licensing subcommittee (see 2.4.12 above). Each of these cases is considered below.

10.5.1 Mandatory grants

10.5.2 The criteria

The provisions of s 120, which govern the determination of applications, apply where the authority has received an application made in accordance with s 117 (s 120(1)) and, where this is the case, the authority must grant the licence if the following criteria set out in s 120(2) are satisfied:

- The authority must grant the licence if it appears to it that–
  - the applicant is aged 18 or over,
  - he possesses a licensing qualification or is a person of a prescribed description,
  - no personal licence held by him has been forfeited in the period of five years ending with the day the application was made, and
  - he has not been convicted of any relevant offence or any foreign offence.

Provided the criteria are met, it seems that the authority must grant the licence, irrespective of whether it considers the applicant a suitable person to sell alcohol. Matters such as the health, temper and disposition of the applicant, which might have precluded the grant of a justices’ licence for the sale of intoxicating liquor under the previous law on the ground that the applicant was not a fit and proper person to hold the licence, will no longer be considered relevant. Paragraph 4.1 of the Guidance provides: ‘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.’ Thus it would appear that an applicant, even if he might be totally incapable of exercising any control over premises, through physical or mental incapacity (for example, paralysis or brain damage), must be granted a licence provided he meets the above criteria.

10.5.3 Age, qualification and absence of forfeiture

As regards the age of the applicant, it is necessary only that he is aged 18 or over at the time of the determination of his application and he need not be this age at the time the application is made. This is in contrast to the position of premises licence applications, where an applicant is precluded by s 16(2) from applying for a premises licence unless he is aged 18 or over (see 6.2.1 above). It is not obvious why the position should be

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12 See *R v Hyde Justices* [1912] 1 KB 645, where Bankes J stated (at 664):

> It would be unwise to attempt any definition of the matters which may legitimately be inquired into; each case must depend on its own circumstances. As illustrations merely of what in my judgment are matters admissible for consideration, I would mention the health of the applicant, his temper and disposition. I cannot think that a paralysed person, for instance, or a person of so combative a temperament that breaches of the peace would be a certain consequence of permitting him to hold a licence, would be a fit and proper person to hold a licence.
different here, but it would appear to be since there is no comparable provision to s 16(2) in Part 6 of the Act as regards personal licences.

As regards licensing qualifications, s 120(8) provides:

In this section “licensing qualification” means–

(a) a qualification–

(i) accredited at the time of its award, and
(ii) awarded by a body accredited at that time,

(b) a qualification awarded before the coming into force of this section which the Secretary of State certifies is to be treated for the purposes of this section as if it were a qualification within paragraph (a), or

(c) a qualification obtained in Scotland or Northern Ireland or in an EEA State (other than the United Kingdom) which is equivalent to a qualification within paragraph (a) or (b).13

Under s 120(9), a qualification is ‘accredited’ if it is accredited by the Secretary of State14 and on 7 February 2005 the Secretary of State accredited the first two personal licence qualifications, the British Institute of Innkeeping Associated Board (BIIAB) Level 2 National Certificate for Personal Licence Holders (QCA Accreditation Number: 100/4866/2) and the Global Online Assessment for Learning (GOAL) Level 2 Certificate for Personal Licence Holders (QCA Accreditation Number: 100/4865/0).15 Persons not possessing a recognised licensing qualification may nevertheless satisfy the requirement in s 120(2)(b) if they are a ‘person of a prescribed description’. Under reg 4 of the LA 2003 (Personal Licences) Regs 2005, the Secretary of State has prescribed three classes of persons who may obtain a personal licence without a licensing qualification:

(a) a member of the company of the Master, Wardens, Freemen and Commonality of Mistery of the Vintners of the City of London;

(b) a person operating under a licence granted by the University of Cambridge; or

(c) a person operating premises under a licence granted by the Board of the Green Cloth.

The first class of persons can obtain a personal licence, provided the other requirements are met, without the need for a licensing qualification as the Vintners ‘adopt very high standards for admission to their Company, membership of which is a significant honour … [and] the Secretary of State is satisfied that it would be fair and equitable to regard admission to the Company as the equivalent of obtaining a licensing qualification’ (Consultation on Draft Regulations and Order to be Made under the

13 Section 120(9) provides: ‘“EEA State” means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.’

14 For the purposes of transition, Sched 8 provides that existing holders of justices’ licences do not need to hold a licensing qualification before being granted a personal licence – see 13.15.1 below. As the Guidance, para 4.13 states: ‘This is because the licensing justices, following a hearing, have already declared the individual concerned to be “fit and proper” to sell alcohol.’ Nevertheless, most licensing justices have required applicants for justices’ licences to complete the National Certificate for Licensees, a qualification awarded by the BIIAB (which will be replaced by the BIIAB accredited qualification), as part of deciding that they are a ‘fit and proper’ person to hold a licence.

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Licensing Act 2003, para 3.9). Members of the second and third classes of persons are able to obtain a personal licence without a licensing qualification, but only during the transitional period before the second appointed day. Although these persons hold licences from the University and the Board, they do not hold justices’ licences and so cannot benefit from the transitional arrangements in Sched 8, which allow existing licence holders to obtain personal licences without having to hold a new licensing qualification (see 13.15.1 below). The effect of making provisions for such persons, however, is that they are effectively placed in the same position as the holders of justices’ licences in that they can obtain a personal licence during transition without having a licensing qualification.

As regards absence of forfeiture, it is necessary for the applicant not to have forfeited any personal licence held within the preceding five year period. Forfeiture of a personal licence may occur where the licence holder is convicted of a ‘relevant offence’ by a court in England or Wales and the court orders the licence to be forfeited.17

10.5.4 Absence of convictions for any relevant offence or any foreign offence

10.5.5 Not all convictions will preclude a mandatory grant, but only ones for a ‘relevant offence’ or ‘foreign offence’. Further, some convictions for such offences are to be disregarded and do not count as a ‘conviction’ for the purposes of premises licences under Pt 6 of the Act. These are where the conviction for a relevant offence or foreign offence has become ‘spent’ for the purposes of the Rehabilitation of Offenders Act 1974. The three matters requiring consideration, therefore, are the meaning of ‘relevant offence’, the meaning of ‘foreign offence’ and when convictions for these offences become ‘spent’. These are considered below.

10.5.6 Relevant offence

Section 113(1) provides: ‘In this Part “relevant offence” means an offence listed in Schedule 4.’ The offences listed in the Schedule are, for the most part, set out in chronological order by reference to the statutory provisions in which they appear, although they broadly fall into the following categories:

- offences involving licensing or alcohol (including drugs);
- offences involving firearms;
- offences involving fraudulent or dishonest conduct;
- offences involving sexual conduct; and
- offences involving violence.

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16 The Board of the Green Cloth, originally an ancient committee of the Royal Household, is a Bench of Magistrates that has responsibility for licensing inns ‘within the verge of the Palace’ i.e Buckingham Palace. The inns which it licenses, eg, in the northern end of Whitehall are those that were formerly within the private grounds of the Sovereign.

17 A court can order forfeiture under s 129 – see 10.9.6 below. As to what constitutes a ‘relevant offence’, see 10.5.6–10.5.11 below.

18 Section 113(2) provides: ‘The Secretary of State may by order amend that list so as to add, modify or omit any entry.’
The relevant offences are mentioned below under these categories, with a reference in parentheses, after the statutory provision(s), to the relevant paragraph(s) in Sched 4 in which the offences appear.

10.5.7 Offences involving licensing or alcohol (including drugs)

The following offences are included:

- Offences under the Licensing Act 2003 (para 1).
- Offences under previous licensing legislation governing the areas of alcohol, entertainment and late night refreshment. The relevant legislative provisions are:
  - for alcohol, the Licensing Act 1964 and the Licensing (Occasional Permissions) Act 1983 (para 2(b) and (g));
  - for entertainment, Sched 12 to the London Government Act 1963, the Private Places of Entertainment (Licensing) Act 1967, s 13 of the Theatres Act 1968, s 6 of or Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982 and the Cinemas Act 1985 (para 2(a), (c), (d), (f) and (h));
  - for late night refreshment, the Late Night Refreshment Houses Act 1969 and the London Local Authorities Act 1990 (para 2(e) and (i)).
- An offence under s 3 of the Private Security Industry Act 2001 of engaging in certain activities relating to security without a licence (para 20).
- An offence under s 7(2) of the Gaming Act 1968 of allowing a child to take part in gaming on premises licensed for the sale of alcohol (para 6).
- Offences under the Road Traffic Act 1988 that involve alcohol or drugs and motor vehicles, which are:
  - causing death by careless driving while under the influence of drink or drugs (s 3A);
  - driving a vehicle when under the influence of drink or drugs (s 4); and
  - driving a vehicle with alcohol concentration above the prescribed limit (s 5) (para 14).
- Offences under the Misuse of Drugs Act 1971, which are:
  - production of a controlled drug (s 4(2));
  - supply of a controlled drug (s 4(3));
  - possession of a controlled drug with intent to supply (s 5(3)); and
  - permitting [various drug-related] activities to take place on premises (s 8) (para 7).

10.5.8 Offences involving firearms

The following offences are included:

- Offences under the Firearms Act 1968 (para 3).
- Offences under the Firearms (Amendment) Act 1988 (para 12).
- Offences under the Firearms (Amendment) Act 1997 (para 17).
10.5.9 Offences involving fraudulent or dishonest conduct

The following offences are included:

- An offence under s 1 of the Trade Descriptions Act 1968 of applying a false trade description of goods, or supplying or offering to supply goods to which a false trade description is applied, in circumstances where the goods in question are or include alcohol (para 4).

- Most offences under the Theft Act 1968:
  - theft (s 1);
  - robbery (s 8);
  - burglary (s 9);
  - aggravated burglary (s 10);
  - removal of articles from places open to the public (s 11);
  - aggravated vehicle-taking (s 12A);
  - abstracting of electricity (s 13);
  - obtaining property by deception (s 15);
  - obtaining a money transfer by deception (s 15A);
  - obtaining pecuniary advantage by deception (s 16);
  - false accounting (s 17);
  - false statements by company directors, etc (s 19);
  - suppression, etc, of documents (s 20);
  - blackmail (s 21);
  - handling stolen goods (s 22);
  - dishonestly retaining a wrongful credit (s 24A); and
  - going equipped for stealing, etc (s 25) (para 5(a)–(q)).

- Deception offences under Theft Act 1978:
  - obtaining services by deception (s 1); and
  - evasion of liability by deception (s 2) (para 8(a) and (b)).

- Offences under the Customs and Excise Management Act 1979:
  - fraudulent evasion of duty (s 170); and
  - taking preparatory steps for evasion of duty (s 170B) (para 9(a) and (b)).

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19 This applies only in circumstances where s 12A(2)(b) applies and the accident caused the death of any person: para 5(f).

20 There are only a few offences under the Act that are not included, such as taking a conveyance without authority (s 12), theft or robbery of mail outside the jurisdiction (s 14), and advertising rewards for the return of goods lost or stolen with no questions asked, etc (s 23).

21 The only offence under the Act that is not included is making off without payment (s 3).

22 For the offence of fraudulent evasion of duty under s 170, s 173(1)(a) is to be disregarded: para 9(a). Under s 170(1)(a), it is an offence if any person, with intent to defraud, knowingly acquires possession of various goods, including ones which are chargeable with a duty that has not been paid. This means that fraudulent evasion, as a relevant offence, is confined to the offence in s 170(1)(b) of knowingly being concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any such goods, with intent to defraud.
• Offences under the Tobacco Products Duty Act 1979:
  ○ possession and sale of unmarked tobacco (s 8G); and
  ○ use of premises for sale of unmarked tobacco (s 8H) (para 9(a) and (b)).23
• Offences under the Forgery and Counterfeiting Act 1981 (other than an offence under ss 18 or 19) (para 11).24
• Offences under the Copyright, Designs and Patents Act 1988:
  ○ public exhibition in the course of business of an article infringing copyright (s 107(1)(d)(iii));
  ○ broadcast, etc, of recording of a performance made without sufficient consent (s 198(2));
  ○ fraudulent reception of transmission (s 297(1)); and
  ○ supply, etc, of unauthorised decoder (s 297A(1)) (para 13).
• Offences under the Food Safety Act 1990, in circumstances where the food in question is or includes alcohol:
  ○ selling food or drink not of the nature, substance or quality demanded (s 14); and
  ○ falsely describing or presenting food or drink (s 15) (para 15).
• An offence under s 92(1) or (2) of the Trade Marks Act 1994 of unauthorised use of trade mark, etc in relation to goods, in circumstances where the goods in question are or include alcohol (para 16).

10.5.10 Offences involving sexual conduct

Offences which constitute a ‘sexual offence’ within the meaning of s 161(2) of the Powers of Criminal Courts (Sentencing) Act 2000 will be a relevant offence (para 18).25

23 These fall broadly under fraudulent or dishonest conduct since unmarked tobacco consists of tobacco products not carrying a fiscal mark indicating that excise duty has been paid on them.
24 The offences under ss 18 and 19 relate respectively to reproduction of British currency notes and making imitation British coins.
25 Section 161(2), as amended by the Sexual Offences Act 2003, provides: ‘In this Act, “sexual offence” means any of the following:
(a) …;
(b) …;
(c) …;
(d) …;
(e) …;
(f) an offence under the Protection of Children Act 1978;
(fa) an offence under any provision of Part 1 of the Sexual Offences Act 2003 except section 52, 53 or 71;
(g) an offence under section 1 of the Criminal Law Act 1977 of conspiracy to commit any of the offences in paragraphs (f) to (fa) above;
(h) an offence under section 1 of the Criminal Attempts Act 1981 of attempting to commit any of those offences;
(i) an offence of inciting another to commit any of those offences.’
10.5.11 Offences involving violence

Offences which constitute a ‘violent offence’ within the meaning of s 161(3) of the Powers of Criminal Courts (Sentencing) Act 2000 will be a relevant offence (para 19).

10.5.12 ‘Foreign offence’

Section 113(3) provides: ‘In this Part “foreign offence” means an offence (other than a relevant offence) under the law of any place outside England and Wales.’ The effect of this provision seems to be that, if relevant offences are excluded, the requirements for the mandatory grant of a licence will not be met where an applicant has a conviction for any foreign offence. This is because, if the words ‘(other than a relevant offence)’ are excluded, all that this leaves in s 113(3) is ‘an offence … under the law of any place outside England and Wales’, without any other limiting or qualifying words. This is not to say, however, that an applicant with a conviction for any foreign offence will not obtain a personal licence, but only that this will preclude a mandatory grant. Where there is a conviction, it will mean, as will be seen, that the authority must give notice to the police under s 120(4) so the police have an opportunity to object (see 10.5.17 below).

It is doubtful whether convictions for all foreign offences will be drawn to the attention of the local authority and police since the Guidance envisages only offences equivalent to relevant offences being disclosed. Paragraph 4.5 states that all applicants would ‘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’ (emphasis added). If only these offences are disclosed, then only these offences will prevent a mandatory grant. It may be, of course, that applicants disclose convictions that are not equivalent to relevant offences. This will still have the effect of preventing a mandatory grant and will require a notice to be given to the police, although the police will not be in a position to object on the basis of such convictions. This is because, in deciding whether to make an objection in the case of a conviction

Section 161(3) provides: ‘In this Act, “violent offence” means an offence which leads, or is intended or likely to lead, to a person’s death or to physical injury to a person, and includes an offence which is required to be charged as arson (whether or not it would otherwise fall within this definition).’ This is a wide definition that might include even common assault. A threatening act sufficient to raise in the mind of the person threatened a fear of immediate violence could be an offence that is likely to lead to physical injury to a person. Although a matter of interpretation for a court as to whether common assault falls within this definition, it appears that the Government’s view is that it should be included – see Poppleston Allen, Licensed Trade E-News, 8 February 2005.

The effect of the words in parentheses in s 113(3) is to exclude them and exclusion is not surprising. It is most unlikely that any such offences, as defined in Sched 4, will be offences under the law elsewhere, since the ‘extent’ sections in the applicable legislation will in all probability confine application to England and Wales. It is possible that in some cases application may extend to Scotland or Northern Ireland, in which case in these instances the ‘relevant offence’ will be an offence in either of these jurisdictions. This will enable account to be taken of it as a ‘relevant offence’, but it will not be a ‘foreign offence’ under s 113(3) because of the excluding words in parentheses.

It is not obvious why a conviction for any foreign offence should preclude a mandatory grant of a personal licence whereas only a conviction for certain offences in England and Wales (‘relevant offences’) will do so. Perhaps it is felt that the licensing authority may not be in a position to determine whether a foreign offence is comparable to a relevant offence and that this matter is best left to the police to decide. The police will be able to do this when a notice is given and they have the opportunity to object.
for a foreign offence, the police can only do so under s 120(5)(b) where the foreign
offence is one ‘which the chief officer of police considers to be comparable to a relevant
offence’ (see 10.5.19 below).

10.5.13 Spent convictions

10.5.14 Section 114 provides:

For the purposes of this Part a conviction for a relevant offence or a foreign offence
must be disregarded if it is spent for the purposes of the Rehabilitation of Offenders
Act 1974 (c.53).

For certain ‘less serious’ offences, a conviction is to be treated as ‘spent’ under s 1 of the
Rehabilitation of Offenders Act 1974, and a person is to be treated as a ‘rehabilitated
person’, once the required period of time under the Act (the ‘rehabilitation period’) has
elapsed.29 The requirement in s 114 that a conviction must be disregarded ‘if it is spent
for the purposes of the Rehabilitation of Offenders Act 1974’ might mean simply that,
in accordance with s 1, the rehabilitation period has passed. One view would be that it
does have this meaning and, if this is the case, all spent convictions must in all circumstances
be disregarded and can never be taken into account. However, an
alternative view would be that this provision in s 114 should be read and interpreted in
the wider context of the 1974 Act as a whole. Where a conviction is to be treated as
spent, s 4(1) of the 1974 Act goes on to make provision for the effect of rehabilitation,
which is that the conviction must be disregarded. It provides that the person convicted
is to be treated in law as if he had neither committed nor been tried for the offence(s) in
question and that no evidence as to the conviction shall be admissible in proceedings
before a judicial authority. This is, however, subject to the provision in s 7(3) that, in
any proceedings before a judicial authority, the authority can admit or require
evidence as to a person’s spent conviction if satisfied that justice cannot otherwise be
done. The 1974 Act does not therefore require spent convictions to be disregarded in all
circumstances.

10.5.15 If the reference in s 114 to ‘spent for the purposes of the Rehabilitation of
Offenders Act 1974’ means spent for the purposes of the Act taken as a whole, the
section might be seen as representing no more than a declaratory statement of the law
as regards spent convictions under the 1974 Act. On this view, s 7(3) might still have
application and spent convictions need not be disregarded in absolutely all
circumstances. A local authority, when reaching a decision on a licensing application, is
a ‘judicial authority’ for the purposes of s 7(3),30 and it might therefore admit evidence
of spent convictions if satisfied that justice cannot otherwise be done. In short, on the

29 The length of the rehabilitation period is specified in s 5 of the Act and depends on the
sentence imposed. Length ranges from six months, in the case of an absolute discharge, to 10
years, in the case of a sentence of imprisonment for more than six months, but not more than
30 months. In cases where a sentence exceeds 30 months’ imprisonment, the conviction cannot
become spent. The 1974 Act applies both to convictions for offences in England and Wales and
to convictions for ‘foreign offences’ since s 1(4) provides that ‘references to a conviction …
include references (a) to a conviction by or before a court outside Great Britain …’.

30 In Adamson v Waveney District Council (1997) 161 JP 787, 789, it was stated by the High Court
that ‘it is common ground in this case that the initial consideration by the local authority of
an application under s 59 of the [Local Government (Miscellaneous Provisions)] Act of 1976
for a hackney carriage driver’s licence is a proceeding before a judicial authority within this
provision’ (per Sedley J). The position will clearly be the same in respect of other licensing
functions exercised by local authorities.
first view, the power to admit spent convictions under s 7(3) would be impliedly excluded by s 114, but, on the second view, it will continue to have application notwithstanding s 114. Either view might be supported on the wording of s 114.

Neither the Explanatory Notes to the Act nor the Guidance provides any real indication of whether or not s 7(3) is to have application, for neither makes any mention of the section. The Explanatory Notes do state that convictions must be disregarded ‘when spent’ under the 1974 Act, which might perhaps be seen as supporting the view that spent convictions are to be disregarded in all circumstances; but this is not conclusive and a persuasive argument might be made against this view. Under the previous law, licensing authorities were able to take into account spent convictions under s 7(3) and can continue to do so in other areas where licensing control is exercised. To exclude the application of s 7(3) under the 2003 Act would therefore not only be a major change in the law, but also a departure from the well-established legal position operating in other areas. It might be said that, in the absence of clear words, a change of such fundamental importance should not be made. After all, the section does not say, as it might have done, that spent convictions must be disregarded in all circumstances or that the provision in s 7(3) of the 1974 Act does not have application for the purposes of Pt 6 of the 2003 Act. Had it done so, the position would have been clear, but it is not and there is at the very least an element of doubt as to whether s 7(3) is impliedly excluded by s 114.

10.5.16 It remains to be seen what view will be taken of the provision in s 114(1). Of the two views, disregarding spent convictions in all circumstances perhaps accords more closely with the ordinary and natural meaning of the section, but a tentative view is offered that, as a matter of policy, the best course would be to regard s 7(3) as still having application. The courts have made it clear that s 7(3) does not confer a discretion on authorities to admit spent convictions, and the circumstances in which they can be taken into account are tightly circumscribed by the requirement that justice cannot be done otherwise than by admitting the conviction. This can be seen from the remarks of Sedley J in R v Hastings Magistrates’ Court ex p McSpirit (1994) 162 JP 44, a liquor licensing case (at 48):

In my judgment the purpose of section 7(3) is not to confer a dispensing power by way of discretion by adjudicating bodies but to ensure that spent convictions stay spent, unless in the classes of case where it is permissible to do so the party applying to put the spent conviction in can satisfy the judicial authority concerned that there is no other way of doing justice.

Similar remarks were made by his Lordship in Adamson v Waveney District Council (1997) 161 JP 787, 793, where justices had dismissed an appeal against the local authority’s refusal to grant a hackney carriage licence following reception from the police of a list of the applicant’s spent convictions:

the justices ... were ... wrongly advised ... that they had a discretion to admit spent convictions. It is misleading so to describe the power conferred by s 7(3). Section 7(3) creates a specific and limited exception to an otherwise overriding statutory exclusion of evidence of spent convictions. It is an exception that has to be applied with regard

31 Explanatory Note 192. On the question of the use of Explanatory Notes as an aid to interpreting statutory provisions, see 9.6.4 above.
both to the letter of s 7(3) and to the overriding purpose of the Act itself. It is a matter of judgment, not discretion.

Given the limited extent to which spent convictions can be admitted under s 7(3), but the crucial importance that they may have in a relatively small number of cases, it is submitted that the preferable course would be to interpret s 114 so as not to impliedly exclude the application of s 7(3). To do so would not go against the general tenor of the 2003 Act, which is to reduce the level of discretion, for s 7(3) is not concerned with discretion. The provision is concerned with preventing injustice in the circumstances of an individual case and this may not be possible if there is a hard and fast rule, rigidly applied, that spent convictions must be disregarded in all circumstances.

10.5.17 Mandatory refusals

Where an applicant fails to meet any of the criteria in s 120(2)(a)–(c) as to age, licensing qualification and absence of forfeiture of a personal licence within the preceding five years (see 10.5.2 above), then the authority must refuse the licence. Section 120(3) provides:

The authority must reject the application if it appears to it that the applicant fails to meet the condition in paragraph (a), (b) or (c) of subsection (2).

Mandatory refusal does not apply if an applicant fails to meet the criteria in s 120(2)(d), that being that he has not been convicted of any relevant offence or any foreign offence. If the above three criteria are met, but this one is not, then the authority must give the police a notice to this effect. Section 120(4) provides:

If it appears to the authority that the applicant meets the conditions in paragraphs (a), (b) and (c) of that subsection but fails to meet the condition in paragraph (d) of that subsection, the authority must give the chief officer of police for its area a notice to that effect.

This will then give the police an opportunity to object to the application on the ground that to grant it might undermine the crime prevention objective.

10.5.18 Discretionary grants

10.5.19 The licensing authority has a discretion whether or not to grant the personal licence only if an objection is received from the police. Once the police have received a notice from the authority that the applicant has a conviction for a relevant offence or foreign offence, they have 14 days within which to give the authority an objection notice. If a foreign offence is involved, it has to be one that the police consider is comparable to a relevant offence. The police can object only if they are satisfied that granting the licence would undermine the crime prevention objective and reasons why this would be the case must be given. Section 120(5) provides:

Where, having regard to–

(a) any conviction of the applicant for a relevant offence, and
(b) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence,

the chief officer of police is satisfied that granting the licence would undermine the crime prevention objective, he must, within the period of 14 days beginning with the
day he received the notice under subsection (4), give the authority notice stating the reasons why he is so satisfied ("an objection notice").

10.5.20 If there is no objection within the 14 day period, or if any objection is withdrawn, the licence must be granted. Section 120(6) provides:

Where no objection notice is given within that period (or the notice is withdrawn), the authority must grant the application.

On the wording of the section it would appear that if an objection notice is received outside the period, the authority must nevertheless grant the licence, irrespective of the merits of the objection. However, to do so might conflict with the authority’s duty under s 4(1) to carry out its functions under the Act with a view to promoting the licensing objectives, one of which under s 4(2)(a) is the prevention of crime and disorder (see 4.1.1 above). If the authority shares the police’s view that granting the licence will undermine the crime prevention objective, but grants the application because the objection is given outside the required period, it will not be complying with its duty in s 4(1). Conversely, if does not grant the licence in order to comply with its duty under s 4(1), it will be failing to comply with the requirement in s 120(6). Both s 4(1) and s 120(6) are expressed in mandatory terms and there cannot be compliance with both. Priority will have to be accorded to one and the other will need to be read subject to it. One view would be that, as s 4(1) is only a general provision, whereas s 120(6) is dealing with a specific matter, the specific should be accorded priority. This would be in keeping with general principles of statutory construction, with s 4(1) having application insofar as the Act permits it to do so. A contrary view would be that promotion of the licensing objectives is of overriding importance and other provisions in the Act should be read subject to it. In this instance, it is submitted that the latter view is to be preferred. The requirement in s 120(6), unlike s 4(1), is one of form rather than substance and the provision in s 120(6) should be read subject to s 4(1). If the objection is late, but the authority considers it has substance, it should hold a hearing, in the same way as if the objection is within the required period, to decide whether or not to grant the licence.32

10.5.21 Where an objection notice is received from the police (either within or outside the required period, if the view advocated above is correct), the authority must, under reg 5 and para 12 of Sched 1 to the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44 (LA 2003 (Hearings) Regs 2005), hold a hearing within 20 working days to consider the application (unless the parties consider it unnecessary). Under reg 6(4), and para 12 of Sched 2, notice of the hearing must be given to the applicant and the police no later than 10 working days before the day or the first day on which the hearing is to be held.33 Then, having regard to the objection notice, the authority must reject the application if it considers it necessary to promote the crime prevention objective and or otherwise grant it. Section 120(7) provides:

In any other case, the authority—

(a) must hold a hearing to consider the objection notice, unless the applicant, the chief officer of police and the authority agree that it is unnecessary, and

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32 This issue similarly arises where there are late representations in respect of premises licence applications – see 6.4.19 above.

33 As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 11, the applicant must be given the police notice of objection with the notice of hearing.
(b) having regard to the notice, must—

(i) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and

(ii) grant the application in any other case.

There is no provision in the Act or any indication in Explanatory Notes 197–200 to s 120 or in the Guidance that the giving of objection notices, or the rejection of applications having regard to them, should be confined to exceptional circumstances. Indeed, once an objection notice is given, the position is quite the reverse and the expectation is that the licensing committee will reject the application. Paragraph 4.8 of the Guidance states: ‘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.’

10.6 DETERMINATION OF RENEWAL APPLICATIONS FOR PERSONAL LICENCES

10.6.1 The provisions of s 121, which govern the determination of renewal applications, apply where the authority has received an application made in accordance with s 117 (s 121(1)). These provisions relate only to cases where it appears to the authority that the applicant has been convicted of a relevant offence or foreign offence in the period since the licence was granted or last renewed. It seems implicit from the section, although there is no express provision to this effect, that in the absence of convictions the authority must grant the renewal application. Where it appears there are convictions, the authority must give notice to the police, who, if satisfied renewal of the licence would undermine the crime prevention objective, must give an objection notice to the authority within 14 days stating their reasons. Section 121(2) and (3) provides:

(2) If it appears to the authority that the applicant has been convicted of any relevant offence or foreign offence since the relevant time, the relevant licensing authority must give notice to that effect to the chief officer of police for its area.

34 This can be contrasted with the position in respect of police objections to designated premises supervisors for premises licences – see 6.4.23 above.

35 An example of such circumstances might be where an applicant is able to demonstrate that, because the offence in question took place so long ago and there is no longer any propensity to re-offend, any risk to the community is so diminished that it would be right to grant the application: Guidance, para 4.8. A further example might be if a conviction were shortly to become spent and the authority would grant the licence once it had become so.

36 Explanatory Note 201 states: ‘The licensing authority must renew a personal licence except where the applicant has been convicted of one or more relevant offences since the original grant of the licence or its last renewal.’ An obligation to renew the licence seems implicit from s 121(5), which provides that the authority must grant the application if there is no objection from the police. *A fortiori*, the application must be granted if there are no convictions.

37 Section 121(7) provides: ‘In this section “the relevant time” means—

(a) if the personal licence has not been renewed since it was granted, the time it was granted, and

(b) if it has been renewed, the last time it was renewed.’
(3) Where, having regard to—
(a) any conviction of the applicant for a relevant offence, and
(b) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence,

the chief officer of police is satisfied that renewing the licence would undermine the crime prevention objective, he must, within the period of 14 days beginning with the day he received the notice under subsection (2), give the authority a notice stating the reasons why he is so satisfied (“an objection notice”).

10.6.2 In deciding whether to give an objection notice, the police are not confined to considering convictions incurred in the period since the licence was granted or last renewed. Any convictions incurred either before or after this period can also be taken into account.\(^{38}\) Section 121(4) provides:

For the purposes of subsection (3)(a) and (b) it is irrelevant whether the conviction occurred before or after the relevant time.

If the police decide not to give an objection notice, the authority must renew the licence and, if a notice is given, a hearing must, under reg 5 and para 13 of Sched 1 to the LA 2003 (Hearings) Regs 2005, be held within 20 working days (unless the parties agree this is unnecessary) to determine the application. Under reg 6(4), and para 13 of Sched 2, notice of the hearing must be given to the applicant and the police no later than 10 working days before the day or the first day on which the hearing is to be held.\(^{39}\) When considering the application, the authority must reject it if it considers it necessary for the promotion of the crime prevention objective and, if not necessary for that objective, grant it. Section 121(5) and (6) provides:

(5) Where no objection notice is given within that period (or any such notice is withdrawn), the authority must grant the application.

(6) In any other case, the authority—
(a) must hold a hearing to consider the objection notice unless the applicant, the chief officer of police and the authority agree that it is unnecessary, and
(b) having regard to the notice, must—
(i) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and
(ii) grant the application in any other case.

Where a renewal application has been made, the existing licence will remain in effect, even if its expiry date has passed, until the application has been determined or withdrawn. Section 119 provides:

(1) Where—
(a) an application for renewal is made in accordance with section 117, and
(b) the application has not been determined before the time the licence would, in the absence of this section, expire,

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38 These might include, for example, convictions of which the authority was unaware at the time of the earlier grant or renewal and which have only since come to light.

39 As to the giving of notice of hearing, see 2.4.13 below. Under reg 7(2) and Sched 3, para 12, the applicant must be given the police notice of objection with the notice of hearing.
then, by virtue of this section, the licence continues to have effect for the period beginning with that time and ending with the determination or withdrawal of the application.

(2) Subsection (1) is subject to section 115(3) and (4) (revocation, forfeiture and suspension) and section 116 (surrender).

10.7 NOTIFICATION OF GRANT OR REFUSAL AND ISSUING OF THE PERSONAL LICENCE

10.7.1 When an application for the grant or renewal of a personal licence is determined, the licensing authority is required to notify its decision to the applicant and the police. If the licence is granted and the police objected, the notification must include a statement of the authority’s reasons for granting the licence. Similarly, if the licence is refused, notification must be given stating the reasons for rejection of the application. Section 122 provides:

(1) Where a licensing authority grants an application—
   (a) it must give the applicant and the chief officer of police for its area a notice to that effect, and
   (b) if the chief officer of police gave an objection notice (which was not withdrawn), the notice under paragraph (a) must contain a statement of the licensing authority’s reasons for granting the application.

(2) A licensing authority which rejects an application must give the applicant and the chief officer of police for its area a notice to that effect containing a statement of the authority’s reasons for rejecting the application.

(3) In this section—
   “application” means an application for the grant or renewal of a personal licence;
   and
   “objection notice” has the meaning given in section 120 or 121, as the case may be.

On the wording of s 122(1)(a), the giving of notice to the police seems to be required in all cases, even in ones where the requirements for a mandatory grant under s 120(2) are satisfied, although in such a case the police are involved (through notification of convictions and the opportunity to object) in the application process.

10.7.2 Where granted, the licence must be issued forthwith, specify the holder’s name and address and the issuing licensing authority, and be in a form prescribed by regulations. Section 125 provides:

(1) Where a licensing authority grants a personal licence, it must forthwith issue the applicant with the licence.

(2) The licence must—
   (a) specify the holder’s name and address, and
   (b) identify the licensing authority which granted it.

40 Notice must be given forthwith on making the determination and the notice must be accompanied by information regarding the right of a party to appeal against the determination of the authority: regs 28–29 LA 2003 (Hearings) Regs 2005. For the meaning of ‘forthwith’, see 6.6.2 above.

41 For the meaning of ‘forthwith’, see 6.6.2 above.
(3) It must also contain a record of each relevant offence and each foreign offence of which the holder has been convicted, the date of each conviction and the sentence imposed in respect of it.

(4) Subject to subsections (2) and (3), the licence must be in the prescribed form.

Regulation 5(1) of the LA 2003 (Personal Licences) Regs 2005 prescribes the form of the personal licence and requires it to be a physical document in two separate parts. The first part, which must be in durable form and of a size no larger than 70mm x 100mm, requires inclusion of the matters referred to in s 125(2), a photograph of the holder, a number allocated by the licensing authority and unique to the licence, an identifier for the licensing authority granting the licence and the date of the expiry of the licence. The second part requires inclusion of the matters referred to in s 125(3) of the Act and the matters referred to in the first part, except for the photograph of the holder. Regulation 5(1) provides:

A personal licence shall be in the form of a physical document in two separate parts and shall contain—

(a) in the first part, the matters referred to in section 125(2) of the Act, a photograph of the holder, a number allocated by the licensing authority that is unique to the licence, an identifier for the licensing authority granting the licence and the date of the expiry of the licence and this part shall be produced in durable form and shall be of a size no larger than 70mm x 100mm, and

(b) in the second part, the matters referred to in section 125(3) of the Act and the matters referred to in (a) except that the photograph of the holder shall be omitted.

In the event that the licence is lost, stolen, damaged or destroyed, s 126 enables the licence holder to obtain a copy, in the same form as it existed immediately before it was lost, stolen, damaged or destroyed, on payment of a fee (which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is £10.50):

(1) Where a personal licence is lost, stolen, damaged or destroyed, the holder of the licence may apply to the relevant licensing authority for a copy of the licence.

(2) Subsection (1) is subject to regulations under section 133(2) (power to prescribe fee to accompany application).

(3) Where the relevant licensing authority receives an application under this section, it must issue the licence holder with a copy of the licence (certified by the authority to be a true copy) if it is satisfied that—

(a) the licence has been lost, stolen, damaged or destroyed, and

(b) where it has been lost or stolen, the holder of the licence has reported the loss or theft to the police.

(4) The copy issued under this section must be a copy of the licence in the form in which it existed immediately before it was lost, stolen, damaged or destroyed.

(5) This Act applies in relation to a copy issued under this section as it applies in relation to an original licence.

The section does not, however, place any requirement on the licence holder to return to the licensing authority the licence that is lost or stolen should it come back into his possession, although it might have been expected that such a provision would have been included.
10.8 CONVICTIONS INCURRED DURING THE APPLICATION PERIOD

10.8.1 Sections 123 and 124 make provision where convictions for a relevant offence or a foreign offence are incurred during the application period, that is, the period beginning when the application is made and ending when it is determined or withdrawn. The former section requires an applicant to disclose such convictions to the authority and the latter makes provision for revocation of the licence by the authority. Section 123 provides that an applicant convicted of a relevant offence or foreign offence during the application period must notify the authority as soon as is reasonably practicable and a failure to do so is a summary offence punishable by a fine not exceeding level 4 on the standard scale:

(1) Where an applicant for the grant or renewal of a personal licence is convicted of a relevant offence or a foreign offence during the application period, he must as soon as reasonably practicable notify the conviction to the authority to which the application is made.

(2) A person commits an offence if he fails, without reasonable excuse, to comply with subsection (1).

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) In this section “the application period” means the period that—
(a) begins when the application for grant or renewal is made, and
(b) ends when the application is determined or withdrawn.

10.8.2 Where the authority becomes aware of such a conviction, whether through disclosure by the applicant under s 123(1) or notification by a court under s 131 or by the licence holder under s 132 (see 10.9.12 below), s 124 requires the police to be notified to give them an opportunity to object on the ground that continuation of the licence would undermine the crime prevention objective. The police have 14 days within which to object and, if they do, the authority must, under reg 5 and para 14 of Sched 1 to the LA 2003 (Hearings) Regs 2005, hold a hearing within 20 working days to determine whether or not to revoke the licence. This is unless the parties agree this is unnecessary. Under reg 6(4) and para 14 of Sched 2, notice of the hearing must be given to the licence holder and the police no later than 10 working days before the day or the first day on which the hearing is to be held. If the authority considers it necessary for the promotion of the crime prevention objective to revoke the licence, it must do so. Section 124(1)–(4) provides:

(1) This section applies where, after a licensing authority has granted or renewed a personal licence, it becomes aware (whether by virtue of section 123(1), 131 or 132 or otherwise) that the holder of a personal licence (“the offender”) was convicted during the application period of any relevant offence or foreign offence.

(2) The licensing authority must give a notice to that effect to the chief officer of police for its area.

(3) Where, having regard to—

42 As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched , para 13, the licence holder must be given the police notice of objection with the notice of hearing.

43 Section 124(7) contains a provision comparable to s 123(4) (see 10.8.1 above), and provides: ‘In this section “application period”, in relation to the grant or renewal of a personal licence, means the period that—(contd)
(a) any conviction of the applicant for a relevant offence, and
(b) any conviction of his for a foreign offence which the chief officer of police
considers to be comparable to a relevant offence,

which occurred before the end of the application period, the chief officer of police is
satisfied that continuation of the licence would undermine the crime prevention
objective, he must, within the period of 14 days beginning with the day he received
the notice under subsection (2), give the authority a notice stating the reasons why he
is so satisfied (“an objection notice”).

(4) Where an objection notice is given within that period (and not withdrawn), the
authority—

(a) must hold a hearing to consider the objection notice, unless the holder of the
licence, the chief officer of police and the authority agree it is unnecessary, and

(b) having regard to the notice, must revoke the licence if it considers it necessary
for the promotion of the crime prevention objective to do so.

10.8.3 Once a decision is reached, the authority must notify the offender and the
police of its decision and its reasons. The decision does not, however, have effect
whilst an appeal can be made or is outstanding, so, even if revoked, the licence will be
deemed to remain in force pending appeal. Section 124(5) and (6) provides:

(5) Where the authority revokes or decides not to revoke a licence under
subsection (4) it must notify the offender and the chief officer of police of the
decision and its reasons for making it.

(6) A decision under this section does not have effect—

(a) until the end of the period given for appealing against the decision, or

(b) if the decision is appealed against, until the appeal is disposed of.

10.9 CONVICTIONS DURING THE CURRENCY OF THE LICENCE

10.9.1 Introduction

Where a personal licence holder is charged with a relevant offence, he must under
s 128 notify the court that he is the holder of a personal licence. This is to enable the
court to decide, in the event of a conviction, whether to exercise its powers under s 129
to order forfeiture or suspension of the licence. If an order is made it may have
immediate effect, although the court has power under s 130 to suspend its operation
pending an appeal. The court must under s 131 also notify the licensing authority of
the conviction and the Guidance in para 4.24 provides that, on receipt of such a

(contd)

(a) begins when the application for the grant or renewal is made, and
(b) ends at the time of the grant or renewal.’

44 Notice must be given forthwith on making the determination and the notice must be
accompanied by information regarding the right of a party to appeal against the
determination of the authority: regs 28–29 of the LA 2003 (Hearings) Regs 2005. For the
meaning of ‘forthwith’, see 6.6.2 above.
notification, the authority should contact the holder and request his licence so that the necessary action can be taken. 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.

Although the authority will become aware of convictions for relevant offences when notified by the court, this will only occur if the court is aware of the existence of the personal licence. There may be cases where the court is not so aware and, to ensure that the authority knows of the convictions, s 132 imposes a duty on the licence holder to notify the authority of them. The duty under s 132 also extends to notifying the authority of convictions for any foreign offence for which the personal licence holder is convicted since unless these are disclosed the authority is unlikely to become aware of their existence.

10.9.2 Notifying the court that a personal licence is held

10.9.3 A personal licence holder charged with a relevant offence must, by the time of his first court appearance, produce his licence or, if unable to do so, give reasons to the court and notify the court of the relevant licensing authority that issued the licence. Section 128(1) provides:

Where the holder of a personal licence is charged with a relevant offence, he must, no later than the time he makes his first appearance in a magistrates’ court in connection with that offence–

(a) produce to the court the personal licence, or

(b) if that is not practicable, notify the court of the existence of the personal licence and the identity of the relevant licensing authority and of the reasons why he cannot produce the licence.

Section 128(2) and (3) make similar provision where a person is granted a personal licence in the period between his first court appearance and the conclusion of his trial or, if an appeal is made, the disposal of the appeal. In such circumstances, the person must comply when he next appears in court. Section 128(2) and (3) provides:

(2) Subsection (3) applies where a person charged with a relevant offence is granted a personal licence–

(a) after his first appearance in a magistrates’ court in connection with that offence, but

(b) before–

(i) his conviction, and sentencing for the offence, or his acquittal, or,

(ii) where an appeal is brought against his conviction, sentence or acquittal, the disposal of that appeal.

(3) At his next appearance in court in connection with that offence, that person must–

(a) produce to the court the personal licence, or

45 On request, the holder must then produce his licence to the authority within 14 days. The Guidance goes on to provide: ‘It is expected that the chief officer of police for the area in which the holder resides should be advised if he or she does not respond promptly’ (para 4.24). It does not, however, give any indication of what action should be taken by the police should the holder not respond.
(b) if that is not practicable, notify the court of the existence of the personal licence and the identity of the relevant licensing authority and of the reasons why he cannot produce the licence.

10.9.4 If, after having first produced the licence (or after having explained why he cannot), the licence is surrendered, revoked or renewed, or there is a licence renewal application (made or withdrawn), in the interim period up to the conclusion of the trial, the personal licence holder is under a duty to notify the court at his next court appearance. Section 128(4) and (5) provides:

(4) Where–
(a) a person charged with a relevant offence has produced his licence to, or notified, a court under subsection (1) or (3), and
(b) before he is convicted of and sentenced for, or acquitted of, that offence, a notifiable event occurs in respect of the licence,
he must, at his next appearance in court in connection with that offence, notify the court of that event.

(5) For this purpose a “notifiable event” in relation to a personal licence means any of the following–
(a) the making or withdrawal of an application for renewal of the licence;
(b) the surrender of the licence under section 116;
(c) the renewal of the licence under section 121;
(d) the revocation of the licence under section 124.

Failure to comply with the duty without reasonable excuse is a criminal offence, for which the penalty is a level 2 fine on the standard scale. Section 128(6) and (7) provides:

(6) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

A reasonable excuse for not producing the licence might arise in cases where it was not practicable for the licence holder to produce the licence and he notified the court of its existence (under s 128(1)(b)) by a letter sent by post, but the letter was not delivered to the court.

10.9.5 Forfeiture or suspension of the licence on conviction for relevant offence

10.9.6 Where a personal licence holder is convicted of a relevant offence, the court has power under s 129 to make an order for forfeiture of the licence or suspension for a period of up to six months. Section 129(1) and (2) provides:

(1) This section applies where the holder of a personal licence is convicted of a relevant offence by or before a court in England and Wales.

(2) The court may–
(a) order the forfeiture of the licence, or
(b) order its suspension for a period not exceeding six months.
Presumably if the court feels a six months’ suspension period is inadequate the appropriate course would be to order forfeiture of the licence.

The court, when deciding whether to make an order, is not confined to considering the relevant offence for which the licence holder was convicted, but can take into account any previous conviction for a relevant offence.\footnote{Quaere whether spent convictions might be taken into account under s 7(3) of the Rehabilitation of Offenders Act 1974 – see 10.5.13–10.5.16 above.} If an order is made, it will have immediate effect, unless the court suspends the order pending an appeal against it, in which case the licence will continue in force. Section 129(3)–(5) provides:

\begin{itemize}
  \item[(3)] In determining whether to make an order under subsection (2), the court may take account of any previous conviction of the holder for a relevant offence.
  \item[(4)] Where a court makes an order under this section it may suspend the order pending an appeal against it.
  \item[(5)] Subject to subsection (4) and section 130, an order under this section takes effect immediately after it is made.
\end{itemize}

\textbf{10.9.7 Orders made under s 129} can be suspended by the court where the licence holder appeals against his conviction or sentence to the Crown Court (if the case was heard in the magistrates’ court) or if there is a subsequent appeal, or application for leave to appeal, to the Court of Appeal and/or the House of Lords. In the case of appeals to the Crown Court and the Court of Appeal, it is these courts, that is the court to which the appeal is made, which have the power to suspend the order. In the case of appeals to the House of Lords, it is the court from which the appeal is made that has the power, that is the High Court (in cases where there can be an appeal direct to the House of Lords)\footnote{This is a so-called ‘leapfrog’ appeal direct to the House of Lords from the High Court, where a point of law of general public importance is involved and leave to appeal is given either by the High Court or the House of Lords. The relevant part of the High Court from which such an appeal can be made is the Administrative Court, to which an appeal may have been made by way of case stated from the court before which the personal licence holder was convicted of a relevant offence.} or Court of Appeal. Section 130(1)–(4) provides:

\begin{itemize}
  \item[(1)] This section applies where–
    \begin{itemize}
      \item[(a)] a person (“the offender”) is convicted of a relevant offence, and
      \item[(b)] an order is made under section 129 in respect of that conviction (“the section 129 order”).
    \end{itemize}
  \item[(2)] In this section any reference to the offender’s sentence includes a reference to the section 129 order and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.
  \item[(3)] Where the offender–
    \begin{itemize}
      \item[(a)] appeals to the Crown Court, or
      \item[(b)] appeals or applies for leave to appeal to the Court of Appeal, against his conviction or his sentence, the Crown Court or, as the case may be, the Court of Appeal may suspend the section 129 order.
    \end{itemize}
  \item[(4)] Where the offender appeals or applies for leave to appeal to the House of Lords–
(a) under section 1 of the Administration of Justice Act 1960 (c.65) from any decision of the High Court which is material to his conviction or sentence, or
(b) under section 33 of the Criminal Appeal Act 1968 (c.19) from any decision of the Court of Appeal which is material to his conviction or sentence,
the High Court or, as the case may require, the Court of Appeal may suspend the section 129 order.

10.9.8 Suspension is not confined to appeals against conviction or sentence, but also extends to appeals by case stated to the High Court and applications to the High Court for a quashing order. In both cases, it is the High Court that has the power to suspend the order. Section 130(5) and (6) provides:

(5) Where the offender makes an application in respect of the decision of the court in question under section 111 of the Magistrates’ Courts Act 1980 (c.43) (statement of case by magistrates’ court) or section 28 of the Supreme Court Act 1981 (c.54) (statement of case by Crown Court) the High Court may suspend the section 129 order.

(6) Where the offender—
(a) applies to the High Court for a quashing order to remove into the High Court any proceedings of a magistrates’ court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or
(b) applies to the High Court for permission to make such an application,
the High Court may suspend the section 129 order.

If the court decides to suspend the order, it can do so on such terms as it thinks fit and must notify the licensing authority of the suspension. Suspension of the order will allow the licence holder to continue trading during the period of suspension either by reinstating the licence where the order is for its forfeiture or permitting it to remain in force where the order is for its suspension. Section 130(7)–(9) provides:

(7) Any power of a court under this section to suspend the section 129 order is a power to do so on such terms as the court thinks fit.

(8) Where, by virtue of this section, a court suspends the section 129 order it must send notice of the suspension to the relevant licensing authority.

(9) Where the section 129 order is an order for forfeiture of the licence, an order under this section to suspend that order has effect to reinstate the licence for the period of the suspension.

10.9.9 Court’s duty to notify licensing authority of convictions

10.9.10 Where a personal licence holder is convicted of a relevant offence and the court is aware that he holds a personal licence, it must notify the licensing authority, through the appropriate court officer, of the person’s name and address, the nature and date of the conviction and details of any sentence passed. The court must also send a copy of the notice to the person himself. Section 131(1) and (2) provides:
(1) This section applies where a person who holds a personal licence (“the relevant person”) is convicted, by or before a court in England and Wales, of a relevant offence in a case where—

(a) the relevant person has given notice under section 128 (notification of personal licence), or

(b) the court is, for any other reason, aware of the existence of that personal licence.

(2) The appropriate officer of the court must (as soon as reasonably practicable)—

(a) send to the relevant licensing authority a notice specifying—

(i) the name and address of the relevant person,
(ii) the nature and date of the conviction, and
(iii) any sentence passed in respect of it, including any order made under section 129, and

(b) send a copy of the notice to the relevant person.

On receiving notification, the licensing authority should request that the licence holder return the licence so that details of the conviction can be recorded and endorsed on the licence (Guidance, para 5.23).

10.9.11 In cases where there is an appeal and the conviction is quashed or the sentence altered, the appeal court must notify the licensing authority of the outcome and also send a copy of the notice to the person himself. Similar action must be taken by the Court of Appeal in cases where it takes action in relation to a sentence it regards as unduly lenient on references to it under s 36 of the Criminal Justice Act 1988. Section 131(3) and (4) provides:

(3) Where, on an appeal against the relevant person’s conviction for the relevant offence or against the sentence imposed on him for that offence, his conviction is quashed or a new sentence is substituted for that sentence, the court which determines the appeal must (as soon as reasonably practicable) arrange—

(a) for notice of the quashing of the conviction or the substituting of the sentence to be sent to the relevant licensing authority, and

(b) for a copy of the notice to be sent to the relevant person.

(4) Where the case is referred to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (c.33) (review of lenient sentence), the court must cause—

(a) notice of any action it takes under subsection (1) of that section to be sent to the relevant licensing authority, and

(b) a copy of the notice to be sent to the relevant person.

49 Section 131(5) provides:

For the purposes of subsection (2) “the appropriate officer” is—

(a) in the case of a magistrates’ court, the clerk of the court, and
(b) in the case of the Crown Court, the appropriate officer;

and section 141 of the Magistrates’ Courts Act 1980 (c.43) (meaning of “clerk of a magistrates’ court”) applies in relation to this subsection as it applies in relation to that section.
10.9.12 Licence holder’s duty to notify licensing authority of convictions

The licence holder will be aware of convictions notified by the court to the licensing authority under s 131 as he will have received a copy of the notice containing details of convictions sent by the court to the authority, but in other cases the onus is upon the licence holder, under s 132, to notify the licensing authority. This will be the case with convictions for relevant offences where the court was not aware of the existence of the licence and convictions for foreign offences of which the licensing authority will otherwise be unaware. The licence holder must, as soon as reasonably practicable after the conviction, give to the authority a notice containing details of the conviction, any sentence imposed and the outcome of any appeal. He must also return with the notice his personal licence or give reasons why it is not practicable to do so. Section 132(1)–(3) provides:

(1) Subsection (2) applies where the holder of a personal licence—
(a) is convicted of a relevant offence, in a case where section 131(1) does not apply, or
(b) is convicted of a foreign offence.

(2) The holder must—
(a) as soon as reasonably practicable after the conviction, give the relevant licensing authority a notice containing details of the nature and date of the conviction, and any sentence imposed on him in respect of it, and
(b) as soon as reasonably practicable after the determination of any appeal against the conviction or sentence, or of any reference under section 36 of the Criminal Justice Act 1988 (c.33) in respect of the case, give the relevant licensing authority a notice containing details of the determination.

(3) A notice under subsection (2) must be accompanied by the personal licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence.

Failure to comply, without reasonable excuse, is a summary offence punishable by a level 2 fine. Section 132(4) and (5) provides:

(4) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Where a licence holder complies with the duty to notify the licensing authority, there seem to be limited sanctions available to the authority even where the relevant offence or foreign offence is a particularly serious one, for example, rape or grievous bodily harm. The licensing authority can request return of the licence for details of the conviction to be recorded and endorsed on the licence, but has no power to revoke or suspend the licence. Only a court, following conviction for a relevant offence, can make an order for revocation or suspension under s 129 (see 10.9.5–10.9.8 above). The licensing authority can, when the licence is due for renewal, notify the police of the licence holder’s conviction(s) for a relevant offence and/or foreign offence and, if an objection notice is given by the police on the ground that renewing the licence would undermine the crime prevention objective, the authority can refuse to renew the licence if it considers it necessary to promote the crime prevention objective (see 10.6
above). However, as personal licences require renewal only after a 10 year period (see 10.10.1 below), renewal of the licence may be some years away, by which time it is possible that the conviction(s) might in any event have become spent and may not be able to be taken into account (see 10.5.13–10.5.16 above). It is possible that a prosecution might be brought against the licence holder, under s 132, for failing to notify the court that he holds a personal licence (see 10.9.2–10.9.4 above) and, if a conviction is secured, the court might then order forfeiture or suspension of the licence. This is nevertheless dependent on securing a conviction, something which might not occur if the licence holder had a reasonable excuse for the court not being aware that he held a personal licence, for example, if he had notified the court by post and the letter had not been delivered (see 10.9.4 above). It seems surprising that no power of revocation or suspension is conferred on the licensing authority in cases where it is notified by the licence holder of convictions under s 132. Given that a licensing authority can revoke or suspend a premises licences and a CPC following a review of the licence or certificate, there seems no obvious reason why it should not be able to revoke or suspend a personal licence and it is difficult to resist the conclusion that the absence of such a power is the result of an oversight.

10.10 DURATION OF PERSONAL LICENCE

10.10.1 Ten year duration

A personal licence, once granted, will generally remain in force for 10 years (although it also will continue in force pending renewal or disposal of an appeal) and is renewable at intervals of 10 years. The circumstances in which it will not do so are when it is surrendered, revoked, suspended or forfeited. Section 115 provides:

(1) A personal licence–
   (a) has effect for an initial period of ten years beginning with the date on which it is granted, and
   (b) may be renewed in accordance with this Part for further periods of ten years at a time.

(2) Subsection (1) is subject to subsections (3) and (4) and to–
   (a) section 116 (surrender),
   (b) section 119 (continuation of licence pending renewal), and
   (c) paragraph 17 of Schedule 5 (continuation of licence pending disposal of appeal).

(3) A personal licence ceases to have effect when it is revoked under section 124 or forfeited under section 129.

50 Quaere whether forfeiture or suspension of the licence for conviction for this offence might be seen as a disproportionate sentence. Arguably it might be, as the offence is summary only and under s 128(7) subject only to a level 2 fine – see 10.9.5 above. However, the consequence of not notifying the court may be that forfeiture or suspension could not be imposed for a conviction for a much more serious offence for which this would have been a proportionate sentence. On the basis of this causal link, it may be said that the sentence is not disproportionate.
(4) And a personal licence does not have effect during any period when it is suspended under section 129.

(5) Subsections (3) and (4) are subject to any court order under sections 129(4) or 130.

10.10.2 Exceptions: surrender, revocation, suspension and forfeiture,

Provision for surrender of a personal licence is made by s 116, which provides:

(1) Where the holder of a personal licence wishes to surrender his licence he may give the relevant licensing authority a notice to that effect.

(2) The notice must be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence.

(3) Where a notice of surrender is given in accordance with this section, the personal licence lapses on receipt of the notice by the authority.

No provision is made for notification of anyone other than the licensing authority, although surrender of a personal licence may have serious repercussions for other persons, notably the premises licence holder, for example, if a designated premises supervisor (DPS) were to surrender his personal licence without the knowledge of the premises licence holder and sales of alcohol were to continue, there would be a breach of the mandatory condition attached to the premises licence that no supply of alcohol can be made at a time when the DPS does not hold a personal licence. Nevertheless, it is open to the premises licence holder, under s 178, as a person with a ‘property interest’ in the premises, to give notice of his interest to the licensing authority as a result of which he will be notified if a ‘change relating to the premises’ is made in the licensing register (see 2.4.18 above). Since the post of DPS is linked to particular premises for which there is a premises licence, surrender by the DPS of his licence could be regarded as a ‘change relating to the premises’. The premises licence holder will, however, be notified only if he has, under s 178, given notice (which is renewable annually) to the licensing authority of his interest and the notice still has effect. Further, notification may occur at some point after the surrender of the licence has taken effect. Under s 116(3), the personal licence lapses on receipt by the authority of the notice of surrender, but, until a change recording surrender is made to the register (and this may not be done immediately), there is no obligation on the authority under s 178 to notify the premises licence holder.

Revocation of the licence might occur where the authority becomes aware of convictions incurred by the licence holder during the application period and considers that, following a police objection, revocation is necessary for the promotion of the crime prevention objective (see s 124(4)(b) and 10.8.2 above). It seems that revocation by the authority is confined to these circumstances.

Suspension or forfeiture of a licence can be ordered only by a court where a personal licence holder is convicted of a relevant offence (see 10.9.5–10.9.8 above). There is no power available to the authority to suspend the licence or require its forfeiture.

51 See s 19(2)(b) and 6.4.2 above. In such circumstances, the premises licence holder may well have a defence of ‘due diligence’, under s 139, to a charge of carrying on an unauthorised licensable activity – see 11.2.11 below.
10.11 UPDATING AND PRODUCTION OF PERSONAL LICENCE

10.11.1 Updating of licence

10.11.2 Once a licence has been granted, the holder of the licence is under a duty to notify the licensing authority of any change in his name or address. The notice given must be accompanied by the appropriate fee, which under reg 8 and Sched 6 to the LA 2003 (Fees) Regs 2005 is £10.50, and the licence for the changes to be recorded on it. (A duty to update the licensing document is imposed on the licensing authority by s 134 – see 10.11.3 below.) Section 127(1)–(3) provides:

(1) The holder of a personal licence must, as soon as reasonably practicable, notify the relevant licensing authority of any change in his name or address as stated in the personal licence.

(2) Subsection (1) is subject to regulations under section 133(2) (power to prescribe fee to accompany notice).

(3) A notice under subsection (1) must also be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence.

Failure to comply with the duty without reasonable excuse is a criminal offence, for which the penalty is a level 2 fine on the standard scale. Section 127(4) and (5) provides:

(4) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

10.11.3 The licensing authority itself is under a duty to update the licence where it renews or revokes it; where it is notified by a licence applicant that he has been convicted of a relevant offence or foreign offence, or that he has changed his name or address; where it is notified by a court that the licence holder has been convicted of a relevant offence and where it is notified by the licence holder himself that he has been so convicted. It must similarly update the licence following the disposal of any appeal that has been made in respect of a personal licence. Section 134(1) provides:

Where–

(a) the relevant licensing authority makes a determination under section 121 or 124(4),

(b) it receives a notice under section 123(1), 127, 131 or 132, or

(c) an appeal against a decision under this Part is disposed of,

in relation to a personal licence, the authority must make the appropriate amendments (if any) to the licence.

If, on conviction of the licence holder for a relevant offence, the court makes an order under s 129 for the forfeiture or suspension of the licence, the licensing authority must make an endorsement on the licence indicating the terms of the forfeiture or suspension. This endorsement must, however, be cancelled in the event of an appeal leading to the quashing of the forfeiture or suspension order. Section 134(2) and (3) provides:
(2) Where, under section 131, notice is given of the making of an order under section 129, the relevant licensing authority must make an endorsement on the licence stating the terms of the order.

(3) Where, under section 131, notice is given of the quashing of such an order, any endorsement previously made under subsection (2) in respect of it must be cancelled.

In order to update the licence, the licensing authority can require the licence holder to produce it to the authority within 14 days of being notified and failure on the part of the licence holder to do so, without reasonable excuse, is a summary offence punishable with a fine not exceeding level 2 on the standard scale. Section 134(4)–(6) provides:

(4) Where a licensing authority is not in possession of a personal licence, it may, for the purposes of discharging its obligations under this section, require the holder of the licence to produce it to the authority within 14 days beginning with the day on which he is notified of the requirement.

(5) A person commits an offence if he fails, without reasonable excuse, to comply with a requirement under subsection (4).

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Notification to the personal licence holder to produce licence will be in accordance with the provision in s 184(3). Thus, notice can be given to him by delivering it to him or by leaving it at his proper address, or by sending it by post to him at that address (see 2.4.19–2.4.22 above), although if notice is given by the last mentioned method, the licence holder will in fact have less than 14 days within which to produce the licence. As the requirement in s 134(4) is for the licence holder to ‘produce’ the licence to the authority where it is not in the authority’s possession, the requirement would not seem to be met until the authority has actually acquired possession of it. If the licence were to be sent by the post to the licensing authority, but not arrive, the licence holder has arguably failed to ‘produce’ it to the authority as required by s 134(4), although he may, under s 134(5), have a reasonable excuse for failing to comply with this requirement.

10.11.4 Production of licence

Where a personal licence holder is on premises making or authorising the supply of alcohol under a premises licence or temporary event notice (TEN), a constable or authorised officer (on production on request of authorisation) can require him to produce the licence for examination. Section 135(1)–(3) provides:

(1) This section applies where the holder of a personal licence is on premises to make or authorise the supply of alcohol, and such supplies—
   (a) are authorised by a premises licence in respect of those premises, or
   (b) are a permitted temporary activity on the premises by virtue of a temporary event notice given under Part 5 in respect of which he is the premises user.
(2) Any constable or authorised officer\(^{52}\) may require the holder of the personal licence to produce that licence for examination.

(3) An authorised officer exercising the power conferred by subsection (2) must, if so requested, produce evidence of his authority to exercise the power.

A failure to produce the licence, without reasonable excuse, is a summary offence punishable by a fine not exceeding level 2 on the standard scale. Section 135(4) and (5) provides:

(4) A person who fails, without reasonable excuse, to comply with a requirement under subsection (2) is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

10.12 CONCLUSION

Personal licences play a critical role in regulating the sale and supply (hereafter ‘supply’) of alcohol by ensuring that supplies are made or authorised by persons who not only possess a suitable qualification, but also do not have convictions for the more ‘serious’ offences in consequence of which there might be problems of crime and disorder.\(^{53}\) Not all supplies will be made or authorised by personal licence holders, however, for such a licence is needed only for supplies on premises for which there is a premises licence. A premises licence is not needed where there is a CPC and its absence should not give rise to difficulties given that members’ clubs, in the main, are well run and relatively unproblematic. Nor is one needed for TENs, although it is possible that the premises user giving the TEN may have one. Where no personal licence is held, difficulties may be more likely to arise since premises users may give TENs for events at which alcohol will be supplied, but the premises users may turn out to be totally unsuitable persons to supply alcohol. Whilst the police may be able to prevent this occurring in some instances (if they can give an objection notice and this is upheld by the licensing authority), they may not be able to do so in others. In these instances, it will be left to the police to deal with any difficulties that arise through their powers of closure under the 2003 Act (see 11.12–11.14 below).

\(^{52}\) Section 135(6) provides: ‘In this section “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of this Act.’

\(^{53}\) Where there are such convictions, although it might be anticipated that a personal licence will be refused in many cases, one must be granted if there is no police objection or (if there is) may be granted if the licensing authority does not feel it necessary for the promotion of the crime prevention objective to refuse the application.
CHAPTER 11

ENFORCEMENT

11.1 INTRODUCTION

11.1.1 Parts 7–9 of the 2003 Act contain provisions for the enforcement of licensing control. These include the creation in Pt 7 of a number of offences, powers of closure in respect of licensed premises contained in Pt 8, and rights of entry to investigate licensable activities and the commission of offences in Pt 9.

Part 7 contains some offences for which the conduct element (actus reus) alone will suffice for criminal liability, although a ‘due diligence’ defence may be provided, whereas other offences require a mental element (mens rea), normally knowledge, to be proved by the prosecution. The three main categories of offences are unauthorised licensable activities, drunkenness and disorderly conduct, and children and alcohol, with additional categories of smuggled goods, vehicles and trains, and false statements in relation to licensing. There are numerous other offences in the Act directed at failure to comply with procedural requirements and these are dealt with at the points at which these requirements are considered. However, a comprehensive list of all offences is contained in Appendix 10 to the book. This appendix covers the relevant statutory provision, a description of the offence, persons who may be liable for the offence, any applicable defence and the maximum penalty for the offence.

11.1.2 The offence in s 136, of carrying out or attempting to carry out unauthorised licensable activities or knowingly allowing such activities to be carried on, is the one that will have primary application and ‘is central to the enforcement of the licensing regime introduced by the Act’ (Explanatory Note 219). This is supplemented by ss 137–38, which create offences of exposing alcohol for unauthorised sale or keeping alcohol on the premises for unauthorised sale. The effect of these provisions is that an offence is committed where no sale or attempted sale of alcohol takes place, which would be necessary for the offence under s 136 to have been committed. A defence of due diligence to these offences (with the exception of allowing unauthorised licensable activities to be carried on, for which the defence is inapplicable since the prosecution must prove knowledge) is provided by s 139.

A number of other offences, most of which are alcohol related, are also contained in Pt 7. These include offences dealing with drunkenness and disorderly conduct (ss 140–43); the keeping of smuggled goods (s 144);1 the involvement of children with alcohol (ss 145–55);2 the sale of alcohol on moving vehicles and on trains (ss 156–57); and the making of false statements in connection with licensing applications and notices (s 158). There are also some general provisions relating to offences in Pt 9 that cover the institution of proceedings for offences (s 186), offences by bodies corporate (s 187) and jurisdiction and procedure in respect of offences (s 188).

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1 This is not restricted to alcohol, but could include any goods on which duty has not been paid, such as cigarettes, or which have been unlawfully imported.
2 The responsibility for enforcement of the offences of sale or allowing the sale of alcohol to children under ss 146–47 rests with the weights and measures authorities (s 154) and the power of the police to confiscate alcohol in certain designated areas for curbing anti-social behaviour is extended to alcohol contained in sealed containers by s 155.
11.1.3 Part 8 contains provisions enabling the police to make orders for the closure of all licensed premises in an area experiencing disorder for a period not exceeding 24 hours (s 160). Closure orders, again for a period not exceeding 24 hours, may also be made in respect of identified premises where there is, or is likely imminently to be, disorder on or in the vicinity of the premises and closure is necessary for public safety, or where a public nuisance is created by noise and closure is necessary to prevent the nuisance (s 161). Provisions are included for extension (s 162) and cancellation (s 163) of closure orders, for their consideration by magistrates’ courts (ss 164–66), for review of a premises licence following a closure order (ss 167–68), for enforcement of closure orders (s 169) and for exemption of the police from liability for damages (s 170). These powers of closure under Pt 8 can only be exercised by the police, but similar powers of closure are available to local authorities under ss 40–41 of the Anti-Social Behaviour Act 2003 in respect of ‘noisy premises’. Under s 40 a closure order may be made by the chief executive officer of a local authority (who may, under s 41(2), authorise an environmental health officer to exercise the power) for premises where a premises licence or temporary event notice (TEN) has effect in respect of them and where there is a reasonable belief that a public nuisance is being caused by noise coming from the premises, and closure of the premises is necessary to prevent that nuisance.3

11.1.4 Part 9 of the 2003 Act contains powers of entry and inspection for police officers and authorised persons. Under s 179, they can enter to investigate licensable activities taking place on premises and an offence is committed by any person who intentionally obstructs a person exercising this power. Under s 180, a police officer may enter and search premises if he has reason to believe an offence under the Act has been, is being, or is about to be committed.

OFFENCES

11.2 UNAUTHOURISED LICENSABLE ACTIVITIES

11.2.1 Section 136(1) provides:

A person commits an offence if–

(a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or

(b) he knowingly allows a licensable activity to be so carried on.

This offence is wide ranging in scope and applies in respect of all premises lacking ‘an authorisation’, that is authorisation under a premises licence, a club premises certificate (CPC) or TEN.4 It will thus encompass premises that have no authorisation at all for licensable activities to take place, premises that have authorisation, but not for

3 These sections came into force on 31 March 2004: Anti-Social Behaviour Act 2003 (Commencement No 2) Order 2004, SI 2004/690, an order made by the Secretary of State in relation to England under s 93(2)(a), and Anti-Social Behaviour Act 2003 (Commencement No 1) (Wales) Order 2004, SI 2004/999, an order made by the National Assembly for Wales in relation to Wales under s 93(2)(b).

4 Section 136(5) provides: ‘In this Part “authorisation” means–

(a) a premises licence,

(b) a club premises certificate, or

(c) a temporary event notice in respect of which the conditions of section 98(2) to (4) are satisfied.’
the particular licensable activity in question, and premises where, although there is authorisation for the licensable activity in question, a breach of conditions occurs.\(^5\) Paragraph 14.6 of the Guidance states:

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 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.

The offences, however, are subject to qualification by s 136(2), which provides:

Where the licensable activity in question is the provision of regulated entertainment, a person does not commit an offence under this section if his only involvement in the provision of the entertainment is that he–

(a) performs in a play,
(b) participates as a sportsman in an indoor sporting event,
(c) boxes or wrestles in a boxing or wrestling entertainment,
(d) performs live music,
(e) plays recorded music,
(f) performs dance, or
(g) does something coming within paragraph 2(1)(h) of Schedule 1 (entertainment similar to music, dance, etc).\(^6\)

This provision precludes application of the offence in s 136(1) to those who are performers or participants in regulated entertainment. A person undertaking any of the above-mentioned activities will not be a person who ‘carries on or attempts to carry on’ a licensable activity without authorisation for the purposes of this section if his only involvement is as a performer.\(^7\) The exclusion of such persons from the scope of the offence followed a Report of the Joint Committee on Human Rights (JCHR) that raised doubts about whether criminalisation of the actions of performers who participated in the entertainment could be justified in terms of the right to freedom of expression under Art 10 of the European Convention on Human Rights. The JCHR concluded that inclusion of performers within the offence would give rise to ‘a significant risk of disproportionality, and hence incompatibility under Article 10’\(^8\) and

\(^5\) It seems likely that there will be only one offence committed irrespective of the number of conditions breached. This was the view taken by the Divisional Court, in *Mendip District Council v Glastonbury Festivals Ltd* (1993) 91 LGR 447, in respect of the offence, under Sched 1, para 12(2) of the Local Government (Miscellaneous Provisions) Act 1982, of providing public entertainment ‘otherwise than in accordance with the terms, conditions or restrictions on or subject to which the licence is held’.

\(^6\) Section 136(3) provides: ‘Subsection (2) is to be construed in accordance with Part 3 of Schedule 1’, Pt 3 being concerned with interpretation of the terms used to describe the various types of regulated entertainment – see 5.3.21–5.3.32 above.

\(^7\) However, if the individual also organised or helped to organise the event, an offence may be committed notwithstanding the fact that the individual was also a performer: Guidance, para 14.7. This is, however, subject to the defence of due diligence – see 11.2.10 below.

the provision in s 136(2) was duly incorporated on the third reading of the Bill in the House of Lords.

The penalty for the offence is prescribed by s 136(4), which provides:

A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

The maximum sentence that can be imposed is, as para 14.8 of the Guidance recognises, ‘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’.

There are two categories of persons who might commit the offence in s 136(1). One is those who carry on or attempt to carry on an unauthorised licensable activity and the other is those who allow such an activity to be so carried on.

11.2.2 Carrying on or attempting to carry on an unauthorised licensable activity

11.2.3 Carrying on

11.2.4 This category will most obviously include those who have some organisational or managerial involvement in the licensable activity. This will be in accordance with the ordinary dictionary meaning of ‘carry on’, which includes (in reference to a business) to ‘manage’.9 In the case of premises lacking any authorisation for a licensable activity, this could be the person running the premises. Alternatively, in the case of entertainment, it could be those responsible for putting on, arranging, promoting or managing the entertainment and, in the case of late night refreshment, those providing the refreshment. In the case of premises for which there is an authorisation, but not for the particular licensable activity in question, this could be (where the authorisation is a premises licence) the premises licence holder or (where the authorisation is a CPC) the club secretary or the club committee or (where the authorisation is a TEN) the premises user.

11.2.5 How far liability extends beyond such persons will depend on how ‘carries on’ is interpreted. If a broad interpretation is given, this might include those who take part in the licensable activity in a way that contributes significantly to the activity, apart of course from participation as a performer since this activity is specifically excluded by s 136(2) (see 11.2.1 above). Such an interpretation would accord with the approach taken by the courts under the previous law in respect of the offence of being concerned in the organisation or management of unlicensed public entertainment under para 12(1) of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982. The Divisional Court, in Chichester District Council v Ware (1992) 157 JP 574, held that this offence was wide enough to include anyone who took part in the running of the entertainment and whose part could be said to contribute significantly to the whole unlicensed entertainment. In the Chichester case, an unlicensed public musical

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9 See, eg, Chambers English Dictionary, Collins English Dictionary and Shorter Oxford English Dictionary. See also Brown v London and Northern Western Ry Co (1863) 32 LJQB 318, 321, per Blackburn J: ‘Business can only be said to be carried on where it is managed.’
entertainment in the nature of an ‘acid house’ party\textsuperscript{10} was held in a barn near Chichester and prosecutions were instituted against four defendants who either played a part in taking equipment to the barn or who made use of the equipment in the course of the entertainment. One defendant, Byrne, hired the audio equipment and two electric generators; a second defendant, Simpkins, drove a van transporting Byrne and this equipment at least part of the way to the barn; a third defendant, Sylvester, hired the record turntable and lighting equipment used; and a fourth defendant, Ware (who according to the evidence was the only one present at the party), although he had not been engaged to act as a disc jockey, did so at the start of the party as no other disc jockey had arrived. The defendants denied taking part in organising the party, alleging that they had ‘independently either come across, or been approached by that chimical go-between, so frequently figuring in criminal courts, a man in a pub (\textit{per} Beldam LJ at 575). The justices, before whom the defendants appeared, took the view that the conduct of the defendants was not proximate enough to constitute being concerned in the organisation of unlicensed public entertainment and acquitted the defendants.

There was an appeal by case stated to the Divisional Court which took a broad view of the nature and degree of participation required to bring an act within the description of acts ‘concerned in the organisation ... of that entertainment’ and held that the justices were not correct in deciding that the defendants’ conduct was not proximate enough. Beldam LJ stated (at 581):

Looking at the subsection [sic] broadly, a distinction is first of all drawn between those who are concerned in the organisation and management of the entertainment and those who are in a position to permit an entertainment to be held at some place. Those two categories cover all those who take part in the provision of such unlicensed musical entertainment except those who simply attend for the purpose of being entertained.

This remark might have equal application to s 136(1), which similarly draws a distinction between carrying on or attempting to carry on (hereafter ‘carrying on’) a licensable activity and allowing such an activity to be carried on. If these two categories are looked at broadly, they might cover all who take part (to a significant extent)\textsuperscript{11} in a licensable activity, except those who attend the premises to purchase alcohol, to be entertained or to purchase late night refreshment.

11.2.6 No reference is made in s 136(1)(a) to any mental element for the offence of carrying on a licensable activity. Absence of any reference is often indicative of strict liability, although sometimes courts ‘read in’ a mental element since there is a presumption that statutes creating criminal offences require a blameworthy state of

\textsuperscript{10} The term ‘acid house’ is commonly supposed to derive from the colloquial name for the drug LSD, the use of which may be associated with parties of the kind in question, but this may not be the correct explanation. According to Tony Colston-Hayter, Chairman of the Association of Dance Party Promotions:

the name “Acid House” comes from the streets of Chicago, where “acid” means to steal: Chicago House music is made up of “samples” taken from recordings and thus, in a sense, stolen: hence Acid House. Only the tabloids and the ill-informed maintain that it derives from LSD. Nobody else uses the term “Acid House party”. The police use the self-explanatory “pay party”; we prefer “warehouse party” or “rave”. (‘Why Should Having Fun Be Against the Law?’, \textit{Independent}, 3 March 1990.)

\textsuperscript{11} Beldam LJ, qualifying the above statement, went on to remark (at 582): ‘it may be that there will arise a case in which it can be said that a part played is so minor and so small that it should not be regarded as being concerned in the organisation or management of the entertainment.’
mind (*mens rea*) on the part of a defendant. It seems unlikely, however, that a mental element will be required here, for there is an express reference to knowledge in s 136(1)(b) for the offence of allowing a licensable activity to be carried on. The absence of any reference to knowledge, or some lesser mental element such as reasonable suspicion, in s 136(1)(a) strongly suggests that the offence is one of strict liability, as does the provision in s 139 of a defence of due diligence for the offence in s 136(1)(a). The position seems comparable to that under the previous law for the offence of providing unlicensed public entertainment, and in the *Chichester* case the Divisional Court held that that offence was one of strict liability. The decisive factor for the court was the wording of the offence itself:12

In subparagraph (1) of para 12 [of Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982] the clear distinction is drawn between persons who are concerned in the organisation and management of the unlicensed entertainment and other persons who, knowing or having reasonable cause to suspect that such an entertainment would be so provided, permit a place to be used for the provision of entertainment.

It seems to me impossible to infer that the draftsman of that provision intended it to be a requirement of the offence under s [sic] 12(1)(a) that it would have to be proved that the person concerned in the organisation and management of the entertainment knew or had reasonable cause to suspect that the entertainment would be provided at the place referred to.

Thus, in the drafting of the section [sic] there was a clear distinction drawn between the two subparagraphs and my interpretation that no particular mental requirement is necessary for an offence to be proved under para 12(1)(a) is reinforced by the provision in sub para (3), that it is to be a defence to a person charged with an offence under the paragraph to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence, words which strongly suggest that the offence is one of strict liability though I accept, of course, that they are not determinative.13

It is submitted that s 136(1)(a) should be similarly interpreted, notwithstanding that under s 136(4) a relatively high maximum penalty of six months’ imprisonment and a

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12 Other factors to which the court had regard were:

(a) the offence regulates specific activities involving potential danger to public safety and not the general conduct of citizens in the course of their everyday life, so placing it in the category of offences for which strict liability might be imposed, according to Lord Diplock in *Sweet v Parsley* [1970] AC 132, 162;

(b) the presumption of mens rea is not particularly strong since the offence is not, in the words of Lord Scarman in *Gammon (Hong Kong)* Ltd v *Attorney General of Hong Kong* [1985] AC 1, 14, ‘truly criminal’ in character; and

(c) the presumption of mens rea could be displaced, in accordance with the criteria set out by Lord Scarman in the Gammon (Hong Kong) case, as the statute is concerned with matters of social policy and the offence was created to promote the enforcement of the provisions of Sched 1 to the 1982 Act for ensuring safety and welfare.

13 (1992) 157 JP 574, 581. A subsequent Divisional Court, in *Marshall v South Oxfordshire District Council* (12 June 1996, unreported), declined an invitation to regard as incorrect the ruling in *Chichester* that the offence was one of strict liability. Henry LJ stated:

We are asked to say that *Chichester District Council v Ware* is wrong. Although that decision is not technically binding on us, it is a decision of a court of equivalent jurisdiction, another constitution of the court in which we sit, and in those circumstances we should follow it unless we are clearly of the opinion that it is wrong. I, on the material before me, am not satisfied that that decision is clearly wrong. It seems to me that it should be followed ...
fine not exceeding £20,000 might be imposed for the offence. Imposing strict liability under s 136(1)(a) would accord not only with the previous law relating to the provision of unlicensed public entertainment, but also with the previous law relating to the sale of intoxicating liquor without a licence.

11.2.7 Attempting to carry on

11.2.8 The offence under s 136(1)(a) extends to cases where a person is ‘attempting to carry on’ an unauthorised licensable activity. In general, statutory provisions creating criminal offences do not include references to attempts since liability for attempts is imposed by s 1(1) of the Criminal Attempts Act 1981. However, liability under s 1(1) arises only in respect of attempts to commit indictable offences (those which can or, in some cases, must be tried before a jury). Section 1(4) provides (subject to some exceptions): ‘This section applies to any offence which, if it were completed, would be triable in England and Wales as an indictable offence …’ The Act does not therefore apply to summary only offences (those which are triable only before magistrates) and, since the offence in s 136(1) is summary only, it is for this reason that reference is made in the section to attempting to carry on an unauthorised licensable activity.

The principles governing liability for attempting summary only offences, in cases where there is a special statutory provision creating an offence of attempting to commit another offence, are nevertheless the same as those which apply to attempts under s 1(1) of the 1981 Act. Section 3 of the 1981 Act contains provisions to this effect and s 3(4), essentially replicating s 1(1), provides:

A person is guilty of an attempt under a special statutory provision if, with intent to commit the relevant full offence, he does an act which is more than merely preparatory to the commission of that offence.

11.2.9 The conduct element required for the offence is whether an act has been done which is ‘more than merely preparatory’ to the commission of an offence and, where there is evidence to support such a finding, the Act, in s 4(3), explicitly provides that this ‘is a question of fact’. Although the courts have provided some guidance, much will depend on the circumstances of the particular case. The mental element required

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14 A similar sentence was available for the offence of providing unlicensed music and dancing and licensed music and dancing where there was a breach of condition relating to the numbers of persons present, following the passing of the Entertainments (Increased Penalties) Act 1990. Although this Act was not in force at the time of the Chichester case, it was at the time of the decision in Marshall.

15 See French v Hoggett [1968] 1 WLR 94 (steward of working men’s club served a plain-clothes policeman, who he honestly believed was a club member and to whom he was not therefore making a sale, held liable for making a sale to the policeman of intoxicating liquor without a justices’ licence contrary to s 160 of the Licensing Act 1964).

16 The rationale for this is that attempts are less serious than the perpetration of substantive offences and do not merit criminalisation where the substantive crime is of a relatively minor nature, which tends to be the case with summary only offences. There are, however, a number of specific statutory offences of attempting to commit particular summary only offences.

17 See, eg, R v Gullefer [1990] 3 All ER 882, where the Court of Appeal stated (per Lord Lane CJ at 885) that attempt ‘begins when the merely preparatory acts come to an end and the defendant embarks upon the crime proper’. As Allen, M (Textbook of Criminal Law, 7th edn, 2003, Oxford: OUP, pp 279 and 282) observes: ‘The inclusion of the word “merely” … suggests a grey area of ill-defined proportions between acts which are purely preparatory and the last act of commission … [and] while … a distinction may be drawn between acts which fall within the “preparation phase” of the intended crime from those which fall within the “commission phase”, it is clear that courts have difficulty in identifying where the line between the two is to be drawn.’
is intent to commit the offence, which means ‘a decision to bring about, in so far as it lies within the accused’s power, the commission of the offence which it is alleged the accused intended to commit, no matter whether the accused desired that consequence of his act or not.’\textsuperscript{18} Although it seems that the full offence itself under s 136(1)(a) is one of strict liability, nevertheless it will still probably be necessary for intent to be proved on a charge of attempt.\textsuperscript{19}

\textbf{11.2.10 Defence of due diligence}

11.2.11 A defence of due diligence is provided for the offence in s 136(1)(a). Section 139 provides:

(1) In proceedings against a person for an offence to which subsection (2) applies, it is a defence that—
   (a) his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and
   (b) he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(2) This subsection applies to an offence under—
   (a) section 136(1)(a) (carrying on unauthorised licensable activity),
   (b) section 137 (exposing alcohol for unauthorised sale), or
   (c) section 138 (keeping alcohol on premises for unauthorised sale).

This defence seems rather narrower in scope than that under the previous law where it was necessary only that a person took all reasonable precautions and exercised all due diligence (hereafter ‘due diligence’) to avoid committing the offence, for example, under para 12(3) of Sched 1 to the Local Government (Miscellaneous Provisions) Act 1982 for providing unlicensed public entertainment or entertainment in breach of licence conditions and under s 169(4A) of the Licensing Act 1964 for selling intoxicating liquor to a person under the age of 18. There is now an additional limiting factor in that the act in question has to be attributable to one of the four causes mentioned in s 139(1)(a). It will no longer be sufficient if there has been due diligence; if the act was not also due to one of the specified causes, the defence will not be made out.\textsuperscript{20} Given that the factors mentioned are broadly specified, however, it may be that this additional requirement will have little practical effect in restricting successful pleas of the defence.

11.2.12 An example of a situation where the defence might have application is contained in para 14.9 of the Guidance:

\textsuperscript{18} \textit{R v Mohan} [1976] QB 1, 3 (per James LJ), a pre-Act case, but subsequently stated by the Court of Appeal, in \textit{R v Pearman} (1985) 80 Cr App R 259, to remain an authoritative guide to interpretation of ‘intent’ under the Act.

\textsuperscript{19} This seems to be generally accepted by commentators, although there is no authority directly on the point.

\textsuperscript{20} Guidance, para 14.13. (‘It is therefore important that both elements of the defence must be in place before the defence would be effective.’)
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.

Whether or not due diligence can be established in any particular case will be a question of fact in all the circumstances. Where there is clear evidence that there is an adequately implemented and supervised system to deal with sales of alcohol to persons under the age of 18, the defence will be made out and it will be wrong for a court to come to the view that it is not. The High Court, in Davies v Carmarthenshire County Council ((2005), unreported, 3 March (at the time of writing)), held that a magistrates’ court had erred in rejecting a defence of due diligence by a supermarket manageress (a joint licensee) who was charged with selling intoxicating liquor to a person under the age of 18 contrary to s 169 of the Licensing Act 1964, following a sale made by a sales assistant at the supermarket, where a number of undisputed matters that were material and of considerable importance to the defence had been made out. These included the sales assistant having been provided with written material aimed at preventing under-age sales, a prominent display throughout the store of the supermarket’s policy of requesting age identification from anyone who looked under the age of 21 before alcohol would be sold, the use of tills which required a sales assistant to be satisfied as to a person’s age before a sale of alcohol could be effected and a completed record by the sales assistant logging previous occasions when sales had been refused. Allowing the appeal by case stated, the High Court held that all this material showed that the defendant had taken adequate steps to train and supervise the sales assistant and the magistrates’ court had erred in holding that the defendant had not established the defence.

It may not be necessary, however, for the person relying on the defence to have personally taken reasonable precautions and exercised all due diligence to avoid the commission of the offence. The Divisional Court so held in Russell v DPP (1996) 161 JP 185, where, the defendant, a trainee branch manager acting as relief manager for the licensee in off-licensed premises, sold intoxicating liquor to a person under the age of 18 contrary to s 169(1) of the Licensing Act 1964 after false documentary proof of age had been given by the purchaser to the company’s area manager, who was working alongside the defendant in the premises. The Divisional Court held that the ‘due diligence’ defence in s 169(4A) did not require that the defendant personally had exercised all due diligence to avoid the commission of the offence. McCowan LJ stated (at 188–89):

the Crown Court went wrong in approaching the matter on the basis that the appellant had to show that he had exercised an independent judgment in the matter. That was not required by the Act. He was operating a good system put in place by his employers and he was at the time under the immediate control of a superior and very much more experienced employee of the company. There was no finding that CR [the purchaser] was obviously [under] 18 and there is a specific finding that there was nothing on the face of the card to indicate that it was a forgery. I think it entirely reasonable that the

21 See RC Hammett Ltd v Crabb (1931) 47 TLR 623, 625, a case decided under the Sale of Food (Weights & Measures) Act 1926. (‘It is a question of fact in every case whether what the principal has done constitutes due diligence on his part to enforce the execution of the Act’, per Avory J.)
appellant should accept Mr Manthorpe’s [the area manager’s] assessment of CR and his
document. Indeed, to expect the appellant to contradict Mr Manthorpe’s assessment
would, in my judgment, be a wholly excessive and unrealistic expectation.

The above principles should have similar application to the defence of due diligence
under s 139.

11.2.13 No reference is made in s 139 to the burden of proof in respect of the defence,
which means that ultimately it will be a matter for the courts to determine whether the
legal burden of proof will be on the defendant to prove the defence on the balance of
probabilities or whether the defendant will merely have an evidential burden, with the
legal burden of disproving the defence resting on the prosecution. This issue, linked
with the presumption of innocence in Art 6(2) of the European Convention on Human
Rights, has been considered elsewhere and the view has been advanced that the legal
burden of proof will be on the defendant (see 3.5.17–3.5.23 above). A similar view is
expressed in para 14.14 of the Guidance, which states: ‘The burden of satisfying the
court that this defence has been met falls on the individual raising it.’

22 This statement in the Guidance might be seen as indicative of Parliamentary intent and be admissible
as an aid to interpreting the Act. Although courts are not required to have regard to the
Guidance when interpreting the provisions of the Act – the requirement to do so
applies only to licensing authorities under s 4(3)(b) when carrying out their licensing
functions under the Act – courts can have regard to intrinsic material within a statute,
such as other sections in the Act or the Act’s long title, as well as a range of extrinsic
material including parliamentary and pre-parliamentary publications like Government
White Papers and Reports of Royal Commissions.

23 There would seem to be no reason
why they might not similarly have regard to Guidance issued pursuant to a statutory
provision in an Act as an aid to the Act’s interpretation. If recourse is had to para 14.14
of the Guidance, this suggests s 139, correctly interpreted, imposes the legal burden of
proof on the defendant.

11.2.14 Knowingly allowing a licensable activity to be carried on
without authorisation

11.2.15 Knowingly

11.2.16 Where an offence is formulated so as to require that a person acts ‘knowingly’
in relation to certain circumstances, this necessitates a positive belief on the part of the
person that the relevant circumstances exist. It seems that, for s 136(1)(b), the relevant
circumstances will be not only the licensable activity being carried on, but also it being
carried on without authorisation. It has been held, in respect of sex establishment
licensing, that knowledge is needed not only as to the use to which the premises are
put, but also as to the entertainment being unlicensed, and this principle should have
equal application to s 136(1)(b). In Westminster City Council v Croyalgrange Ltd [1986] 1
WLR 674, the defendants sublet premises for use as a sex establishment and were
prosecuted for knowingly permitting the use of the premises without a licence. No

22 It seems clear that the burden of proof means the legal burden, although not referred to
expressly as such.

23 See Manchester, C, Salter, D, Moodie, P and Lynch, B, Exploring the Law: The Dynamics of
licence was obtained by the person operating the establishment, although the defendants contended that they had no knowledge a licence had not been obtained and honestly believed an application had been made. The council argued that knowledge was needed only as to the use of the premises, but this argument was rejected by the House of Lords. Lord Bridge stated (at 681–82):

... If the argument for the council were accepted, it would lead to the conclusion that paragraph 20(1)(a) had in effect created an offence of strict liability. The offence would consist in the unlawful use of premises as a sex establishment and even an honest belief in facts which, if true, would make the use lawful would afford no defence. It is trite law that the legislature’s intention to create an offence of strict liability must be signified by clear language. To find such an intention in paragraph 20(1)(a) is obviously impossible. The only meaning of which the language is reasonably capable makes knowledge that the use of premises as a sex establishment is in contravention of the prohibition imposed by paragraph 6 a necessary ingredient of the offence.

11.2.17 Although ‘knowledge’ is equated with positive belief, it is not necessary for a person to think that the circumstance (in this case that a licensable activity is carried on without authorisation) exists with ascertifiable certainty and he need only accept or assume it exists or entertain no serious doubts that this is the case. However, a belief or knowledge that a circumstance may exist and indifference to it, which is more akin to the concept of recklessness, will not suffice where knowledge is required. Where, however, there is an awareness that the circumstance might well exist and a person deliberately refrains from further investigation, shutting his eyes to an obvious means of knowledge, knowledge may be readily inferred and attributed to him under the doctrine of ‘wilful blindness’. As Lord Bridge observed in Westminster City Council v Croyalgrange Ltd (at 684):

It is always open to a tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from enquiry because he suspected the truth but did not want to have his suspicion confirmed.

24 For some offences, recklessness may suffice for liability, eg the offence of knowingly or recklessly making false statements when making licence applications or giving notices under s 158 (see 11.10 below), but it does not suffice for this offence.

25 See also the remarks of Lord Brightman at 684 that knowledge might readily be inferred where the defendant chooses not to give evidence of his absence of knowledge and there are no circumstances that sufficiently suggest an absence of knowledge. (‘But although such knowledge is an ingredient of the offence under paragraph 20(1)(a), and although the onus of establishing all the ingredients of the offence must lie on the prosecution, this does not impose on the prosecution an undue burden: if (1) all the other ingredients of the offence are proved, (2) the defendant (or the responsible officer of a corporate defendant) chooses not to give evidence of his absence of knowledge, and (3) there are no circumstances which sufficiently suggest absence of knowledge, the court may properly infer without direct evidence that the defendant did indeed possess the requisite knowledge.’)
It is a person’s deliberate shutting of his eyes to the obvious and refraining from enquiry that is of the essence of wilful blindness. This is not the same as indifference and the fact that the person ought to have known had proper enquiries been made. As Devlin J stated, in *Taylor’s Central Garages (Exeter) Ltd v Roper* [1951] 2 TLR 284 (at 289):

> There is a vast distinction between a state of mind which consists of deliberately refraining from making inquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and prudent person would make.

In practice, however, it may not always be easy to distinguish between cases of wilful blindness, which constitutes knowledge, and cases of indifference or neglecting to make enquiries, which does not, since there is a fine dividing line between them and the concepts do tend to shade into each other.

### 11.2.18 Allows

11.2.19 It may be that a person ‘allows’ a licensable activity to be carried on at premises not only where he has done something positive to facilitate the activity, but also where he has omitted to exercise any control to prevent it in cases where he has the power to do so. This was the view taken by the Divisional Court, in *Barking and Dagenham London Borough Council v Bass Taverns* [1993] COD 453, in respect of the offence under para 10(1)(b)(i) of Sched 12 to the London Government Act 1963, under which it was an offence if a person ‘allowed’ a place to be used in the Greater London area for the provision of unlicensed public entertainment. Glidewell LJ stated:

> provided that the person who knows, or has reasonable cause to suspect, that there will be unlicensed dancing at the premises has means in his power to prevent that dancing taking place, and does not use those means, then it can be said that he allowed the premises to be used for the purposes of that entertainment. He does not need to do something active. Of course, if he does do something such as actively encouraging or advertising the dancing, then there could be no difficulty about construing that as “allowing”.

11.2.20 His Lordship went on to state that knowledge or reasonable cause to suspect that there will be unlicensed entertainment needed to relate to the particular occasion(s) on which or the particular periods at which unlicensed entertainment took place, before it could be said that a person ‘allowed’ the entertainment by failing to exercise a power to prevent it. A general suspicion that unlicensed entertainment might take place, coupled with an actual occurrence of unlicensed entertainment, would not suffice:

> Mr Pittaway, for the London Borough Council, submits that once it has been established, as it was here, that Bass had reasonable cause to suspect that the unlicensed dancing would be provided or would take place, then if Bass failed to take steps which were open to them to prevent such dancing, they allowed it ...
Mr Beckett, for Bass argues, on the other hand, that while “allowing” can include failing to take steps which are open to the particular party, nevertheless it must, in its context, mean doing or failing to do something related to the particular occasion when dancing took place.

Here, the Justices decided that Bass had reasonable cause to suspect that music and dancing would be provided in the public house because they had received two letters of 1987 and January 1989 – particularly the letter of January 1989, which referred to a specific occasion when there had been unlicensed dancing. But that finding, Mr Beckett submits, can only have been that they had such a suspicion in a general sense. It cannot have been intended to be a finding that there would be a suspicion that there would be dancing on that particular day, or perhaps even in that particular week. In order to allow dancing to take place Bass, or their employees on their behalf, must have had some reason to suspect that dancing was going to take place at or about the time when it did. There must be some connection between that reasonable suspicion and what actually happened on 6 March 1992. There was none here …

I agree with Mr Beckett’s submission that there had to be some connection between the suspicion and the actual event that took place so as to provide a nexus from which it can be said that they allowed to happen that which they suspected might happen …

The interpretation of ‘allowed’ in this case would seem to have application under s 136(1)(b), not only to allowing entertainment to be carried on, but also other licensable activities, namely the sale and supply of alcohol and the provision of late night refreshment.

11.3 EXPOSING ALCOHOL FOR UNAUTHORISED SALE

11.3.1 Section 137(1) provides:

A person commits an offence if, on any premises, he exposes for sale by retail any alcohol in circumstances where the sale by retail of that alcohol on those premises would be an unauthorised licensable activity.

The sale by retail of alcohol or the attempted sale would constitute the offence of carrying on or attempting to carry on an unauthorised licensable activity under s 136(1), but this offence will have application where no sale or attempted sale is made, but alcohol is nevertheless exposed for unauthorised sale. In view of the fact that s 138(1) creates an offence of keeping alcohol on premises for unauthorised sale, it seems likely that the conduct element, ‘exposes’, in s 137(1) will mean ‘exposes to view’ so that those visiting the premises can actually see the alcohol on sale, rather than ‘makes available’ for sale so that those visiting are aware alcohol is on sale even if it might not be visibly on display. This latter situation would seem to be covered by s 138(1) and ought therefore to fall outside the scope of the offence in s 137(1).

The offence will not be confined to cases where there is no authorisation at all for the sale by retail of alcohol, for s 137(2) provides:

For that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation.

Thus where there is authorisation for the sale by retail of alcohol, but not in the particular circumstances, for example because there is a breach of condition relating to hours, the licensable activity will be unauthorised because it is not under and in
accordance with an authorisation. Exposing alcohol for sale outside authorised hours will therefore constitute an offence under s 137(1).

11.3.2 No mention is made of any mental element for the offence and, in view of this and the provision of a defence of due diligence by s 139 (see 11.2.11–11.2.13 above), it is likely that one will not be required.

The same maximum penalty as for the offence in s 136(1) is prescribed by s 137(3), which provides:

A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

Where a person is convicted of this offence, the court may order the confiscation of the alcohol exposed for sale and its containers, which may then be either destroyed or otherwise dealt with as the court sees fit. Section 137(4) provides:

The court by which a person is convicted of an offence under this section may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

11.4 KEEPING ALCOHOL ON PREMISES FOR UNAUTHORISED SALE

11.4.1 Section 138(1) provides:

A person commits an offence if he has in his possession or under his control alcohol which he intends to sell by retail or supply27 in circumstances where that activity would be an unauthorised licensable activity.

This section makes it 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 is an unauthorised licensable activity (Guidance, para 14.12). Having possession or control of the alcohol is sufficient for the offence and it is not necessary that a person has ownership or any other proprietary right in the alcohol. ‘Possession’ is an established legal concept that normally requires a mental element, an intention to possess or an awareness of having possession,28 and some degree of dominion over the property, which will vary according to the circumstances. Often a person with ‘possession’ of property will have ‘control’ of it, although, since either will

27 Section 138(3) provides: ‘In subsection (1) the reference to the supply of alcohol is a reference to the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.’

28 A person who is not aware that he has possession of an item, as where the item is slipped into his bag or pocket without his knowledge, is not in ‘possession’ of it, although if a person is aware that a container or receptacle has come under his control, he will (be deemed to) be in ‘possession’ of it, even if mistaken about its contents, unless the contents are of a wholly different nature than was believed. These principles, derived from the (confusing) House of Lords’ case of Warner v Metropolitan Police Commissioner [1969] 2 AC 256, which involved possession of dangerous drugs, were subsequently re-stated by the Court of Appeal in R v McNamara (1988) 87 Cr App R 246. If these principles are applied, it may be that a person who has possession of containers, intending to sell or supply the contents mistakenly believing them not to be alcohol, will commit the offence if in the circumstances the sale of the alcohol would be an unauthorised licensable activity.
suffice under the section, it is not necessary to distinguish between the two. 29
Although the sidenote (or marginal note) to the section refers to keeping alcohol on
premises for unauthorised sale, the section itself refers only to a person having alcohol
in his possession or under his control and makes no mention of the alcohol itself being
on premises. The wording of the section therefore seems wide enough to encompass
cases where a person has possession or control of alcohol other than on premises, for
example, on his person or whilst travelling in a vehicle. It is possible, however, that a
court might interpret the section so as to exclude this, having recourse to the sidenote
as an indication that Parliament’s intention was to confine liability to cases where
alcohol was kept on premises. The House of Lords, in R v Montila [2005] 1 All ER 113,
has recently disapproved earlier authorities (for example, Re Woking Urban District
Council (Basingstoke Canal Act 1911) [1914] Ch 300) containing statements to the effect
that sidenotes are not part of the statute and should not be considered. Holding that
these can be taken into account, the House of Lords stated (at para 34):

The question then is whether headings and sidenotes, although unamendable, can be
considered in construing a provision in an Act of Parliament. Account must, of course,
be taken of the fact that these components were included in the Bill not for debate but
for ease of reference. This indicates that less weight can be attached to them than to the
parts of the Act that are open for consideration and debate in Parliament. But it is
another matter to be required by a rule of law to disregard them altogether. One
cannot ignore the fact that the headings and sidenotes are included on the face of the
Bill throughout its passage through the legislature. They are there for guidance. They
provide the context for an examination of those parts of the Bill that are open for
debate. Subject, of course, to the fact that they are unamendable, they ought to be open
to consideration as part of the enactment when it reaches the statute book. 30

If the mischief at which the offence is aimed is the keeping of the alcohol for
unauthorised sale, as the sidenote seems to indicate, where it is kept is of no real
significance and it may be better if a broad interpretation is given to the section to
include keeping alcohol whether on or off premises.

11.4.2 Although a mental element is needed for possession and there needs to be an
intention to sell by retail or supply, it may be sufficient if the sale or supply is in
circumstances where that activity would be an unauthorised licensable activity,
whether or not the person keeping the alcohol is aware of this. No reference is made to
any mental element, such as knowledge or reasonable cause to suspect that the sale or
supply would be an unauthorised licensable activity. This, coupled with the provision
of a due diligence defence for this offence by s 139(2)(c) (see 11.2.11 above), strongly
suggests that awareness for this element of the offence (the licensable activity being
unauthorised) is not needed and that liability in this respect is strict.

29 There may be cases where a person who has possession does not have control, eg, an
employer will legally retain possession of property given to an employee to deliver to a third
party, but will not have control of it whilst the employee has it during delivery.
30 The House went on to state (at paras 35–36): ‘[35] … It has become common practice for their
Lordships to ask to be shown the explanatory notes when issues are raised about the
meaning of words used in an enactment. [36] The headings and sidenotes are as much part of
the contextual scene as these materials, and there is no logical reason why they should be
treated differently.’ Strictly speaking, sidenotes are no longer sidenotes as they do not now
appear as a note at the side of (or in the margin to) a section of the Act. Following a change in
practice in 2001 by the Parliamentary Counsel Office, they now appear in bold type as
headings to each section in the version of the statute published by Stationery Office. This will
be apparent from an examination of the 2003 Act.
As with the preceding offence, liability will not be confined to cases where there is no authorisation at all for the sale by retail or supply of alcohol, for s 138(2) provides:

For that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation.

Thus a club with a CPC that keeps alcohol, intending to sell it by retail to persons who are not members and guests, will commit an offence under the section since the sale will be otherwise than in accordance with its CPC.

11.4.3 The offence of keeping alcohol for unauthorised sale attracts a much lower maximum penalty, a level 2 fine, than the preceding offences of selling or attempting to sell alcohol (s 136) or exposing it for sale (s 137), although a similar power of the court to order confiscation of the alcohol and its containers applies in respect of this offence. Section 138(4) and (5) provides:

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) The court by which a person is convicted of an offence under this section may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

11.5 OFFENCES INVOLVING DRUNKENNESS AND DISORDERLY CONDUCT

11.5.1 Sections 140–43 contain various offences involving drunkenness or disorderly conduct on premises that have authorisation for licensable activities to take place. These premises, designated as ‘relevant premises’ in Pt 7 of the Act, are premises for which there is in force a premises licence (‘licensed premises’) or CPC, or which may be used for a permitted temporary activity following the giving of a TEN. Persons who may be liable for the offences of allowing disorderly conduct on relevant premises under s 140 and selling or attempting to sell alcohol to a person who is drunk on relevant premises under s 141 include:

- any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the conduct;
- the premises licence holder and the designated premises supervisor (DPS) (if any);

31 Section 159 provides: “‘relevant premises’ means—
   (a) licensed premises, or
   (b) premises in respect of which there is in force a club premises certificate, or
   (c) premises which may be used for a permitted temporary activity by virtue of Part 5.’

Section 193 provides that: “‘Licensed premises’ means premises in respect of which a premises licence has effect.’

32 On attempts, see 11.2.8–11.2.9 above.

33 This would seem to encompass persons who work at the premises in some type of managerial capacity, although it might extend beyond this to include persons such as door supervisors employed at premises and, where alcohol is served, personal licence holders.
any member or officer of a club holding a club premises certificate who at the time the conduct takes place is present on the premises in a capacity which enables him to prevent it;34

- the premises user in relation to a TEN.

Persons obtaining alcohol for a person who is drunk commit an offence under s 142 and persons who are drunk and disorderly and fail to leave relevant premises following a request to do so commit an offence under s 143.

11.5.2 Allowing disorderly conduct on relevant premises

11.5.3 Section 140 provides:

1. A person to whom subsection (2) applies commits an offence if he knowingly allows disorderly conduct on relevant premises.

2. This subsection applies—
   a. to any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the conduct,
   b. in the case of licensed premises, to—
      i. the holder of a premises licence in respect of the premises, and
      ii. the designated premises supervisor (if any) under such a licence,
   c. in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who at the time the conduct takes place is present on the premises in a capacity which enables him to prevent it, and
   d. in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

3. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

This offence will apply to premises where any licensable activities are taking place, although it is likely to have particular application where alcohol is sold, and is regarded as of crucial importance for the safety of persons on the premises. Paragraph 14.15 of the Guidance states:

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 ... 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.

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34 This might include the club steward and (perhaps) bar staff, as well as officers such as the club secretary and club members who have been elected to the club committee. It is difficult to conceive of circumstances where persons, such as the club secretary and committee members would be on the premises other than in a capacity that enables them to prevent the disorderly conduct and it may be that such persons could be liable for the offence whenever they are on the premises.
11.5.4 The conduct element of the offence requires that a person who commits it ‘allows disorderly conduct’ to take place on relevant premises. The term ‘allow’ includes not only doing something positive to facilitate the conduct, but also failing to exercise any control to prevent it in cases where there is the power to do so (see 11.2.19 above). In this context, it is much more likely that ‘allow’ will involve the latter than the former. As to what constitutes ‘disorderly conduct’, no definition is provided in the Act, but ‘disorder’, in the context of licensing, seems to involve conduct that seriously offends against values generally recognised by society as being of a character likely to cause annoyance to others who are present, although not having reached the stage of criminal conduct calculated to provoke a breach of the peace (see 4.2.2 above). On this basis, the offence in s 140 should include conduct that previously fell within the ‘preservation of order’ offences in the Licensing Act 1964, namely, permitting drunkenness or any violent, quarrelsome or riotous conduct to take place on licensed premises (s 174), allowing licensed premises to be the habitual resort or place of meeting of reputed prostitutes (s 177), permitting licensed premises to be a brothel (s 178) and permitting illegal gaming on licensed premises (s 179). However, its ambit is potentially much broader than this and it remains to be seen what degree of disorder will be required for the offence to be committed.

The offence requires only the allowing of disorderly conduct ‘on relevant premises’, which are those having authorisation for licensable activities. It does not specify that the disorderly conduct should occur at the same time as or as a result of licensable activities taking place under the authorisation, only that such conduct occurs on premises with an authorisation. On a literal interpretation of the section, a person who may commit the offence may do so if such conduct were to occur at any time and for reasons unconnected with the provision of licensable activities. The position is less clear if a purposive interpretation is adopted. One view may be that the purpose of the legislation is the regulation of licensable activities and disorderly conduct therefore needs to be related to such activities if it is to fall within the scope of the statutory offence. Another view, however, may be that the legislative purpose is to ensure that premises in respect of which there is an authorisation for licensable activities are properly run in all circumstances. If they are not properly run when non-licensable activities are occurring there is equally a risk that they will not be properly run when licensable activities are taking place and allowing disorderly conduct on the premises at any time ought therefore to fall within the offence. It is submitted that the offence should be given a broad interpretation to include disorderly conduct even if unconnected with licensable activities. The s 140 offence re-enacts in part the offence in s 172 of the Licensing Act 1964, where conduct did not need to occur when alcohol was being sold,\(^{35}\) and the position should be the same for the s 140 offence.

11.5.5 The mental element required for the offence is knowledge on the part of the person who may commit it.\(^{36}\) It is not clear whether knowledge will be required only that the conduct is taking place or whether knowledge will also be needed that the conduct is disorderly. This may depend on whether conduct being ‘disorderly’ is seen as a question of law or fact. If it is seen as a question of law, then knowledge that the

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\(^{35}\) See, eg, *Lawson v Edminson* [1908] 2 KB 952, where a licensee who, after closing hours on his licensed premises, supplied guests with drink at his own expense was held to have been rightly convicted of permitting drunkenness on the premises when the guests were found to be drunk.

\(^{36}\) As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.
conduct is disorderly may not be necessary. Everyone is presumed to know the law and lack of knowledge that conduct in law is ‘disorderly’ will not prevent a person being liable. If it is seen as a question of fact, knowledge that the conduct is disorderly may be required, although equally it may not be. It is difficult to predict whether issues will be seen as ones of law or fact and also the extent to which knowledge may be required where there are composite elements in an offence, as here (conduct and disorderly). No more than a tentative view can therefore be offered, but it is felt that whether conduct is ‘disorderly’ will be seen as a question of fact in the circumstances of the case and that knowledge will be required only as to the occurrence of the conduct and not whether it is disorderly.

Liability for this offence is not dependent on a person being present on the premises at the time the disorderly conduct takes place, except in the case of a club member or officer where a CPC has effect in relation to the premises. In many cases the person alleged to have committed the offence may well have been present and personally aware of the occurrence of the disorderly conduct, although in some instances this will not be so, for example, in the case of premises licences, the DPS may be absent for a period of time from the premises or the premises licence holder may not be in day-to-day control of the premises. In such cases, the question will arise whether personal knowledge will be needed or whether knowledge might be imputed to establish liability. It would seem that the principle of delegated authority, whereby knowledge can be imputed where there has been a delegation of authority, will have application, as it did under the Licensing Act 1964. For knowledge to be imputed under the delegation principle, it seems that there must be a complete and not partial transfer of authority and responsibilities to another person. Thus, in Vane v Yiannopoullos [1965] AC 486, the House of Lords held that knowledge could not be imputed to the licensee of a restaurant where a sale of alcohol was made by a waitress without his knowledge to persons not taking meals contrary to the terms of the licence, for he had merely given her authority to sell alcohol and there had not been a delegation of authority to manage the business. Although in this case some doubts were cast on the validity of the delegation principle, it has been endorsed by the Court of Appeal in R v Winson [1969] 1 QB 371 and applied in subsequent cases.

11.5.6 Selling or attempting to sell alcohol to a person who is drunk

11.5.7 Section 141 provides:

(1) A person to whom subsection (2) applies commits an offence if, on relevant premises, he knowingly–
   (a) sells or attempts to sell alcohol to a person who is drunk, or
   (b) allows alcohol to be sold to such a person.

(2) This subsection applies–

37 Lord Parker CJ (at 385–86) stated, that when introducing the legislation:
Parliament must be taken … to know that the doctrine of delegation had been applied in a number of licensing cases, and that the principle of those cases was that a man cannot get out of the responsibilities and duties attached to the licence by absenting himself. The position of course is quite different if he remains in control. It would be only right he should not be liable if a servant behind his back did something which contravened the terms of the licence. If, however, he wholly absents himself leaving somebody else in control, he cannot claim that what has happened has happened without his knowledge if the delegate has knowingly carried on in contravention of the licence.
(a) to any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell the alcohol concerned,

(b) in the case of licensed premises, to–
   (i) the holder of a premises licence in respect of the premises, and
   (ii) the designated premises supervisor (if any) under such a licence,

(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who at the time the sale (or attempted sale) takes place is present on the premises in a capacity which enables him to prevent it, and

(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

(3) This section applies in relation to the supply of alcohol by or on behalf of a club to or to the order of a member of the club as it applies in relation to the sale of alcohol.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

This offence, in effect, re-enacts the previous offences in s 172(3) and s 172A(3) of the Licensing Act 1964 and will cover not only cases where there is a sale or attempted sale (hereafter ‘sale’) of alcohol from premises in respect of which there is in force a premises licence (s 141(2)(b)) or a TEN (s 141(2)(d)), but also cases where there is a supply or attempted supply (hereafter ‘supply’) of alcohol by a club to a club member (s 141(2)(c) and s 141(3)). Whether in such cases, for an offence to be committed, the licensable activities under the premises licence, TEN or CPC will need to include a sale by retail or supply of alcohol or whether it will suffice if there is an unauthorised sale or supply is less clear. It is perhaps implicit from the categories of persons mentioned in s 141(2) who might commit the offence that authorisation for the sale or supply of alcohol will be needed – s 141(2)(a) refers to a person working at the premises in a capacity which ‘gives him authority to sell the alcohol concerned’, whilst s 141(2)(b)(ii) refers to the ‘designated premises supervisor’ (DPS) and there will only be such a person if alcohol can be sold under a premises licence. However, the wording of the section is wide enough to encompass an unauthorised sale or supply of alcohol from premises whose licensable activities do not include alcohol and the mischief aimed at by the offence is preventing a person who is drunk from consuming more alcohol. It may be, therefore, that the offence can be committed where consumption occurs on premises where the licensable activities do not include the sale by retail or supply of alcohol either at all or in the particular circumstances, although in such cases there is in any event likely to be an offence of carrying on or attempting to carry an unauthorised licensable activity under s 136(1) (see 11.2.1 above).

38 Explanatory Note 225. Section 172(3) made it an offence for the holder of a justices’ licence to sell intoxicating liquor to a drunken person and s 172A(3) made it an offence for any person to do so who worked in the licensed premises in a capacity, whether paid or unpaid, which gave him authority to sell the intoxicating liquor concerned. Neither of these offences, unlike s 141, required proof of knowledge.

39 On attempts, see 11.2.8–11.2.9 above.
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11.5.8 The conduct element of the offence requires that a person who may commit it ‘sells or attempts to sell’ alcohol, or ‘allows’ alcohol to be sold, to a person who is ‘drunk’. A sale will normally involve proof that money passed in return for the alcohol, so if a bona fide gift of alcohol is made to a person who is drunk this would seem to fall outside the offence.\footnote{Petherick v Sargent (1862) 26 JP 135.} Less clear is the case where there is a transaction in the nature of a sale, as where a person who is drunk is given alcohol in exchange for some valuable consideration. Under the Licensing Act 1964, a sale might be regarded as having taken place in such circumstances, for there was a provision in s 196(1) whereby evidence that a transaction in the nature of a sale took place was to be evidence of a sale without proof that money passed. There is, however, no equivalent provision in the 2003 Act. It seems, therefore, that unless ‘sale’ is to be construed to include an exchange for valuable consideration other than money, no offence may be committed. In cases of an ‘attempt to sell’, the requirements set out in the Criminal Attempts Act 1981 will have application in determining whether an attempt has taken place (see 11.2.8–11.2.9 above). The term ‘allow’ includes not only doing something positive to facilitate the activity, but also failing to exercise any control to prevent it in cases where there is the power to do so (see 11.2.19 above).

As to whether a person is ‘drunk’, no definition is provided in the Act and the word should therefore be given its ordinary and natural meaning. Such a meaning was considered by the Divisional Court, in Neale v RJME (A Minor) (1985) 80 Cr App R 20, in respect of the offence under s 12 of the Licensing Act 1872 of disorderly behaviour in a public place whilst drunk, where Robert Goff LJ stated (at 23):

> the natural and ordinary meaning of the word, as found in the statute, appears to me to coincide with the primary dictionary meaning. The primary meaning set out in the Shorter Oxford Dictionary (1933) is as follows: “That has drunk intoxicating liquor to an extent which affects steady self-control.” … In my judgment, that is indeed the natural and ordinary meaning of the word “drunk” in ordinary common speech in 1984.

There seems no reason why the ordinary and natural meaning should not apply in respect of the offence in s 141 or why any different meaning should be given to the word ‘drunk’ at the present time from that given by the court in this case.

It is clear from the wording of the offence that the person selling or attempting to sell must be on relevant premises when the sale or attempted sale to the person who is drunk takes place, but it is less clear whether the person who is drunk needs to be on the relevant premises at the time or whether there needs to be consumption (or intended consumption) by him of the alcohol on the premises. The reference to being ‘on relevant premises’ in s 141(1) might be read as having application only to the person selling or attempting to sell or as having application both to that person and the person who is drunk. If read in the former sense, the section might encompass a case where there is a sale or attempted sale from public house premises through an off-sales window to a person outside the premises who is drunk and who seeks to purchase alcohol for consumption off the premises. If read in the latter sense, such a case would fall outside the offence. As the mischief at which the offence is aimed is

\footnote{Petherick v Sargent (1862) 26 JP 135. However, if the person making the gift made it not to the person who was drunk, but to another person who obtained it for the person who was drunk, he might aid and abet an offence by the person who obtained it, under s 142, of obtaining alcohol for a person who is drunk – see 11.5.10–11.5.12 below.}
preventing a person who is drunk from consuming more alcohol, whether or not that person is on the premises is of no real significance and it may be better if a broad interpretation is given to the section to require only the person making the sale or attempted sale to be on the premises.

11.5.9 The mental element required for the offence is knowledge\(^{41}\) on the part of the person who may commit it and this might be interpreted to mean knowledge that a sale or attempted sale is being made to a person who is in fact drunk or knowledge as to both elements, that is the sale or attempted sale and the person being drunk. Neither of the previous offences that this offence replaced included any reference to ‘knowledge’ (see 11.5.7 above) nor was any provision made for a ‘due diligence’ defence in respect of them, so liability was strict. By including a mental element of knowledge for the offence in s 141, it seems unlikely that Parliament intended it simply to relate to the element of sale, where it serves little meaningful purpose, and it is submitted that knowledge should be required as to both the sale or attempted sale and as to the person being drunk. Proof of knowledge should not present an insuperable burden for the prosecution in cases where there is a sale or attempted sale to a person and there is compelling evidence in the form of unsteady gait or slurred speech (shurely shome mishtake …) on the part of that person. In cases where the charge is one of allowing alcohol to be sold to a person who is drunk, knowledge may be imputed where there has been a delegation of authority (see 11.5.5 above).

11.5.10 Obtaining alcohol for a person who is drunk

11.5.11 Section 142 provides:

\(\begin{align*}
1 & A \text{ person commits an offence if, on relevant premises, he knowingly obtains or attempts to obtain alcohol for consumption on those premises by a person who is drunk.} \\
2 & A \text{ person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.}
\end{align*}\)

This offence, in effect, re-enacts the existing offence in s 173(1) of the Licensing Act 1964 (Explanatory Note 226), although liability under s 142 is confined to cases where alcohol is obtained for consumption on the premises (which was not necessary under s 173(1)). Although there will need to be a premises licence, CPC or TEN in force in respect of the premises (otherwise they will not be ‘relevant premises’ – see 11.5.1 above), it would not seem to be necessary for the licensable activities to include the sale by retail or supply of alcohol on the premises. If only regulated entertainment and/or the provision of late night refreshment can be provided, but a person obtains or attempts to obtain alcohol for consumption on the premises by a person who is drunk, the offence would seem to be made out. As with s 141, the mischief aimed at by the offence is preventing a person who is drunk from consuming more alcohol and it may be that the offence should not be restricted to cases where consumption occurs on premises where the licensable activities include the sale by retail or supply of alcohol. It is, however, necessary that the obtaining or attempted obtaining is for consumption

\(^{41}\) As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.
on the premises and no offence is committed if the obtaining or attempted obtaining is for consumption off the premises.42

11.5.12 The conduct element of the offence requires that a person ‘obtains or attempts to obtain’ alcohol. ‘Obtain’ seems wide enough to cover not only cases where a person purchases alcohol for someone who is drunk, but also instances where a person acquires alcohol either for valuable consideration other than money or without payment, as where a free drink is given. In cases of an ‘attempt to sell’, the requirements set out in the Criminal Attempts Act 1981 will have application in determining whether an attempt has taken place (see 11.2.8–11.2.9 above). The mental element required for the offence is knowledge,43 which should be knowledge both as to the element of obtaining or attempted obtaining and as to the person being drunk.44

11.5.13 Failure to leave relevant premises

11.5.14 Section 143 provides:

(1) A person who is drunk or disorderly commits an offence if, without reasonable excuse–

(a) he fails to leave relevant premises when requested to do so by a constable or by a person to whom subsection (2) applies, or

(b) he enters or attempts to enter relevant premises after a constable or a person to whom subsection (2) applies has requested him not to enter.

(2) This subsection applies–

(a) to any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to make such a request,

(b) in the case of licensed premises, to–

(i) the holder of a premises licence in respect of the premises, or

(ii) the designated premises supervisor (if any) under such a licence,

(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who is present on the premises in a capacity which enables him to make such a request, and

(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(4) On being requested to do so by a person to whom subsection (2) applies, a constable must–

(a) help to expel from relevant premises a person who is drunk or disorderly,

(b) help to prevent such a person from entering relevant premises.
11.5.15 The conduct element of the offence requires that a person be drunk or disorderly and either fails to leave the relevant premises (see 11.5.1 above) on request or enters or attempts to enter following a request not to do so.\(^{45}\) A request may be made by a constable or any of the persons who may themselves be liable either for selling or attempting to sell alcohol to a person who is drunk on relevant premises or for allowing disorderly conduct to take place on the premises. Any such persons may, under s 143(4), require a constable to provide assistance in removing a person who has been requested to leave or in preventing a person entering who has been requested not to enter. This re-enacts the provision previously contained in s 174(3) of the Licensing Act 1964, except that no provision is made in s 143(4), unlike s 174(3), for the constable to use ‘such force as may be required for the purpose’. As under the previous law, a constable is not authorised to arrest an offender.\(^{46}\)

11.5.16 No mention is made in the section of any mental element for the commission of the offence, although it may perhaps be implicit that the person appreciates that a request has been made for him to leave or not to enter. In any event, a defence of reasonable excuse is provided, which might apply, for example, if a person is ill, disabled or injured and so unable to leave the premises. The legal burden of proof for this defence will probably be on the defence on a balance of probabilities.\(^{46}\)

11.6 SMUGGLED GOODS

11.6.1 Section 144 provides:

(1) A person to whom subsection (2) applies commits an offence if he knowingly keeps or allows to be kept, on any relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported.

(2) This subsection applies—

(a) to any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to prevent the keeping of the goods on the premises,

(b) in the case of licensed premises, to—

(i) the holder of a premises licence in respect of the premises, and

(ii) the designated premises supervisor (if any) under such a licence,

(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who is present on the premises at any time when the goods are kept on the premises in a capacity which enables him to prevent them being so kept, and

(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

\(^{45}\) As to the requirement of ‘disorderly’ see 11.5.4 above, for ‘drunk’ see 11.5.9 above and for ‘attempts’ see 11.2.8–11.2.9 above.

\(^{46}\) See 11.2.13 above, where this matter has been considered in respect of the ‘due diligence’ defence in s 139.
(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) The court by which a person is convicted of an offence under this section may order the goods in question, and any container for them, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

This offence is aimed primarily at the sale in relevant premises (see 11.5.1 above) of cigarettes and alcohol smuggled in from abroad, as is apparent from para 14.22 of the Guidance:

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 Eastern European countries and China on behalf of organised criminal gangs and could therefore contain dangerous ingredients.

11.6.2 The conduct element of the offence, however, extends considerably beyond the sale of these goods. First, it is not necessary for any sale to take place or even that the goods are kept for sale. It is only necessary that the goods are kept or allowed to be kept on the premises by any of the persons specified in s 144(2), so mere possession will suffice. Secondly, the offence applies not only to ‘any goods which have been imported without payment of duty’, which will include but are not limited to contraband cigarettes and alcohol, but also to ‘any goods … which have otherwise been unlawfully imported’. This might include any goods in respect of which there is an import prohibition, such as obscene material, drugs, or counterfeit currency. Allowing any of these goods to be kept on the premises, even if not commercially imported and only in small quantities and for personal use, will suffice for the commission of the offence.

11.6.3 The mental element required for the offence is knowledge on the part of the person who keeps the goods or allows them to be kept on the premises. It is uncertain whether knowledge is confined to the element of keeping or whether it is required also in respect of the element of the goods having being imported unlawfully. One view is that it may be confined only to the element of keeping. Where a person ‘keeps’ goods, this seems not to be substantively different from where he has goods ‘in his possession or under his control’, as is required for the offence in s 138, and ‘possession’ cases require only knowledge of having control of the goods and not knowledge as to their nature or identity (see 11.4.1 above). On this basis, knowledge might similarly be required only as to the goods being kept on the premises and not that they have been unlawfully imported (which would be difficult for the prosecution to prove). However, another view is that, if knowledge is needed only as to keeping, a person who buys some goods in good faith, acting impeccably with no reason to suppose that the goods have been unlawfully imported, will be liable for the offence, as no ‘due diligence’ defence is provided by the section. Each view is persuasive, the

47 These persons are the same persons who might be liable for the offences of allowing disorderly conduct on relevant premises under s 140 and selling or attempting to sell alcohol to a person who is drunk on relevant premises under s 141 – see s 140(2) and s 141(2), and 11.5.3 and 11.5.7 above respectively.

48 As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.

49 That the sidenote to each section refers to ‘keeping’ is indicative of the fact that there is no substantive difference.
issue is finely balanced and it is difficult to state a ‘better view’. Given the relatively low penalty, a level 3 fine, the balance might be tipped marginally in favour of knowledge being required only as to keeping, although this is put forward as no more than a tentative view.

Where a person is convicted of this offence, the court may, under s 144(4), order the confiscation of the goods and any container for them, which may then be either destroyed or otherwise dealt with as the court sees fit. In terms of the institution of proceedings for this offence, para 14.23 of the Guidance provides: ‘Licensing authorities should liaise closely with Customs and Excise in respect of the investigation and prosecution of such offences.’

11.7 CHILDREN AND ALCOHOL

11.7.1 Sections 145–55 contain a range of offences involving children and alcohol, which broadly fall into four categories:

- unaccompanied children prohibited from certain premises;
- sales of alcohol to children;
- acquisition of alcohol by or for children; and
- sales to others involving children.

‘Children’, for these purposes, are generally persons under the age of 18 (see 4.2.14 above), although the prohibition on unaccompanied children relates to children under 16 and in some instances alcohol may be consumed by children who are aged 16 or 17.

In addition, a power is conferred on the police, by s 155, to confiscate from persons under the age of 18 alcohol in sealed containers, which complements the existing right to require surrender of alcohol where it is in open containers (see 11.7.36 below).

11.7.2 Unaccompanied children prohibited from certain premises

11.7.3 Section 145 makes it an offence to allow children under 16 to be on certain categories of ‘relevant premises’ (see 11.5.1 above) if they are not accompanied by an adult when those premises are open for the supply of alcohol for consumption there. The elements of the offence differ according to the category of premises and there are two categories. One is premises used exclusively or primarily for the supply of alcohol for consumption on the premises (hereafter ‘exclusive or primary use’). This includes not only premises used on a permanent basis for such supplies, under either a premises licence or CPC, but also premises open for the supply of alcohol for consumption on the premises under a TEN which, at the time the TEN has effect, are used exclusively or primarily for such supplies. The other is premises that are open for

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50 Section 155 amends s 1 of the Confiscation of Alcohol (Young Persons) Act 1997, which uses the term ‘young persons’, rather than the term ‘children’ that is used in the 2003 Act, although in both instances this means (for the most part) persons under 18.

51 Under the previous law, it was an offence under s 168 of the Licensing Act 1964 for the holder of a justices’ licence to allow a child under 14, accompanied or unaccompanied, to be in the bar of the licensed premises during the permitted hours during which alcohol could be sold. It will be an offence under s 145 if a child under 16 is allowed anywhere on the ‘relevant premises’, not just in the bar, if unaccompanied.
the supply for alcohol for consumption there, although not used exclusively or primarily for such supplies.

For the former category, it is an offence to allow an unaccompanied child under 16 on the premises at any time when the premises are open for the supply of alcohol, whereas for the latter category it is offence to do so only at a time between midnight and 5.00 am when the premises are open for the supply for alcohol. Persons who can commit the offence are those who are in a position to request that a child under 16 who is unaccompanied by an adult leaves the premises. These are any person working there in a capacity which authorises him to request the child leaves, a premises licence holder or DPS, a member or officer of a club holding a CPC who is present in a capacity which authorises him to request the child leaves and, in the case of a TEN, the premises user. Section 145(1)–(4) provides:

(1) A person to whom subsection (3) applies commits an offence if—
(a) knowing that relevant premises are within subsection (4), he allows an unaccompanied child to be on the premises at a time when they are open for the purposes of being used for the supply of alcohol for consumption there, or
(b) he allows an unaccompanied child to be on relevant premises at a time between the hours of midnight and 5 am when the premises are open for the purposes of being used for the supply of alcohol for consumption there.

(2) For the purposes of this section—
(a) “child” means an individual aged under 16,
(b) a child is unaccompanied if he is not in the company of an individual aged 18 or over.

(3) This subsection applies—
(a) to any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to request the unaccompanied child to leave the premises,
(b) in the case of licensed premises, to—
   (i) the holder of a premises licence in respect of the premises, and
   (ii) the designated premises supervisor (if any) under such a licence,
(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who is present on the premises in a capacity which enables him to make such a request, and
(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

(4) Relevant premises are within this subsection if—
(a) they are exclusively or primarily used for the supply of alcohol for consumption on the premises, or

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52 Section 145(10) provides: ‘In this section “supply of alcohol” means—
(a) the sale by retail of alcohol, or
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.’
(b) they are open for the purposes of being used for the supply of alcohol for consumption on the premises by virtue of Part 5 (permitted temporary activities) and, at the time the temporary event notice in question has effect, they are exclusively or primarily used for such supplies.

11.7.4 Whether there is exclusive or primary use will be a question of fact in the circumstances of the particular case and this will presumably be determined by reference to use of the premises as a whole. (Exclusive or primary use additionally arises in connection with the fee payable for premises licence applications and reference should also be made to 6.3.1 above.) Public houses or (drinking) clubs will most obviously be premises so used, but, given that many provide a measure of refreshment and/or entertainment, it may not always be easy to establish whether alcohol is the primary use. Whilst this will be a question of degree, the Guidance, in para 3.34, cautions against adoption of any particular formula or method of calculation:

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.

The effect of the above provisions is that, where there is exclusive or primary use, it will be an offence to allow unaccompanied children under 16 to be on the premises at any time. Whilst this may effectively bar unaccompanied children under 16 from such premises, this does not mean that unaccompanied children between 16 and 18 are necessarily permitted to have access to such premises or any other licensed premises. The Guidance, para 3.35, states:

The fact that the ... 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.

However, allowing unaccompanied children to be on premises where there is no exclusive or primary use will be an offence only where they are there between the hours of midnight and 5.00 am. As the Guidance, para 3.33 states:

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.
Equally, between these hours the offence would not necessarily apply to many nightclubs; but whilst the offence may not apply, this ‘does not mean that children should automatically be admitted to such premises’.

11.7.5 The conduct element of the offence requires that the premises are ‘relevant premises’ within s 145(4), that is they fall into one of the two categories specified, that they are open for the purposes of being used for the supply of alcohol, and that the person who allows an unaccompanied child under 16 to be on the premises (at any time or between midnight and 5.00 am as applicable) is in a position to request the child to leave. No mental element is specified in s 145(1), except in relation to the requirement of the premises being exclusively or primarily used for the supply of alcohol for consumption on the premises, for which knowledge is required. If the premises are found as a matter of fact to be so used it is likely that knowledge will be readily inferred since a number of persons who might commit the offence (for example, a premises licence holder, a DPS, a premises user under a TEN) will clearly be aware of the use of the premises. It is perhaps only in respect of persons working at the premises (in a capacity that authorises them to request the unaccompanied child to leave) that knowledge might be more difficult to establish. The absence of any reference to a mental element in relation to other requirements of the offence, coupled with the provision of the defences in s 145(6) and (8) (see 11.7.6 below), strongly suggest that liability is strict. It will thus not be necessary for the prosecution to establish that a person is aware that the premises are open for the purposes of being used for the supply of alcohol, that the child is under 16 and is unaccompanied, and that the child is on the premises.

The offence is summary only and punishable by a level 3 fine on the standard scale. Section 145(9) provides:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

However, no offence is committed where the unaccompanied child is merely passing through the premises, where this is the only convenient route, for s 145(5) provides:

No offence is committed under this section if the unaccompanied child is on the premises solely for the purpose of passing to or from some other place to or from which there is no other convenient means of access or egress.

It is unclear on whom the burden of proof will lie in this respect. Must the prosecution prove beyond reasonable doubt that the unaccompanied child was not using the premises solely as a means of passage or, if he was, that there was another convenient route or must the defence prove on a balance of probabilities that the unaccompanied child was so using the premises and that there was no other convenient route? Since the provision makes no reference to this being a ‘defence’, in contrast to s 145(6) and (8), it is submitted that the burden of proof should be on the prosecution.

53 Guidance, para 3.33. As to whether children should or should not be admitted to any particular premises, para 3.36 provides: ‘A statement of licensing policy must not ... 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.’

54 As to the meaning of ‘allows’, see 11.2.18–11.2.20 above.

55 As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.
11.7.6 Section 145(6) and (8) each provide a defence, the former where there is a ‘reasonable belief’ that the child was over 16 or that the person accompanying him was an adult and the latter where there has been ‘due diligence’ to avoid the commission of the offence. Section 145(6)–(8) provides:

(6) Where a person is charged with an offence under this section by reason of his own conduct it is a defence that—
(a) he believed that the unaccompanied child was aged 16 or over or that an individual accompanying him was aged 18 or over, and
(b) either—
(i) he had taken all reasonable steps to establish the individual’s age, or
(ii) nobody could reasonably have suspected from the individual’s appearance that he was aged under 16 or, as the case may be, under 18.

(7) For the purposes of subsection (6), a person is treated as having taken all reasonable steps to establish an individual’s age if—
(a) he asked the individual for evidence of his age, and
(b) the evidence would have convinced a reasonable person.

(8) Where a person (“the accused”) is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.

The requirements for the defence of ‘reasonable belief’ are comparable to those for the defence in s 146(4) for the offence in s 146 of selling alcohol to children (see 11.7.10 below), but the due diligence defence in s 145(8) differs from that for that provided by s 139 for the offences in ss 136–38 (see 11.2.10–11.2.13 above). It is less restrictive in its formulation, requiring only that the offence occurs by reason of the act or default of another and that all due diligence has been exercised. No further explanation for the different formulations is provided in either the Explanatory Notes or the Guidance and it remains to be seen whether in practice they will differ significantly in terms of their scope and application.

11.7.7 Sales of alcohol to children

11.7.8 Sale of alcohol to children

11.7.9 The main offence involving sales of alcohol to children is contained in s 146(1), which provides:

A person commits an offence if he sells alcohol to an individual aged under 18.

An offence will also be committed where there is a supply of alcohol to children on premises where supplies of alcohol are authorised by a CPC, for s 146(2) and (3) provides:

(2) A club commits an offence if alcohol is supplied by it or on its behalf—
(a) to, or to the order of, a member of the club who is aged under 18, or
(b) on the order of a member of the club, to an individual who is aged under 18.

(3) A person commits an offence if he supplies alcohol on behalf of a club—
(a) to, or to the order of, a member of the club who is aged under 18, or
(b) to the order of a member of the club, to an individual who is aged under 18.
Section 146(2) refers to an offence being committed by a ‘club’, which suggests that it will be the club as a corporate entity or unincorporated body that will commit the offence and be charged with it rather than any official who might represent the club, such as the club secretary. An offence is also committed under s 146(3) if alcohol is supplied by a person on behalf of the club, which will include supplies by club employees and members who are present in a capacity enabling them to prevent the supply.

Under the previous law, contained in s 169A of the Licensing Act 1964, the offence of selling alcohol to children was restricted to sales in licensed premises and there was no equivalent provision for supply of alcohol to children in registered clubs (which, under s 200(1), were not ‘licensed premises’). Section 146(2) and (3) extends criminal liability to supplies in clubs and s 146(1) extends it to sales that take place anywhere and by any person. Nevertheless, it is anticipated that proceedings will be initiated, in the main, where sales or supply take place where there is an authorisation under the 2003 Act, for para 12.3 of the Guidance provides that licensing authorities ‘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’.

11.7.10 For all of these offences, liability arises only where there is a sale or supply and not where there is an attempted sale or supply. Further, no mental element is required. The alcohol does not have to be knowingly sold or supplied to a person who is aged under 18 and it is sufficient that the person is in fact under that age. However, a defence of ‘reasonable belief’ is contained in s 146(4), which provides:

(4) Where a person is charged with an offence under this section by reason of his own conduct it is a defence that—
(a) he believed that the individual was aged 18 or over, and
(b) either—
(i) he had taken all reasonable steps to establish the individual’s age, or
(ii) nobody could reasonably have suspected from the individual’s appearance that he was aged under 18.

This applies where the person has been charged with the offence ‘by reason of his own conduct’, which suggests this will apply where the person charged has personally made the sale or supply. For the defence to succeed, in all cases it will be necessary for there to be an honest belief that the person was aged 18 or over. This alone may suffice if nobody could reasonably have suspected that the person was aged under 18, as may be the case if ‘the purchaser who was under 18 looked exceptionally old for his age’ (Guidance, para 12.7). In such a case, it would not occur to anyone to ask for any proof of age and the defence could succeed without any proof being requested. Whether a person looked ‘exceptionally old’ will depend on ‘the individual’s appearance’, which

56 Cf the offences of sale or supply of alcohol to, and obtaining alcohol for, a person who is drunk under ss 141–42 – see 11.5.6–11.5.12 above. As the offences in s 146 are summary only (see s 146(7) and 11.7.12 below), there will be no liability for attempt under the Criminal Attempts Act 1981 as this Act does not apply to summary only offences – see s 1(4) and 11.2.8–11.2.9 above.
would seem to be wide enough to include both physical characteristics and the manner of dress. Looking ‘exceptionally old’ in itself will not suffice for the defence unless the person charged honestly believes the person to be aged 18 or over. If there is a suspicion that the person may be under 18, perhaps because others with whom the person is associating are known to be under that age, the defence will not be made out.

Where the purchaser does not look ‘exceptionally old’, it will be necessary for ‘all reasonable steps’ to be taken to establish the individual’s age and s 146(5) makes provision for when a person is deemed to have taken all reasonable steps:

For the purposes of subsection (4), a person is treated as having taken all reasonable steps to establish an individual’s age if—

(a) he asked the individual for evidence of his age, and
(b) the evidence would have convinced a reasonable person.

11.7.11 The threshold in respect of the evidence, that it would have ‘convinced’ a reasonable person, is a high one and seems almost akin to a reasonable person being satisfied ‘beyond reasonable doubt’. This may be met where there is production of a voluntary proof of age card, such as ones issued by the Portman Group, or a birth certificate coupled with some photographic identification of the person whose name appears on the certificate. Less clear, however, is a case where evidence takes the form of a photographic card where the cardholder is very likely to be over the age of 18, but may not necessarily be (for example, a National Union of Students card). Clearly, if the evidence of age was such that no reasonable person would have been convinced by it, as where the proof of age was either an obvious forgery or clearly belonged to another person, the defence will fail (Guidance, para 12.7).

Whilst a person may be treated as having taken all reasonable steps if he has complied with s 146(5), this ought not to be the only way that a person can establish that he has taken all reasonable steps to establish the individual’s age. If, for instance, a regular customer, well known to the manager of a public house, was to assure the manager that the person accompanying him was over the age of 18 and the manager, believing him to be over 18, was to sell alcohol to him, this might in the circumstances constitute taking all reasonable steps. Section 146(5) does not provide that a person may be treated as having taken all reasonable steps only if he asked the individual for evidence of his age and the evidence would have convinced a reasonable person. Whilst this may be conclusive evidence, other evidence of having taken all reasonable steps should suffice for the purposes of s 146(4)(b)(i).

A further defence is provided in circumstances where the sale or supply was not made personally by the person charged with the offence, but by someone else, as where the sale is made by someone acting under delegated authority, provided the person charged exercised all due diligence to avoid committing the offence. Section 146(6) provides:

Where a person (“the accused”) is charged with an offence under this section by reason of the act or default of some other person it is a defence that the accused exercised all due diligence to avoid committing it.

57 The provision in s 146(5), of a person being treated as having taken all reasonable steps, ‘reflects the Government’s strong support for the existing voluntary proof of age card schemes’ (Guidance, para 12.7).
For this defence, and for the defence of ‘reasonable belief’ in s 146(4), the legal burden of proof will probably be on the defence on a balance of probabilities.\(^{58}\) Defences are provided in both instances where a ‘person’ is charged with an offence under the section and need not be confined to cases where an individual commits an offence. They should also extend to cases where a club does so under s 146(2) since the term ‘person’ in law can include a corporate entity or unincorporated body and provision is made in s 187 for offences by corporate bodies, partnerships and unincorporated associations (see 11.11.2 below).

11.7.12 The maximum penalty for the offences of selling alcohol to children, under s 146(1), or supplying alcohol to children on premises where supplies of alcohol are authorised by a club premises certificate, under s 146(2)(3), is a level 5 fine. Section 146(7) provides:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Responsibility for enforcement for this offence rests with local trading standards departments so far as sales from premises to which the public have access are concerned and test purchases, including ones by children,\(^ {59}\) can be made to ensure compliance with the provisions of s 146. Section 154 provides:

(1) It is the duty of every local weights and measures authority\(^ {60}\) in England and Wales to enforce within its area the provisions of sections 146 and 147, so far as they apply to sales of alcohol made on or from premises to which the public have access.

(2) A weights and measures inspector\(^ {61}\) may make, or authorise any person to make on his behalf, such purchases of goods as appear expedient for the purpose of determining whether those provisions are being complied with.

**11.7.13 Allowing the sale of alcohol to children**

Section 147 provides:

(1) A person to whom subsection (2) applies commits an offence if he knowingly allows the sale of alcohol on relevant premises to an individual aged under 18.

(2) This subsection applies to a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the sale.

(3) A person to whom subsection (4) applies commits an offence if he knowingly allows alcohol to be supplied on relevant premises by or on behalf of a club—

(a) to or to the order of a member of the club who is aged under 18, or

(b) to the order of a member of the club, to an individual who is aged under 18.

(4) This subsection applies to—

(a) a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the supply, and

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58 See 11.2.13 above, where this matter has been considered in respect of the ‘due diligence’ defence in s 139, and 11.7.6 above and 11.2.10–11.2.13 above for the defence generally.

59 Provision is made for test purchases by children in s 149(2) – see 11.7.19 below.

60 This is the technical term used for a trading standards department.

61 Section 159 provides: “weights and measures inspector” means an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985 (c.72).
(b) any member or officer of the club who at the time of the supply is present on
the relevant premises in a capacity which enables him to prevent it.

(5) A person guilty of an offence under this section is liable on summary conviction to
a fine not exceeding level 5 on the standard scale.

This offence is confined to the allowing of sales of alcohol to children on relevant
premises (see 11.5.1 above), which extends the law previously contained in s 169B of
the Licensing Act 1964 where it was an offence only to allow sales in licensed premises.
As with the offence in s 146, responsibility for enforcement rests with local trading
standards departments (see 11.7.12 above). Any person who actually makes such a sale
will commit the offence under s 146, but this section makes it an offence if a person
allows a sale on such premises or, in the case of a club with a CPC, allows the supply
on club premises. The only persons who can commit the offence are those who work at
the premises in a capacity that gives them the authority to prevent the sale or supply
and, additionally in the case of a supply on club premises, 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.

The term ‘allow’ includes not only doing something positive to facilitate the
conduct, but also failing to exercise any control to prevent it in cases where there is the
power to do so (see 11.2.19 above). The mental element required for the offence is
knowledge,62 which might be interpreted to mean knowledge as to allowing the sale
to a person who is in fact under the age of 18 or knowledge as to both allowing the sale
and as to the person being under that age. Where there is a sale to a person under the
age of 18, s 146 provides a defence of ‘reasonable belief’ as to the person’s age where
the sale is made personally and a defence of due diligence based on the act or default
of another person where it is not (see 11.7.10 above), but no defence of ‘reasonable
belief’ or ‘due diligence’ is provided by s 147. If knowledge were to be required only in
respect of allowing the sale, there will be liability even if there is no reason to suspect
that the person to whom the sale is made might be under the age of 18. This would
make the offence stricter in this respect than s 146. If, on the other hand, knowledge
were to be required, both as to allowing the sale and as to the person being under the
age of 18, the offence would be more difficult to prove than that in s 146 since the
prosecution would need to prove knowledge as to age. It would not seem to be
consistent with the inclusion of a requirement of knowledge for this offence, but not
for s 146, if this offence were to be stricter than s 146 in relation to the age of the person
(which is the essence of both offences). It is therefore submitted that knowledge that
the person is under the age of 18 ought to be required. This would accord with the
previous law, contained in s 169B(1) of the Licensing Act 1964, where the wording was
comparable to s 147, and in Goodwin v Baldwin (1975) 139 JP 147 (at which time the
offence in s 169B was contained in s 169) it was held that proof of actual knowledge as
to age or deliberate avoidance of attention to obvious means of acquiring knowledge
was necessary. May J stated (at 149):

In my judgment, in s 169 of the Licensing Act, 1964, as indeed in other statutes creating
offences, the use of the word “knowingly” requires proof against the person charged
before he is rightly convicted that he had actual knowledge of the facts creating the
offence or that he wilfully turned away and deliberately avoided paying attention to

62 As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.
an obvious means of knowledge from which, had he paid attention, he would have acquired the appropriate degree of knowledge.

If actual knowledge (or wilful blindness) is needed ‘of the facts creating the offence’, one such fact is whether the person is under the age of 18 and this decision supports the need for knowledge as to age being a requirement of the offence.

11.7.14 Sale of liqueur confectionery to children under 16

11.7.15 It is an offence for a person to sell liqueur confectionery to a child under 16, or for a club or a person on behalf of a club to supply it to such a child. Section 148(1) and (2) provides:

(1) A person commits an offence if he–
   (a) sells liqueur confectionery to an individual aged under 16, or
   (b) he supplies such confectionery, on behalf of a club–
      (i) to or to the order of a member of the club who is aged under 16, or
      (ii) to the order of a member of the club, to an individual who is aged under 16.

(2) A club commits an offence if liqueur confectionery is supplied by it or on its behalf–
   (a) to or to the order of a member of the club who is aged under 16, or
   (b) to the order of a member of the club, to an individual who is aged under 16.

11.7.16 No mental element is required for the offence. The liqueur confectionery does not have to be knowingly sold or supplied to a person who is aged under 16 and it is sufficient that the person is in fact under that age. Defences of ‘reasonable belief’ and ‘due diligence’ are, however, provided by s 148(3)–(5):

(3) Where a person is charged with an offence under this section by reason of his own conduct it is a defence that–
   (a) he believed that the individual was aged 16 or over, and
   (b) either–
      (i) he had taken all reasonable steps to establish the individual’s age, or
      (ii) nobody could reasonably have suspected from the individual’s appearance that he was aged under 16.

(4) For the purposes of subsection (3), a person is treated as having taken all reasonable steps to establish an individual’s age if–
   (a) he asked the individual for evidence of his age, and
   (b) the evidence would have convinced a reasonable person.

63 Section 148(7) provides: ‘In this section “liqueur confectionery” has the meaning given in section 191(2), and s 191(2) provides: “liqueur confectionery” means confectionery which–
   (a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogram of the confectionery, and
   (b) either consists of separate pieces weighing not more than 42g or is designed to be broken into such pieces for the purpose of consumption.’

64 No offence is committed if liqueur confectionery is sold to persons aged 16 and 17, although the exemption which permits such persons to buy alcohol in the form of liqueur confectionery does not extend to any other foodstuffs that contain alcohol of a strength exceeding 0.5 per cent ABV (Alcohol By Volume): Guidance, para 12.12.
(5) Where a person ("the accused") is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.

These defences are similar to those applying to the offence, under s 146, of selling or supplying alcohol to children under 18 (see 11.7.10–11.7.11 above).

The maximum penalty for the offence of selling or supplying liqueur confectionery to a person under the age of 16 is a level 2 fine. Section 148(6) provides:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

11.7.17 Acquisition of alcohol by or for children

11.7.18 Purchase of alcohol by or on behalf of children

11.7.19 Section 149(1) makes it an offence for a child under 18 to purchase or attempt to purchase alcohol, whether or not on licensed premises, or, if he is a member of a club, for him to have or attempt to have alcohol supplied to him by the club.65 This extends the offence previously contained in s 169C of the Licensing Act 1964, which was confined to purchases in licensed premises. Section 149(1) provides:

An individual aged under 18 commits an offence if–
(a) he buys or attempts to buy alcohol, or
(b) where he is a member of a club –
   (i) alcohol is supplied to him or to his order by or on behalf of the club, as a result of some act or default of his, or
   (ii) he attempts to have alcohol supplied to him or to his order by or on behalf of the club.

In the case of supply to him as a member of a club, para 12.13 of the Guidance stipulates that it is necessary for this to be ‘in circumstances where he actively caused the supply’, for s 149(1)(b)(i) requires the supply to be ‘as a result of some act or default of his’. This does not appear to be necessary, however, in the case of an attempt to have alcohol supplied, for there is no equivalent provision in s 149(1)(b)(ii).

The offence will not be committed if the child buys or attempt to buy alcohol as part of a test purchasing operation carried out by a police constable or trading standards officer to establish whether licensees and staff working in licensed premises are complying with the prohibition on underage sales.66 Although test purchasing operations are only likely to be carried out in licensed premises, no offence will be committed wherever a child buys or attempts to buy alcohol as part of such an operation, for the provision in s 149(2) is not limited in its application. Section 149(2) provides:

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65 In cases of an attempt, this and other offences in s 150 are summary only (s 150(7)) and the requirements for liability are set out in s 3(4) of the Criminal Attempts Act 1981 – see 11.2.8 above.

66 Guidance, para 12.13. 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.
But subsection (1) does not apply where the individual buys or attempts to buy the alcohol at the request of–
(a) a constable, or
(b) a weights and measures inspector,67

who is acting in the course of his duty.

This provision re-enacts s 31 of the Criminal Justice and Police Act 2001, which for the first time placed the test purchasing of alcohol on a statutory footing following doubts as to the legality of test purchases for which there was no statutory authorisation.

11.7.20 Section 149 also makes it an offence for a person to purchase or attempt to purchase alcohol for a child, as where a child gives money to an adult to buy alcohol in an off-licence for consumption by the child, or where a club member has alcohol supplied to a child or attempts to do so (Guidance, para 12.14). Section 149(3) provides:

A person commits an offence if–
(a) he buys or attempts to buy alcohol on behalf of an individual aged under 18, or
(b) where he is a member of a club, on behalf of an individual aged under 18 he –
   (i) makes arrangements whereby alcohol is supplied to him or to his order by or on behalf of the club, or
   (ii) attempts to make such arrangements.

A further offence occurs if a person buys or attempts to buy alcohol for consumption by a child on relevant premises (see 11.5.1 above), as where a father buys a drink for his son under 18 in a public house, or where a club member or officer has alcohol supplied to a child (in circumstances where by act or default he actively caused the supply) or attempted to do so (Guidance, para 12.15). Section 149(4) provides:

A person (“the relevant person”) commits an offence if–
(a) he buys or attempts to buy alcohol for consumption on relevant premises by an individual aged under 18, or
(b) where he is a member of a club–
   (i) by some act or default of his, alcohol is supplied to him, or to his order, by or on behalf of the club for consumption on relevant premises by an individual aged under 18, or
   (ii) he attempts to have alcohol so supplied for such consumption.

11.7.21 This offence, however, is not committed where a person aged 18 or over buys beer, wine or cider for a 16 or 17-year-old to consume with a table meal on relevant premises (see 11.5.1 above) when accompanied by an adult. Section 149(5), which re-enacts in substance the provision previously contained in s 169D Licensing Act 1964, provides:

But subsection (4) does not apply where–
(a) the relevant person is aged 18 or over,
(b) the individual is aged 16 or 17,

67 Section 159 provides: ““weights and measures inspector” means an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985 (c.72).’ This is the technical term used for a trading standards officer.
(c) the alcohol is beer, wine or cider,
(d) its purchase or supply is for consumption at a table meal on relevant premises, and
(e) the individual is accompanied at the meal by an individual aged 18 or over.

It is not necessary, for this provision to apply, that the person who purchases the alcohol accompanies the 16 or 17-year-old at the meal. It will suffice if the 16 or 17-year-old is accompanied by any adult, for s 149(5)(e) requires only that there is accompaniment at the meal ‘by an individual aged 18 or over’. The purchase or supply must be for consumption ‘at’ a table meal, which appears to confine the exemption from liability to cases where the alcohol is consumed during the course of the meal and to exclude cases where it is consumed as an aperitif to a meal. The meal must be a ‘table meal’, which is defined by s 159:

“table meal” means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table.

Under this definition, which replicates that previously contained in s 201 of the Licensing Act 1964, table meals are ‘sit down’ meals, where meals are eaten in traditional fashion with persons seated at tables or, in keeping with present day practices, they may be eaten at a counter or similar structure. Counters where refreshments might be consumed by persons who are not seated, as where persons may be standing at a counter eating sandwiches, will not qualify (in accordance with the latter part of the definition in s 159) as a counter at which a table meal may be served. The counter needs to be one that is not used for such purposes, that is it needs to be a counter for ‘sit down’ meals.

A ‘table meal’ will need to be a meal in the ordinary sense of the word, and something more than a snack, for alcohol to be served to a 16 or 17-year-old as an accompaniment. As para 12.15 of the Guidance states, it ‘would not be sufficient for a person to claim that bar snacks amounted to a table meal’. Rather surprisingly, what constitutes a ‘meal’ or ‘table meal’ has not generated much in the way of case law guidance and the only two authorities seem to be Solomon v Green (1955) 119 JP 289 and Timmins v Millman (1965) 109 Sol Jo 31. In Solomon, the High Court refused to interfere with a finding by justices that sandwiches and sausages on sticks constituted a ‘meal’, although Lord Goddard CJ stated (at 290) that the justices, who had themselves described the case as ‘border-line’, ‘might easily have come to the conclusion that it was on the other side of the line’. In Timmins, where justices decided that a substantial sandwich accompanied by beetroot and pickles, eaten at a table, might be a ‘table meal’, the High Court, in a case decided on other grounds, gave no indication that the justices were wrong to take this view.

68 Whether the adult accompanying the 16 or 17-year-old himself needs to be taking a meal is less clear. It will depend on whether ‘accompanied’ in s 149(5)(e) is interpreted to mean simply ‘present with’ at the meal or ‘present with and partaking’. The view taken may depend on what is seen as being the purpose of having an accompanying adult. If it is to exercise proper restraint in a supervisory capacity, it may not matter whether or not the adult is also partaking of a meal. If it is to enable alcohol (other than spirits) to be consumed by 16 or 17-year-olds when having a meal with family or (adult) friends, it may be that the adult will need to be partaking of a meal.
11.7.22 No mental element is required in respect of the child’s age for the offences in s 149(3) and (4), although a defence is provided by s 149(6) if there is no reason to suspect that he was under the age of 18. Section 149(6) provides:

Where a person is charged with an offence under subsection (3) or (4) it is a defence that he had no reason to suspect that the individual was aged under 18.

These two offences are regarded as more serious than the offence in s 149(1), where a person under 18 seeks himself to obtain alcohol, and they carry a level 5 fine, as compared to a level 3 fine for the offence in s 149(1). Section 149(7) provides:

A person guilty of an offence under this section is liable on summary conviction–
(a) in the case of an offence under subsection (1), to a fine not exceeding level 3 on the standard scale, and
(b) in the case of an offence under subsection (3) or (4), to a fine not exceeding level 5 on the standard scale.

11.7.23 Consumption of alcohol by children

11.7.24 Section 150(1) provides:

An individual aged under 18 commits an offence if he knowingly consumes alcohol on relevant premises.

Since this offence relates to consumption on relevant premises (see 11.5.1 above), this might be committed not only where there is consumption in premises such as public houses which operate under a premises licence and are open to the public, but also where consumption takes place in clubs operating under a CPC or on premises where events (which may well be private occasions) are taking place under the authority of a TEN. This extends the offence previously contained in s 169E of the Licensing Act 1964, which was confined to consumption in a bar in licensed premises. No offence will be committed under s 150(1), however, where consumption is inadvertent, as it is necessary that a person ‘knowingly’ consumes alcohol.69 A child whose drink was ‘spiked’ would not therefore commit the offence (Guidance, para 12.16). Nor would a person who thought he was drinking non-alcoholic wine, but was not in fact doing so.

Section 150(2) makes it an offence for a person knowingly to allow the consumption of alcohol by a child on relevant premises. By s 150(3), those who can commit this offence are any person who works at the premises in a capacity that gives him the authority to prevent the consumption and, in the case of a club, any officer or member of a club who is present at the time of the consumption in a capacity which allows him to prevent the supply of alcohol. Section 150(2) and (3) provides:

(2) A person to whom subsection (3) applies commits an offence if he knowingly allows the consumption of alcohol on relevant premises by an individual aged under 18.

(3) This subsection applies–

69 As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.
(a) to a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the consumption, and

(b) where the alcohol was supplied by a club to or to the order of a member of the club, to any member or officer of the club who is present at the premises at the time of the consumption in a capacity which enables him to prevent it.

The term ‘allow’ includes not only doing something positive to facilitate the conduct, but also failing to exercise any control to prevent it in cases where there is the power to do so (see 11.2.19 above). The mental element required for the offence is knowledge,70 which might be interpreted to mean knowledge as to allowing consumption by a person who is in fact under the age of 18 or knowledge as to both allowing consumption and as to the person being under that age. The view has been expressed in respect of the offence, in s 147, of allowing sale to a person under the age of 18 that knowledge should be required as to age (see 11.7.13 above) and it would be illogical if the position were different here. Neither this section nor s 147 provides a defence of ‘reasonable belief’ or ‘due diligence’ and it is submitted that knowledge that the person is under the age of 18 ought to be required in both instances.

11.7.25 No offence under s 150(1) or (2) is committed, however, where a person aged 16 or 17 buys beer, wine or cider for consumption with a table meal on relevant premises when accompanied by an adult. Section 150(4) contains a similar exemption to s 149(5), by which no offence is committed,71 and provides:

Subsections (1) and (2) do not apply where—

(a) the individual is aged 16 or 17,
(b) the alcohol is beer, wine or cider,
(c) its consumption is at a table meal on relevant premises, and
(d) the individual is accompanied at the meal by an individual aged 18 or over.

A maximum sentence for the offence comparable to that for purchase of alcohol under s 149 (see 11.7.22 above) is provided by s 150(5):

A person guilty of an offence under this section is liable on summary conviction—

(a) in the case of an offence under subsection (1), to a fine not exceeding level 3 on the standard scale, and
(b) in the case of an offence under subsection (2), to a fine not exceeding level 5 on the standard scale.

Neither this offence nor the preceding one of purchasing alcohol by children is in practice likely to result in a prosecution, for the police tend to use cautions to deal with this kind of offence, and even these are used infrequently. During 2000, for example, fewer than 25 prosecutions were brought in the whole of England and Wales for the combined offences of purchasing and consuming alcohol on licensed premises by persons under 18, of which 22 resulted in convictions, and there were only 80 cautions for the same offences (HL Deb, vol 645, col 739, 11 March 2003).

70 Ibid.
71 See above 11.7.21 above, where the scope of this exemption is considered.
11.7.26 Delivering alcohol to children

11.7.27 Section 151(1) provides:

A person who works on relevant premises in any capacity, whether paid or unpaid, commits an offence if he knowingly delivers to an individual aged under 18–

(a) alcohol sold on the premises, or

(b) alcohol supplied on the premises by or on behalf of a club to or to the order of a member of the club.

This extends the offence previously contained in s 169F of the Licensing Act 1964, which was confined to delivery by a person working in licensed premises. It will 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 exemptions mentioned below do not apply).  

Section 151(2) makes it an offence for a person working on relevant premises (see 11.5.1 above), and in a position which gives him authority to prevent it (s 151(3)), knowingly to allow another person to deliver alcohol to children. This offence will cover, for example, a person who authorises a delivery of the sort mentioned above in the knowledge that the recipient will be a child (Guidance, para 12.17). Section 151(2) and (3) provides:

(2) A person to whom subsection (3) applies commits an offence if he knowingly allows anybody else to deliver to an individual aged under 18 alcohol sold on relevant premises.

(3) This subsection applies to a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the delivery of the alcohol.

The term ‘allow’ includes not only doing something positive to facilitate the conduct, but also failing to exercise any control to prevent it in cases where there is the power to do so (see 11.2.19 above). The mental element required for the offence is knowledge, which, since no defence of ‘reasonable belief’ or ‘due diligence’ is provided, should be knowledge both as to allowing consumption to take place and as to the person being under the age of 18.

It will similarly be an offence for a person working in a club, and in a position which gives him authority to prevent it, knowingly to allow another person to deliver to children alcohol supplied on the club premises for members. Persons who are in a position to prevent this are anyone working on the premises in a capacity which gives him authority to prevent it (for example, the club steward) and any member or officer present in a capacity which enables him to prevent the supply. Section 151(4) and (5) provides:

(4) A person to whom subsection (5) applies commits an offence if he knowingly allows anybody else to deliver to an individual aged under 18 alcohol supplied on relevant premises by or on behalf of a club to or to the order of a member of the club.

72 Guidance, para 12.17.
73 As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.
74 The reasoning here is the same as in respect of s 147 – see 11.7.13 above.
(5) This subsection applies—
(a) to a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the supply, and
(b) to any member or officer of the club who at the time of the supply in question is present on the premises in a capacity which enables him to prevent the supply.

11.7.28 There are, however, a number of exemptions where no offence is committed. These include where alcohol is delivered to the home or place of work of the purchaser or person who is supplied (for example, where a child answers the door and signs for the delivery of his father’s order at his house), where the job 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), and where the alcohol is sold or supplied for consumption on the relevant premises (Guidance, para 12.17). This last-mentioned exemption would appear to include cases where alcohol is delivered to premises, such as public houses, and delivery is taken there by a child. Section 151(6) provides:

Subsections (1), (2) and (4) do not apply where—
(a) the alcohol is delivered at a place where the buyer or, as the case may be, person supplied lives or works, or
(b) the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol, or
(c) the alcohol is sold or supplied for consumption on the relevant premises.

All of the offences under this section are punishable by a maximum level 5 fine. Section 151(7) provides:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

11.7.29 Sending a child to obtain alcohol

11.7.30 Section 152(1) provides:

A person commits an offence if he knowingly sends an individual aged under 18 to obtain—
(a) alcohol sold or to be sold on relevant premises for consumption off the premises, or
(b) alcohol 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 extends the offence previously contained in s 169G of the Licensing Act 1964, which was confined to sending a person under the age of 18 to obtain intoxicating liquor sold or to be sold in licensed premises for consumption off the premises. The offence in s 152(1) will cover, for example, circumstances where a parent sends his child to an off-licence to collect some alcohol which had been bought over the telephone (Guidance, para 12.18). It will similarly apply where a member of a club sends his child to the club to fetch some alcohol. In both these instances, the person sending the individual will know that that individual is a child under 18, but, in cases
where a person sends an individual to obtain alcohol and does not know that that individual is a child, it would seem no offence is committed.75 Where a child is sent to obtain alcohol, the alcohol will normally be obtained from the relevant premises (see 11.5.1 above) in question, but need not be, for s 152(2) provides:

For the purposes of this section, it is immaterial whether the individual aged under 18 is sent to obtain the alcohol from the relevant premises or from other premises from which it is delivered in pursuance of the sale or supply.

11.7.31 No offence will be committed, however, where the child works at the premises in question and his job involves taking deliveries of alcohol or if the child is sent by a police or trading standards officer as part of a test purchase operation to check compliance of the retailer or club with the prohibition on underage sales.76 Section 152(3) and (4) provides:

(3) Subsection (1) does not apply where the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol.

(4) Subsection (1) also does not apply where the individual aged under 18 is sent by–

(a) a constable, or

(b) a weights and measures inspector,77

who is acting in the course of his duty.

This offence is punishable by a maximum level 5 fine. Section 152(5) provides:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

11.7.32 Sales involving children

11.7.33 Prohibition of unsupervised sales by children

11.7.34 Section 153 makes it an offence for a ‘responsible person’ on relevant premises (see 11.5.1 above) knowingly to allow an individual under the age of 18 to sell or, in the case of a club, to supply alcohol unless the sale or supply has been specifically approved by him or another responsible person.78 Section 153(1) provides:

A responsible person commits an offence if on any relevant premises he knowingly allows an individual aged under 18 to make on the premises–

(a) any sale of alcohol, or

(b) any supply of alcohol by or on behalf of a club to or to the order of a member of the club,

75 As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.

76 No offences of delivering alcohol to children, under s 151, or of children purchasing alcohol, under s 149, will be committed in these circumstances – see s 151(6)(b) and s 149(2), and 11.7.28 above and 11.7.19 above respectively.

77 Section 159 provides: “weights and measures inspector” means an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985 (c.72). This is the technical term used for a trading standards officer.

78 As to the meaning of ‘knowledge’ and ‘allow’, see 11.2.15–11.2.17 above and 11.2.18–11.2.20 above respectively.
unless the sale or supply has been specifically approved by that or another responsible person.

The persons who can commit this offence (a ‘responsible person’) are, in the case of premises licence, the premises licence holder, the DPS or someone aged over 18 authorised by them; 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 under a TEN, the premises user or a person over 18 authorised by him. Section 153(4) provides:

In this section “responsible person” means—

(a) in relation to licensed premises—

(i) the holder of the premises licence in respect of the premises,

(ii) the designated premises supervisor (if any) under such a licence, or

(iii) any individual aged 18 or over who is authorised for the purposes of this section by such a holder or supervisor,

(b) in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables him to prevent the supply in question, and

(c) in relation to premises which may be used for a permitted temporary activity by virtue of Part 5—

(i) the premises user, or

(ii) any individual aged 18 or over who is authorised for the purposes of this section by the premises user.

Since s 153(1) refers to ‘the’ sale or supply being specifically approved by a responsible person, it seems that each such sale or supply will need to be specifically approved if an offence is not to be committed (Guidance, para 12.19). Provided the sale or supply is specifically approved, it seems that no offence will be committed, irrespective of the age of the individual making the sale or supply. Section 153(1) simply refers to ‘an individual aged under 18’ and there is no proscribed minimum age for the individual as far as making the sale or supply is concerned. Whilst this was the case under the previous law in respect of off-sales under s 171A of the Licensing Act 1964, the position was different in respect of sales for consumption on the premises. Under s 170, it was an offence for the holder of a justices’ licence to employ an individual aged under 18 in a bar unless the individual was aged 16 or over and was employed under an approved training scheme.79 This no longer continues to be the case.

11.7.35 No offence is committed where the alcohol is sold for consumption with a table meal in a part of the premises used only for this purpose. Section 153(2) provides:

But subsection (1) does not apply where—

(a) the alcohol is sold or supplied for consumption with a table meal,

(b) it is sold or supplied in premises which are being used for the service of table meals (or in a part of any premises which is being so used), and

(c) the premises are (or the part is) not used for the sale or supply of alcohol otherwise than to persons having table meals there and for consumption by such a person as an ancillary to his meal.

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79 Section 170(1) and (1A), inserted by the Deregulation (Employment in Bars) Order 1997, SI 1997/957.
The effect of this exception is that, for example, a child working as a waiter or waitress in a restaurant is able to serve alcohol lawfully in the restaurant (Guidance, para 12.19). So also can a child working as a waiter or waitress in premises such as public houses that serve table meals, provided this is in a part of the premises being used only for the service of such meals. If table meals can be taken anywhere in the premises at tables which can be used by persons who are only drinking, this would seem to fall outside the exception. In this instance, the premises would be used for the sale or supply of alcohol otherwise than to persons having table meals and s 153(2)(c) requires that they are not so used.80 Further, the alcohol will have to be sold or supplied to the persons taking table meals for consumption by them as an 'ancillary' to their meal. To be ancillary, it will have to be subservient or subordinate81 to the meal, but this does mean that it will have to be supplied at the same time as the meal and consumed with it. Drinks taken as an aperitif before the meal and brandy or liqueurs taken after it will be consumed as an ancillary to the meal and, if these are served by a child, no offence will be committed under s 153(1).

Where an offence is committed under s 153(1), it is punishable by a maximum level 1 fine. Section 153(3) provides:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

11.7.36 Confiscation of alcohol in sealed containers

Section 155 amends the Criminal Justice and Police Act 2001 and the Confiscation of Alcohol (Young Persons) Act 1997 so that the police have the power to confiscate alcohol in sealed containers from anyone under 18 in any public place and from anyone in an area which has been designated by the local authority for the purposes of curbing antisocial behaviour. It provides:

(1) In section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (c.33) (right to require surrender of alcohol)—
(a) in subsection (1), omit “(other than a sealed container)”,
(b) after that subsection insert—
“(1A) But a constable may not under subsection (1) require a person to surrender any sealed container unless the constable reasonably believes that the person is, or has been, consuming, or intends to consume, alcohol in any relevant place.”, and
(c) in subsection (6), after “subsection (1)” insert “and (1A)”.

(2) In section 12(2)(b) of the Criminal Justice and Police Act 2001 (c.16) (right to require surrender of alcohol), omit the words “(other than a sealed container)”.

The 1997 Act was introduced to permit the confiscation of alcohol from the possession of young persons under the age of 18 in public places and other places to which they have unlawfully gained access. There is no requirement that possession of the alcohol

80 In this respect, s 153(2) is similar to the provision in s 68 of the Licensing Act 1964 under the previous law. Under s 68, there could be an extension in permitted hours in premises where table meals were taken, provided the sale or supply of alcohol was ancillary to the meal and was in a part of the premises usually set apart for the service of such persons.

81 Young v O’Connell [2001] LLR 158, 163, per Glidewell, J.
is associated with nuisance to other persons or disorderly conduct, although the power of confiscation was introduced for these reasons. Under s 1(1) a constable can require such a person to surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol. Failure without reasonable excuse to comply is an offence under s 1(4), the maximum penalty for which is a fine not exceeding level 2 on the standard scale, and under s 1(5) a constable may arrest without warrant anyone who fails to comply. This power of confiscation was extended by s 12 of the Criminal Justice and Police Act 2001, which enabled local authorities, with a view to reducing the incidence of nuisance and disorder arising from alcohol consumption in public places, to designate areas where it was an offence to consume alcohol after being requested by a constable not to do so. These powers remain unchanged by the 2003 Act, except for their extension, by s 155, to confiscation where the alcohol is contained in sealed containers.

11.8 SALE OF ALCOHOL ON MOVING VEHICLES

11.8.1 Section 156(1) provides:

A person commits an offence under this section if he sells by retail alcohol on or from a vehicle at a time when the vehicle is not permanently or temporarily parked.

A ‘vehicle’ is defined by s 193 as ‘a vehicle intended or adapted for use on roads’ and most obviously this will include vehicles, such as coaches, minibuses and stretch limousines, from which sales of alcohol might be made whilst on the move. It is necessary for a sale of alcohol to take place for the offence to be committed and, as para 14.24 of the Guidance notes, ‘this does not amount to a ban on the consumption of alcohol on coach trips’. There is no requirement under s 193 that a vehicle needs to be mechanically propelled or capable of self-propulsion, so it should also be an offence when alcohol is sold from a caravan or trailer whilst being towed by another vehicle. An offence is committed, however, only if a vehicle is moving and not if it is parked. This is because there can be authorisation for the sale of alcohol under a premises licence, CPC or TEN in respect of a vehicle when it is parked at a particular place, as vehicles fall within the definition in s 193 of ‘premises’ (see 6.1.2–6.1.6 above).

11.8.2 No mental element is required for this offence, but a ‘due diligence’ defence is available under s 156(3), which provides:

In proceedings against a person for an offence under this section, it is a defence that–

(a) his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and

(b) he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

This defence is comparable to that in s 139, which has application to offences in ss 136–38 (see 11.2.10–11.2.13 above). Such a defence might arise, for example, if a person mistakenly believes the beverages he is serving are non-alcoholic (Explanatory Note 245). The maximum penalty for failure to comply carries both a term of imprisonment and a high fine. Section 156(2) provides:
A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

11.9 POWER TO PROHIBIT SALE OF ALCOHOL ON TRAINS

11.9.1 The sale of alcohol on trains is not automatically an offence, but will become so if a magistrates’ court, on application by a police officer of at least the rank of inspector, exercises its power to make an order prohibiting its sale in order to prevent disorder. Section 157(1)–(3) provides:

(1) A magistrates’ court acting for a petty sessions area may make an order prohibiting the sale of alcohol, during such period as may be specified, on any railway vehicle.
   (a) at such station or stations as may be specified, being stations in that area, or
   (b) travelling between such stations as may be specified, at least one of which is in that area.

(2) A magistrates’ court may make an order under this section only on the application of a senior police officer.

(3) A magistrates’ court may not make such an order unless it is satisfied that the order is necessary to prevent disorder.

Once an order is made, the police officer who applied for the order, or any other police officer of at least the rank of inspector who has been designated by the chief officer of police for this purpose, must forthwith serve a copy of the order on any train operator concerned. Section 157(4) provides:

Where an order is made under this section, the responsible senior police officer must, forthwith, serve a copy of the order on the train operator (or each train operator) affected by the order.

The requirement to serve notice ‘forthwith’, a common requirement under the 2003 Act, might sensibly be interpreted as ‘as soon as reasonably practicable’ rather than ‘immediately’ (see 6.6.2 above).

82 Section 159(7) provides: “specified” means specified in the order under this section.’
83 Section 159(7) provides: “railway vehicle” has the meaning given by section 83 of the Railways Act 1993 (c.43).’ Section 83 provides: “railway vehicle” includes anything which, whether or not it is constructed or adapted to carry any person or load, is constructed or adapted to run on flanged wheels over or along track.’
84 Section 159(7) provides: “station” has the meaning given by section 83 of the Railways Act 1993.’ Section 83 provides: “station” means any land or other property which consists of premises used as, or for the purposes of, or otherwise in connection with, a railway passenger station or railway passenger terminal (including any approaches, forecourt, cycle store or car park), whether or not the land or other property is, or the premises are, also used for other purposes.’
85 Section 159(7) provides: “senior police officer” means a police officer of, or above, the rank of inspector.’
86 Section 159(7) provides: “responsible senior police officer”, in relation to an order under this section, means the senior police officer who applied for the order or, if the chief officer of police of the force in question has designated another senior police officer for the purpose, that other officer.’
87 Section 159(7) provides: “train operator” means a person authorised by a licence under section 8 of that Act to operate railway assets (within the meaning of section 6 of that Act).’ Railway assets under s 6(2) comprise any train, network, station or light maintenance depot.
11.9.2 A person who fails to comply with an order commits an offence if he knowingly sells, attempts to sell or allows the sale of alcohol in contravention of the order and the maximum penalty for the offence includes a term of imprisonment and a high fine. Section 157(5) and (6) provides:

(5) A person commits an offence if he knowingly—
(a) sells or attempts to sell alcohol in contravention of an order under this section, or
(b) allows the sale of alcohol in contravention of such an order.

(6) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

11.10 FALSE STATEMENTS RELATING TO APPLICATIONS

11.10.1 Section 158(1) provides:

A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with—

(a) an application for the grant, variation, transfer or review of a premises licence or club premises certificate,
(b) an application for a provisional statement,
(c) a temporary event notice, an interim authority notice or any other notice under this Act, or
(d) an application for the grant or renewal of a personal licence;
(e) a notice within section 178(1) (notice by freeholder etc conferring right to be notified of changes to licensing register).

There was no specific offence, under the previous law, of making false statements in connection with licensing applications, but false statements made in connection with various applications and notices under the 2003 Act is now an offence under s 158.

The conduct element will be the making of a false statement in connection with an application or notice. The statement will need to be false in fact and it will not suffice if a person believes a statement to be false if it in fact turns out to be true (although there might be an attempt to make a false statement in such a case). Making a false statement will generally mean making an express representation on some matter that is factually incorrect rather than a failure to disclose information or an omission to remedy a mistake or misunderstanding. However, there are circumstances where the law imposes a duty to speak and where a failure or omission will constitute the making of a false statement. A duty will arise if a statement is true when made, but due to a change of circumstances it later, to the knowledge of the person making it,

88 As to the meaning of ‘knowledge’, ‘attempt’ and ‘allow’, see 11.2.15–11.2.17 above, 11.2.7–11.2.9 above and 11.2.18–11.2.20 above respectively.
89 Such conduct nevertheless fell under the general law of obtaining property by deception under s 15 of the Theft Act 1968.
90 R v Deller (1952) 36 Cr App R 184 (a case of obtaining by false pretences under the Larceny Act 1916).
becomes false. Here there is a duty on the person to disclose the change of circumstances. A duty might also arise if, in the circumstances, a person is under a duty to disclose the information.

11.10.2 For the purposes of the offence, a person makes a false statement not only where he makes this himself in some document, but also where he uses some other document that contains a false statement. In this latter instance, he is to be treated as having made a false statement by s 158(2), which provides:

For the purposes of subsection (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

The mental element is ‘knowingly or recklessly’ making a false statement. The meaning of ‘knowledge’ has been considered in 11.2.15–11.2.17 above. The term ‘reckless’ connotes an awareness of the risk of something occurring – in the context of s 158(1) the risk will be of the statement being false – and a willingness to run the risk. The House of Lords has recently re-affirmed, in R v G [2004] 1 Cr App R 21, that ‘reckless’ in the criminal law requires awareness on the part of the defendant and has rejected the concept of ‘objective’ recklessness where liability could arise if the defendant had not given any thought to the possibility of there being any such risk, but where the risk would have been obvious to the reasonable person.

A person who commits the offence under s 158(1) is liable to a maximum sentence of a level 5 fine. Section 158(3) provides:

A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

11.11 GENERAL PROVISIONS RELATING TO OFFENCES

Sections 186–88 contain provisions having general application in respect of the above offences. Section 186 makes provision for the institution of proceedings for offences, s 187 for offences by bodies corporate and s 188 for jurisdiction and procedure in respect of offences.

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91 R v Rai [2000] Crim LR 192. (An application was made for a council grant to install a downstairs bathroom in the defendant’s house for use by his elderly mother. His mother died two days after approval of the grant, the council was not informed and the bathroom was installed. Held that the failure to inform the council was capable of constituting a deception (representing something to be true which is false) and the defendant was liable for obtaining (building) services by deception under s 1 of the Theft Act 1978.)

92 R v Firth (1989) 91 Cr App R 217. (A hospital consultant was convicted of obtaining by deception an exemption from liability to make payment for private patients he had treated, when he failed to inform the hospital that they were private patients, knowing that they would be treated as NHS patients without charge.)

93 The concept of ‘objective’ recklessness, established in an earlier House of Lords’ case, R v Caldwell [1982] AC 341, had exercised a considerable influence over English criminal law in the 1980s but had since gone out of fashion and was held in, R v G, to have been based on a misinterpretation of the word ‘reckless’ in s 1 of the Criminal Damage Act 1971.
11.11.1 Institution of proceedings

Either the licensing authority or the Director of Public Prosecutions can institute proceedings for offences under the Act and in certain circumstances, involving offences of selling or allowing the sale of alcohol under ss 146–47 (see 11.7.7–11.7.13 above), a trading standards department of the local authority can do so. Section 186(1) and (2) provides:

(1) In this section “offence” means an offence under this Act.

(2) Proceedings for an offence may be instituted–

(a) by a licensing authority,

(b) by the Director of Public Prosecutions, or

(c) in the case of an offence under section 146 or 147 (sale of alcohol to children), by a local weights and measures authority (within the meaning of section 69 of the Weights and Measures Act 1985 (c.72)).

All of the offences under the Act are summary only and normally prosecutions for such offences need to be commenced within six months from the commission of the offence. However, perhaps in recognition of the increased responsibilities that licensing authorities have under the Act, this limitation period is extended to 12 months by s 186(3), which provides:

In relation to any offence, section 127(1) of the Magistrates’ Courts Act 1980 (information to be laid within six months of offence) is to have effect as if for the reference to six months there were substituted a reference to 12 months.

11.11.2 Offences by bodies corporate

Where an offence is committed a corporate body, for example, a limited company, provision is made for there to be additional liability on the part of persons in a senior management capacity within the company where it can be shown that the offence has been committed with their consent or connivance or through neglect that can be attributed to them. This additional liability extends to a director, member of the management committee, chief executive, manager, secretary or similar officer (including persons purporting to act in such a capacity), or person controlling the corporate body, and, where the body is managed by its members, a member of the body. Section 187(1)–(3) provides:

(1) If an offence committed by a body corporate is shown–

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part, the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

94 This is the technical term used for a trading standards department of the local authority.
95 Section 187(8) provides: ‘In this section “offence” means an offence under this Act.’
96 The meaning of ‘connivance’ seems not to have been judicially considered, but connivance is likely to cover the case where it cannot be established that a person has given actual consent to the commission of the offence, but has tacitly acquiesced in its commission by failing to take steps to prevent or discourage it.
(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) In subsection (1) “officer”, in relation to a body corporate, means—

(a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, or

(b) an individual who is a controller of the body.

A similar provision is made for additional liability of partners where an offence is committed by a partnership and, in the case of unincorporated associations, for additional liability of an officer of the association or member of its governing body. Section 187(4)–(6) provides:

(4) If an offence committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on his part, the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subsection (4) “partner” includes a person purporting to act as a partner.

(6) If an offence committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or

(b) to be attributable to any neglect on the part of such an officer or member, that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

The Secretary of State has a power to make regulations under s 187(7) for the application of any of the above provisions with such modifications as he considers appropriate. Section 187(7) provides:

Regulations may provide for the application of any provision of this section, with such modifications as the Secretary of State considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

11.11.3 Jurisdiction and procedure in respect of offences

Although headed ‘jurisdiction and procedure in respect of offences’, s 188 relates only in part to this and is concerned as much, if not more so, with matters pertaining to unincorporated associations. It makes provision for any fine imposed following conviction for an offence under the 2003 Act to be paid out of an unincorporated association’s funds and for any proceedings brought against such associations to be brought in the name of the association (not in the name of any of its members). Section 188(1) and (2) provides:

97 Section 187(8) provides: ‘In this section “offence” means an offence under this Act.’

98 Section 187(8) provides: ‘In this section “offence” means an offence under this Act.’
(1) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.

(2) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

The section also makes provision for certain legal procedures and rules relating to the service of documents that apply to bodies corporate to have application to unincorporated associations. Section 188(3) and (4) provides:

(3) Rules of court relating to the service of documents are to have effect as if the association were a body corporate.

(4) In proceedings for an offence brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 (c.86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c.43) (procedure) apply as they do in relation to a body corporate.

Finally, general provision is made in respect of jurisdiction, as far as the institution of proceedings for an offence is concerned, that is, the geographical area(s) in which proceedings can be taken. In the case of an unincorporated association or a body corporate, proceedings may be instituted at any place at which it has a place of business and, for individuals, at any place where they are for the time being. Section 188(5) and (6) provides:

(5) Proceedings for an offence may be taken—
   (a) against a body corporate or unincorporated association at any place at which it has a place of business;
   (b) against an individual at any place where he is for the time being.

(6) Subsection (5) does not affect any jurisdiction exercisable apart from this section.

CLOSURE OF PREMISES

11.12 INTRODUCTION TO CLOSURE OF PREMISES

Two separate powers of closure of premises are provided in Pt 8 of the 2003 Act. One is a power of closure under a magistrates’ court order, on application by the police, under s 160, under which all premises with authorisation for licensable activities in an identified area can be closed for a period of up to 24 hours where they are situated at or near a place where disorder is occurring or anticipated. The other is a police power of closure, under s 161, of individual premises for a similar period where closure is necessary in the interests of public safety because disorder is occurring or is imminent, or where a nuisance is being caused by noise from the premises. Section 160 replaces and extends the longstanding powers of s 188 of the Licensing Act 1964 (Guidance, para 11.9) and s 161 replaces provisions previously contained in the Criminal Justice and Police Act 2001 for police closure of premises on which alcohol was sold for...
consumption there.\textsuperscript{100} The provisions in ss 160 and 161 significantly extend the previous powers by making them available in relation to premises licensed for the provision of regulated entertainment and late night refreshment (Guidance, para 11.1).

The arrangements for closing premises, contained in s 160, will generally be used by the police, with the sanction of the courts, where contingency planning is possible, although the powers may be used in a geographical area that is experiencing or expected to experience disorder in emergency too. The arrangements for closing down individual licensed premises, contained in ss 161–70, will generally be used only where unanticipated events arise and emergency action proves necessary (Guidance, para 11.7) and, in order to give effect to these arrangements, police officers can use such force as is necessary to secure closure of the premises.\textsuperscript{101}

Not only is the actual use of these powers seen as important, but also their potential use is important. Paragraph 11.8 of the Guidance states:

The Government intends that the ... powers ... should place licence holders, those giving temporary event notices and 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 are thus intended to have a significant deterrent value in curbing disorder and public nuisance through noise,\textsuperscript{102} as well as enabling disorder and noise nuisance to be brought to an end when they occur. The concept of ‘disorder’ (see 4.2.2 above) is a broad one, as perhaps also is that of ‘public nuisance’ (see 4.2.7 above), so it seems, at least potentially, that there is a wide scope for the application of these powers. However, in practice, their use is likely to be limited, rather than widespread, since they are ultimately powers of last resort.

11.13 CLOSURE OF PREMISES IN A GEOGRAPHICAL AREA: MAGISTRATES’ CLOSURE ORDERS

11.13.1 Section 160 replaces, and extends to all licensable activities, the powers of closure of licensed premises contained in s 193 of the Licensing Act 1964. Under s 160, a senior police officer of the rank of superintendent or above may ask a magistrates’

\textsuperscript{100} These powers were introduced in the 2001 Act following a proposal in the White Paper that a police officer of the rank of inspector or above should have the power to require the temporary closure of licensed premises for public order reasons: Time for Reform: Proposals for the Modernisation of our Licensing Laws, Cm 4696, 2000, para 49. This was to supplement various other powers that the police have for dealing with conduct prejudicial to public order, eg, offences, under the Public Order Act 1986, of violent disorder, causing fear or provoking violence, or causing harassment alarm or distress, and powers, under the Criminal Justice and Public Order Act 1994, to prevent the holding of raves.

\textsuperscript{101} Section 169 provides: ‘A constable may use such force as may be necessary for the purposes of closing premises in compliance with a closure order.’ Under s 171(5), ‘“closure order” has the meaning given in section 161(2)’.

\textsuperscript{102} Section 161(1)(b) requires that ‘a public nuisance is being caused by noise coming from the premises’, not simply a nuisance – see 11.14.2 below.
court to make an order requiring all premises holding premises licences, or subject to a TEN, that are situated at or near the place of the disorder or anticipated disorder to be closed for a period of up to 24 hours. The magistrates’ court may make the order only if it is satisfied that the order is necessary to prevent disorder. Section 160(1)–(3) provides:

(1) Where there is or is expected to be disorder in any petty sessions area, a magistrates’ court acting for the area may make an order requiring all premises—
   (a) which are situated at or near the place of the disorder or expected disorder, and
   (b) in respect of which a premises licence or a temporary event notice has effect, to be closed for a period, not exceeding 24 hours, specified in the order.

(2) A magistrates’ court may make an order under this section only on the application of a police officer who is of the rank of superintendent or above.

(3) A magistrates’ court may not make such an order unless it is satisfied that it is necessary to prevent disorder.

The use of this power in emergency situations will be where there is disorder, but its more frequent use will be anticipatory, where there is ‘expected to be disorder’. An expectation of disorder suggests that disorder must be more likely to occur than not, rather than its occurrence being merely a possibility, and some evidence should be required to substantiate this. As para 11.10 of the Guidance states:

Such orders should … 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.

11.13.2 Evidence to substantiate an expectation of disorder from a particular event might take the form of disorder having previously occurred when that event took place in the area. It might be anticipated from this that disorder might recur if and when that event was to take place again. Football matches between teams where there has been a history of public order problems and disorder between rival fans is an obvious example. Disorder might be expected to occur, if it has previously done so at this particular fixture. The mere fact that it had previously occurred may not, however, in itself be sufficient and it may be that some intelligence indicating a likely recurrence on this occasion will be required to justify an order requiring closure of premises in such circumstances. Even if there has been no earlier occurrence of disorder, which will be the case if events have not previously taken place, intelligence that disorder is likely may justify the making of an order. This might arise, for instance, if a political demonstration was to be held and there was evidence that it was likely to be hijacked by extreme and violent groups (an example given, along with football matches, in para 11.10 of the Guidance).

The premises that can be required to close do not include clubs with a CPC, since such premises are not open to members of the public and are unlikely to be the focus of or have any effect on the disorder. Closure is confined to premises with a premises licence or where a TEN has effect and will extend only to those ‘situated at or near the place of disorder’. Whether the expression ‘near’, as used here, has any different meaning from ‘vicinity’, which is used in respect of closure orders under s 161 as well as elsewhere in the Act, is unclear. Since the normal meaning of ‘vicinity’ is the state

103 See 11.14.2 below and, for other instances where the term is used, see s 13(3), s 32(3), s 69(3), s 161(1), s 162(2), s 163(2) and s 165(3).
of being near in space, it may well be that there is no significance in the different expression used here. Perhaps the explanation is that the power in s 160 replaces that in s 188 of the Licensing Act 1964; the expression ‘near’ was used in s 188 and has simply been repeated in the 2003 Act. What constitutes being near in space to the disorder will depend on how wide the disorder is seen as extending and will be a question of fact for the court to determine. Whether the area needs to be defined with a degree of precision is less clear. With regard to persons being entitled to make relevant representations as interested parties living within the ‘vicinity’ of application premises, the view has been expressed that what constitutes the ‘vicinity’ will not need to be determined with any degree of precision (see 6.4.14 above). However, in the context of closing all premises with authorisation for licensable activities (except clubs with a CPC) in an area, it may be that the area will need to be more accurately prescribed, either by reference to a radius distance from the place of disorder (or anticipated disorder) or by reference to roads or other identifying features which surround the area.

11.13.3 The court will need to be ‘satisfied that it [the order] is necessary to prevent disorder’ before it can grant the order and ‘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’ (Guidance, para 11.11). As to when intelligence or evidence is ‘sufficient’, since the proceedings for a closure order are civil in nature, it might be expected that the normal standard of proof in civil proceedings will apply, that is the court will need to be satisfied on a balance of probabilities that the closure order is necessary to prevent disorder. The final version of the Guidance makes no reference to proof on a balance of probabilities, although these words did appear in a draft version of the Guidance. Whether their exclusion from the final version is indicative of an intention for this standard not to have application is unclear. It is possible that the view may have been taken that this should not involve a standard proof, but simply an exercise of judgment or evaluation. A similar view was taken by the House of Lords, in R (on the application of McCann) v Manchester Crown Court [2003] AC 787, in respect of the requirement under s 1(1)(b) of the Crime and Disorder Act 1998 of satisfying magistrates that an Anti-Social Behaviour Order (ASBO) is necessary to protect persons from further anti-social behaviour by a specific person, once it had been established beyond reasonable doubt under s 1(1)(a) that that person has acted in an anti-social manner. Whilst this approach may be justified in the case of an ASBO in respect of the s 1(1)(b) requirement, it is submitted that it cannot be for a closure order because of the wide-ranging impact that exercise of the power under s 160 will have, that is closure for a period up to 24 hours of all premises with a premises licences or TEN which are situated near the place of the disorder or anticipated disorder. The impact of an ASBO is much more limited. McCann ought not to be followed in respect of a closure order, but distinguished on the ground that the nature of the order is substantially different, and the burden of proof on the police should be to satisfy the court on a balance of probabilities that the closure order is necessary to prevent disorder.

Having to be satisfied that the order is necessary to ‘prevent’ disorder imposes a high standard of proof for the grant of an order and, if the court is satisfied only that

104 Adler v George [1964] 1 All ER 628, 629, per Lord Parker CJ – see 6.4.14 above, where the meaning of the term ‘vicinity’ is considered.
closure may help to minimise disorder rather than prevent it, the statutory criterion in s 160(3) would not seem to be made out. Even if the court is satisfied that an order is necessary to prevent disorder, it seems to be a matter for the court’s discretion whether or not to grant an order. Section 160(3) does not require the court to grant an order when it is satisfied this is necessary to prevent disorder; it merely provides the court may not make an order unless it is so satisfied. When deciding whether to exercise its discretion to make an order, the court will need to balance the degree to which disorder might be expected to take place against the impact on the community of closure of premises in the area. The greater the degree of disorder expected and the more tightly circumscribed the area affected, the more the balance will be tipped in favour of the closure of premises. Conversely, only a limited degree of anticipated disorder, which might be spread over a wide area, will make it harder to justify the closure of a large number of premises.

The seeking of a closure order under s 160 is seen as a last resort and the Guidance encourages voluntary closure where possible:

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.105

11.13.4 Once a closure order is made, it is an offence for the premises licence holder, a DPS, the premises user (in the case of a TEN) and any manager of the premises in question – a ‘manager’ being a person who has authority to close the premises106 – to knowingly keep open or allow the premises to be kept open during the period of the order. Section 160(4) and (5) provides:

(4) Where an order is made under this section, a person to whom subsection (5) applies commits an offence if he knowingly keeps any premises to which the order relates open, or allows any such premises to be kept open, during the period of the order.

(5) This subsection applies–

(a) to any manager of the premises,

(b) in the case of licensed premises, to–

(i) the holder of a premises licence in respect of the premises, and

(ii) the designated premises supervisor (if any) under such a licence, and

(c) in the case of premises in respect of which a temporary event notice has effect, to the premises user in relation to that notice.

105 Paragraph 11.12. This is reinforced by the earlier statement in para 11.11 of the Guidance that: Police officers should recognise that such action [closure of premises] 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.

106 Section 171(5) provides: ‘A “manager”, in relation to any premises, means a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to close them.’ It is not relevant whether or not the individual has the expression ‘manager’ in his or her job title or description: Guidance, para 11.36.
11.13.5 The conduct element required for the offence is keeping premises, which are subject to a closure order, open or allowing such premises to be kept open. The term ‘allow’ includes not only doing something positive to facilitate the conduct, but also failing to exercise any control to prevent it in cases where there is the power to do so (see 11.2.19 above). Subject to various exceptions, premises are kept ‘open’ for the purposes of this offence if a person enters the premises and either obtains food, drink or anything usually sold or remains there whilst they are used for the provision of regulated entertainment. Exceptions relate both to those who enter and to the particular use of the premises. Premises are not ‘open’ if the only persons who enter are those who might commit the offence, those who usually live at the premises and (in both instances) a member of their family. Nor are premises ‘open’ if they are used for non-licensable activities falling outside the event period under a TEN (where no premises licence is in force in respect of the premises); if they are used for a qualifying club activity under a CPC; or if the obtaining of the food or drink does not amount to the licensable activity of provision of late night refreshment services because, under para 3 of Sched 2, it is an ‘exempt supply’ made to a member of a recognised club (see 5.4.6 above). Section 171(2)–(5) provides:

(2) Relevant premises are open if a person who is not within subsection (4) enters the premises and–
   (a) he buys or is otherwise supplied with food, drink or anything usually sold on the premises, or
   (b) while he is on the premises, they are used for the provision of regulated entertainment.

(3) But in determining whether relevant premises are open the following are to be disregarded–
   (a) where no premises licence has effect in respect of the premises, any use of the premises for activities (other than licensable activities) which do not take place during an event period specified in a temporary event notice having effect in respect of the premises,
   (b) any use of the premises for a qualifying club activity under and in accordance with a club premises certificate, and
   (c) any supply exempted under paragraph 3 of Schedule 2 (certain supplies of hot food and drink by clubs, hotels etc not a licensable activity) in circumstances where a person will neither be admitted to the premises, nor be supplied as mentioned in sub-paragraph (1)(b) of that paragraph, except by virtue of being a member of a recognised club or a guest of such a member.

(4) A person is within this subsection if he is–
   (a) an appropriate person in relation to the premises,
   (b) a person who usually lives at the premises, or
   (c) a member of the family of a person within paragraph (a) or (b).

(5) The following expressions have the meanings given–
   “appropriate person”, in relation to any relevant premises, means–
   (a) any person who holds a premises licence in respect of the premises,
   (b) any designated premises supervisor under such a licence,

107 For the meaning of ‘qualifying club activity’, see s 1(2) and 8.2.2 above.
(c) the premises user in relation to any temporary event notice which has effect in respect of the premises, or

(d) a manager of the premises.

The mental element required for the offence is knowledge, at least in relation to the keeping open of the premises, and this should be knowledge both as to the premises being open and as to them being subject to a closure order. Although there is no requirement for the police to notify persons affected by the order, it might be anticipated that persons will be notified as soon as possible (and they may, in any event, be ‘on notice’ of an order if voluntary closure has been sought, as suggested by the Guidance – see 11.13.3 above). This should facilitate proof of the requirement of knowledge of the closure order. Less clear is whether knowledge is needed where premises are allowed to be kept open. Section 160(4) refers to ‘knowingly keeps ..., or allows’ and, if the reference to ‘knowingly’ is read disjunctively in relation to ‘keeps’ or ‘allows’, knowledge will not be needed where the premises are allowed to be kept open. Conversely, it will be needed if read conjunctively. Given the absence of any provision of a due diligence defence in this section, it is submitted that the reference to ‘knowingly’ should be read conjunctively and an offence might be committed only if a person, knowing that the premises are subject to a closure order, knowingly allows them to remain open. The maximum penalty for the offence is a level 3 fine and a constable may use necessary force to close any premises covered by such an order. Section 160(6) and (7) provides:

(6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) A constable may use such force as may be necessary for the purpose of closing premises ordered to be closed under this section.

No provision is made for cancellation of a magistrates’ closure order under s 160, unlike for police closure orders under s 161 (see 11.14.13–11.14.15 above), so presumably the order will continue to have effect notwithstanding that the basis for it being made no longer has application, that is continued closure is no longer necessary to prevent disorder.

11.14 CLOSURE OF IDENTIFIED PREMISES: POLICE CLOSURE ORDERS

11.14.1 Making a closure order

11.14.2 The circumstances in which disorder might be expected, and where the power in s 160 can have application, will be relatively few and disorder will more commonly arise in circumstances that cannot readily be anticipated. Section 161 makes provision for this by enabling a senior police officer of the rank of inspector or above to make an order closing individual premises covered by premises licences or a TEN for up to 24 hours where disorder is taking place or is imminent and closure is necessary in the

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108 As to the meaning of ‘knowledge’, see 11.2.15–11.2.17 above.
interests of public safety. Such an order can also be made where a nuisance is being caused by noise emanating from the premises. Section 161(1) and (2) provides:

(1) A senior police officer\(^{109}\) may make a closure order in relation to any relevant premises\(^{110}\) if he reasonably believes that–

(a) there is, or is likely imminently to be, disorder on, or in the vicinity of and related to, the premises and their closure is necessary in the interests of public safety, or

(b) a public nuisance is being caused by noise coming from the premises and the closure of the premises is necessary to prevent that nuisance.

(2) A closure order is an order under this section requiring relevant premises to be closed for a period not exceeding 24 hours beginning with the coming into force of the order.\(^{111}\)

An officer’s reasonable belief, under s 161(1)(a), will need to relate to three matters. First, he will need a reasonable belief that disorder is actually occurring, either on the premises or in the vicinity,\(^{112}\) or is likely to be imminent. If he reasonably believes it is likely to occur at some point in the future, then presumably the power in s 160 should be used. The Guidance, in para 11.10, gives an example of intelligence received on a Thursday about a football match to be played on a Saturday, in respect of which it states that the s 160 power should be used and not an order under s 161. In this example, there is clearly sufficient time to obtain a magistrates’ court order under s 160, but, in cases where there is not, then disorder ought to be regarded as ‘imminent’ for the purposes of s 161. Otherwise, there may be a ‘lacuna’ where neither the power under s 160 nor s 161 can be used. Secondly, an officer will need a reasonable belief that the disorder or imminent disorder ‘relates to’ the premises, that is causally linked with the premises. If disorder is occurring or is imminent in the vicinity, but the officer does not reasonably believe it to be connected with the premises, a closure order should not be made. Thirdly, he will need a reasonable belief that closure is necessary in the interests of public safety, which will mean a reasonable belief that ‘closure of the licensed premises should actively diminish the probability that disorder will take place in the immediate future’ (Guidance, para 11.27).

11.14.3 An officer’s reasonable belief, under s 161(1)(a), will need to relate to four matters. First, he will need a reasonable belief that a public nuisance is being caused. Secondly, he will need a reasonable belief that it is being caused by noise. A reasonable belief that such a nuisance may be imminent will not, it seems, justify the exercise of the power since there will not be a reasonable belief that a nuisance is ‘being caused’ if a nuisance by noise is not actually occurring. In this instance, it appears necessary for the officer to wait until the noise (most probably music) has commenced. Thirdly, he

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\(^{109}\) Section 161(8) provides: ‘In this section – ... “senior police officer” means a police officer of, or above, the rank of inspector.’

\(^{110}\) Section 161(8) provides: ‘In this section – “relevant premises” means premises in respect of which one or more of the following have effect–

(a) a premises licence,

(b) a temporary event notice.’

\(^{111}\) The order will come into force when notice of the order is given to ‘an appropriate person’, who is a person who is in a position to close the premises – see 11.14.8 below.

\(^{112}\) The meaning of ‘vicinity’ has been considered earlier – see 11.13.2 above and also 6.4.14 above.
will need a reasonable belief that a public nuisance by noise is coming from the premises. It will not suffice if an officer reasonably believes the noise is coming from the vicinity of the premises: ‘Noise nuisance arising solely from people in the street outside licensed premises would not be sufficient to justify the use of these powers.’

Fourthly, he will need a reasonable belief that closure of the premises is necessary to prevent the noise nuisance and, in this respect, ‘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’ (Guidance, para 11.28).

11.14.4 An officer’s decision whether to make a closure order will in large measure be determined by the nature of the activities taking place, but s 161(3) requires the officer to have regard to the conduct of those involved in running the premises who may be in a position to close them. It provides:

In determining whether to make a closure order in respect of any premises, the senior police officer must have regard, in particular, to the conduct of each appropriate person in relation to the disorder or disturbance.

This is a mandatory requirement and para 11.14 of the Guidance explains how it is intended to have application:

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 if 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 excessive noise, that good conduct should also be taken into account.

Thus, at the very least, the conduct of those involved will be a relevant consideration to be taken into account in reaching a decision and, where there is an element of blameworthiness, this will be more likely to result in an order being made. It may perhaps, at best, be seen as an important relevant consideration, given that the section directs the officer to have regard ‘in particular’ to the conduct of those involved; but it will be no more than a relevant consideration. If there is disorder or excessive noise, a closure order might be made irrespective of how good the conduct of those involved

113 Guidance, para 11.28. A reasonable belief that noise disturbance was arising from the curtilage of the premises, however, should suffice since the curtilage can be regarded as part of the premises themselves.

114 The Guidance, para 11.21, provides:

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.

115 An ‘appropriate person’ is a person who is in a position to close the premises – see the definition in s 171(5) and 11.14.8 below.
might have been. Nevertheless, it is clear from the Guidance that there will, to all intents and purposes, be a presumption against the making of a closure order in such circumstances, for para 11.16 provides that ‘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’.

11.14.5 In some cases, disorder may be taking place, or is expected to take place imminently, in the vicinity of several adjacent or closely situated premises and a senior police officer may reasonably believe that the closure of those premises is necessary in the interests of public safety. In such a case, if regard is had to s 161(3) and there is good conduct on the part of those involved with particular premises, those particular premises may not be subject to a closure order:

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 enforce the closure of others.

If a decision is taken to make a closure order, either in the case of single or multiple premises, the period of closure will need to be determined before the order is given. By s 161(2), the duration of the order cannot exceed 24 hours. This does not necessarily mean that the length of the closure should automatically be set for 24 hours on every occasion. The period should be that which the senior police officer estimates would be needed to end the threat to public safety from disorder or the prevention of public nuisance by noise. In practice, therefore, closure orders could last between 30 minutes and 24 hours depending on the circumstances of each case.

11.14.6 Giving a closure order

11.14.7 If a decision is taken to make a closure order, there is no prescribed form that this must taken, but there is certain information that must be contained in it. Section 161(4) provides:

A closure order must—

(a) specify the premises to which it relates,

(b) specify the period for which the premises are to be closed,

116 This is apparent from para 11.15 of the Guidance: ‘The powers in sections 161–70 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.’

117 Guidance, para 11.42, which goes on to provide: ‘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.’ For the court processes, see 11.14.16–11.14.19 above.

118 Guidance, para 11.34. Paragraph 11.35 goes on to provide:

If, for example, a closure is made at 9 pm 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.
(c) specify the grounds on which it is made, and  
(d) state the effect of sections 162 to 168.

Annex L to the Guidance provides a Specimen Closure Order made under s 161. The Notes to the Order state the effect of ss 162–168, as required by s 161(4)(d). The Order contains a section headed ‘Premises to be closed’ in which the premises to which the order relates is to be specified and all that would seem to be required is identification of the premises by their address (and perhaps trading name). A section headed ‘Period of closure (until – time and date)’ requires insertion of the time and date until which the premises should remain closed, the Order itself indicating the date and time when it is made, which is the period from when closure runs. A section headed ‘Reason (ground) for closure’ meets the requirement in s 161(4)(c) to specify the grounds on which it is made, although it is uncertain what degree of detail is to be given here. More than simple identification of the relevant statutory provision, that is s 161(1)(a) or (b), should be required (since the Notes to the Order, although referring to disorder and nuisance, do not make reference to these provisions). At the very least an indication should be given in the Order as to whether the ground relied on is disorder (or its likelihood) or nuisance by noise. Whether reasons need also to be given in this section is unclear.¹¹⁹

The Act contains no provision as to the effect of a closure order in the event of a failure to comply with any of these requirements in s 161(4). It might reasonably be assumed that relatively minor inaccuracies or deficiencies will not invalidate the notice, but that any major ones might do so.

11.14.8 Where a senior police officer decides to make a closure order under s 161, notice of the order, providing the above details, may be given by that officer personally or, where the decision is made remotely, by any constable.¹²⁰ ‘Giving’ the notice, in this context, is the delivery of the notice to the individual and notice of a closure order must always be given in writing (Guidance, para 11.39). Normally the notice should be by personal service¹²¹ and notice is to be given to an ‘appropriate person’. This will be the holder of the premises licence, the DPS, premises user or the manager of the relevant premises¹²² and it will be at this point that the notice takes effect. Section 161(5) provides:

¹¹⁹ The section heading ‘Reason (grounds) for Closure’ is ambiguous, as is the Guidance which states, in para 11.48, that the closure order must ‘contain details of … the grounds or reasons for the decision’.

¹²⁰ The senior police officer does not have to be present at the premises to authorise service of an order (otherwise, particularly in rural areas, an unreasonable period may pass during which public safety might be at risk). He may make his decision on the basis of information supplied to him by other police officers, although the decision ‘remains his and he remains accountable for that decision’: Guidance, para 11.37. Senior police officers should, however, as a matter of good practice, attempt to attend wherever possible in order to make a full and personal assessment: Guidance, para 11.38.

¹²¹ Guidance, para 11.39. If a licensee 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 and that person should also be advised orally that the notice contains details of his rights and duties under the 2003 Act: Guidance, para 11.39.

¹²² For the definition of ‘appropriate person’ – essentially a person who is in a position to close the premises – see s 171(5) and 11.13.5 above.
A closure order in respect of any relevant premises comes into force at the time a constable gives notice of it to an appropriate person who is connected with any of the activities to which the disorder or nuisance relates.

The 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 customers will leave the premises, given that licensable activities cannot take place during the period of closure. However, the licence holder or manager of the premises commits no offence arising from the mere presence of customers who might remain. Similarly, customers themselves commit no offence if they are not asked to leave the premises and choose to stay.\textsuperscript{123}

\textbf{11.14.9 Extension of a closure order}

11.14.10 Once a closure order comes into force, the senior police officer must, under s 164(1), as soon as reasonably practicable, apply to the magistrates’ court for it to consider the order (see 11.14.16–11.14.19 above). However, there will clearly be some circumstances where the officer may reasonably believe that it will not be possible to make an application before the closure period ends and s 162 accordingly makes provision for extension of the closure period for up to a further 24 hours. Such an extension might be made by the officer (before the closure period ends), provided he also reasonably believes closure is (still) necessary on grounds of disorder or public nuisance by noise. Section 162(1) and (2) provides:

\begin{enumerate}
\item Where, before the end of the period for which relevant premises are to be closed under a closure order or any extension of it (“the closure period”), the responsible senior police officer reasonably believes that–
\begin{enumerate}
\item a relevant magistrates’ court will not have determined whether to exercise its powers under section 165(2) in respect of the closure order, and any extension of it, by the end of the closure period, and
\item the conditions for an extension are satisfied,
\end{enumerate}
he may extend the closure period for a further period not exceeding 24 hours beginning with the end of the previous closure period.
\item The conditions for an extension are that–
\begin{enumerate}
\item in the case of an order made by virtue of section 161(1)(a), closure is necessary in the interests of public safety because of disorder or likely disorder on, or in the vicinity of and related to, the premises,
\item in the case of an order made by virtue of section 161(1)(b), closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises.\textsuperscript{124}
\end{enumerate}
\end{enumerate}

It seems from the wording of the section that there may be more than one extension period. Section 162(1) indicates that the officer ‘may extend the closure period’ and the

\textsuperscript{123} Guidance, para 11.29. However, if an individual who is drunk or disorderly is asked to leave and refuses to do so, this is an offence under s 143 – see 11.5.13–11.5.16 above.

\textsuperscript{124} The condition for securing an extension in the case of public nuisance by noise seems to be wider than in the case of making an order. For an extension, it will suffice, under s 162(2)(b), that such a nuisance \textit{is likely to be} caused by noise coming from the premises, but, for the making of an order, s 161(1)(b) requires that a nuisance \textit{is} being caused by noise coming from the premises – see 11.14.3 above.
'closure period’ is designated as the period when the ‘relevant premises are to be closed under a closure order or any extension of it’.

11.14.11 For the extension to come into force, notice must be given before the end of the closure period and the extension will take effect when the notice is given. Section 162(3) and (4) provides:

(3) An extension in relation to any relevant premises comes into force when a constable gives notice of it to an appropriate person connected with any of the activities to which the disorder or nuisance relates or is expected to relate.

(4) But the extension does not come into force unless the notice is given before the end of the previous closure period.

11.14.12 Failure to comply with a closure order or extension

Where a closure order or extension is in force, a person who permits the premises to remain open without reasonable excuse in contravention of the order or extension commits an offence punishable both by imprisonment and a fine.125 Section 161(6) and (7) provides:

(6) A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of a closure order or any extension of it.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

The commission of this offence is not confined to an ‘appropriate person’, under s 171(5) a person who has power to close the premises (see 11.14.8 above), for s 161(6) makes reference only to ‘a person’. In principle, therefore, it would seem that any person, including perhaps a barman, might commit the offence. However, if a person ‘permits’ premises to remain open, it might be implicit that he must have it within his authority to enable them to remain open, either doing something positive to facilitate this or failing to exercise any control to prevent them from remaining open. In this respect, ‘permit’ has a similar meaning to ‘allow’ (see 11.2.19 above) and it may be that a barman does not have it within his authority to enable the premises to remain open. No mental element is required for this offence, although a defence of reasonable excuse is provided.

11.14.13 Cancellation of a closure order or extension

11.14.14 Once a closure order or extension has come into force, it can be cancelled at any time thereafter by the senior police officer at his discretion up to the time when it is considered by the magistrates’ court. Further, it must be cancelled by him if he no longer reasonably believes that it is necessary in the interests of public safety because of disorder or likely disorder or to ensure that no public nuisance is or is likely to be caused by noise coming from the premises. Section 163(1) and (2) provides:

(1) The responsible senior police officer may cancel a closure order and any extension of it at any time–

(a) after the making of the order, but

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125 As to what constitutes remaining ‘open’, see 11.13.5 above.
(b) before a relevant magistrates’ court has determined whether to exercise its powers under section 165(2) in respect of the order and any extension of it.

(2) The responsible senior police officer must cancel a closure order and any extension of it if he does not reasonably believe that—

(a) in the case of an order made by virtue of section 161(1)(a), closure is necessary in the interests of public safety because of disorder or likely disorder on, or in the vicinity of and related to, the premises,

(b) in the case of an order made by virtue of section 161(1)(b), closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises.

If a closure order or extension is cancelled, notice of the cancellation must be given to an ‘appropriate person’ (which under s 171(5) is the premises licence holder, the DPS, premises user or the manager of the premises) connected with any of the activities related to the disorder or nuisance (see 11.14.8 above). Section 163(3) provides:

Where a closure order and any extension of it are cancelled under this section, the responsible senior police officer must give notice of the cancellation to an appropriate person connected with any of the activities related to the disorder (or anticipated disorder) or nuisance in respect of which the closure order was made.

11.14.15 The section does not provide that the person to whom notice of cancellation is given must be the same person as was given the closure notice. Whilst this may well be the case in most instances, it does not seem necessary according to this provision, which simply requires that notice is given to ‘an appropriate person’ who is connected with any of the activities in question. Paragraph 11.39 of the Guidance provides that the giving of notice of a closure order should normally be by personal service (see 11.14.8 above) and it might be expected that notice of cancellation should similarly be given, but the Guidance contains no provision to this effect.126 Although the section provides that the senior police officer must give the notice of cancellation, presumably this need not be done by him personally and may be done by a constable on his behalf. Notice of a closure order can be given by a constable, where a decision to make an order is made remotely by the senior police officer, and it would be odd if the position were different for notice of cancellation. Although there is no specific provision authorising notice of cancellation to be given by a constable – there is, under s 161(5), in the case of notice of a closure order (see 11.14.8 above) – the giving of such notice should be permissible in accordance with the ordinary principles of the law of agency.

11.14.16 Consideration of a closure order or extension by a magistrates’ court

11.14.17 Whilst the giving of a closure notice enables the instant closure of premises, it is necessary for the senior police officer to make an application as soon as reasonably practicable to the magistrates’ court for the court to consider the order. He must also notify the licensing authority of the order and the court application if the order concerns licensed premises, that is premises in respect of which there is in force a

126 Notice might therefore be given by any of the means specified in s 184(3). Thus, as an alternative to giving it to the person in question by delivering it to him, notice may be given by leaving it at his proper address, or by sending it by post to him at that address – see 2.4.19–2.4.22 above.
premises licence (s 193). This is to enable a review of the premises licence to take place (see 11.14.20–11.14.24 below). Section 164(1) and (2) provides:

(1) The responsible senior police officer must, as soon as reasonably practicable after a closure order comes into force in respect of any relevant premises, apply to a relevant magistrates’ court for it to consider the order and any extension of it.

(2) Where an application is made under this section in respect of licensed premises, the responsible senior officer must also notify the relevant licensing authority—
   (a) that a closure order has come into force,
   (b) of the contents of the order and of any extension of it, and
   (c) of the application under subsection (1).

The magistrates’ court must consider the application as soon as reasonably practicable and decide whether to exercise any of its powers, which include revoking the order (or extension) or ordering the premises to remain closed until the licensing authority has conducted a review of the order under s 167.127 If closure is ordered until review, complete closure may not be necessary. Exceptions can be specified in the order, under which the premises can remain open, and the premises can also remain open if specified conditions are satisfied. Section 165(1) and (2) provides:

(1) A relevant magistrates’ court must as soon as reasonably practicable after receiving an application under section 164(1)—
   (a) hold a hearing to consider whether it is appropriate to exercise any of the court’s powers under subsection (2) in relation to the closure order or any extension of it, and
   (b) determine whether to exercise any of those powers.

(2) The relevant magistrates’ court may—
   (a) revoke the closure order and any extension of it;
   (b) order the premises to remain or to be closed until such time as the relevant licensing authority has made a determination in respect of the order for the purposes of section 167;
   (c) order the premises to remain or to be closed until that time subject to such exceptions as may be specified in the order;
   (d) order the premises to remain or to be closed until that time unless such conditions as may be specified in the order are satisfied.

127 For reviews under s 167, see 11.14.20–11.14.24 below. These powers cannot be exercised if a premises licence is no longer in force in respect of the premises, in which case the premises cease to be ‘relevant premises’ (as defined by s 171(5) and s 161(8)). Section 165(5) provides: ‘Subsection (2) does not apply if, before the relevant magistrates’ court discharges its functions under that subsection, the premises cease to be relevant premises.’ If the powers have been exercised and an order made, the order will cease to have effect if the premises thereafter cease to be ‘relevant premises’. Section 165(6) provides: ‘Any order made under subsection (2) ceases to have effect if the premises cease to be relevant premises.’ The powers can be exercised by a single justice and it is necessary for evidence to be given on oath in the proceedings. Section 165(9) and (10) provides:

(9) The powers conferred on a magistrates’ court by this section are to be exercised in the place required by the Magistrates’ Courts Act 1980 (c.43) for the hearing of a complaint and may be exercised by a single justice.

(10) Evidence given for the purposes of proceedings under this section must be given on oath.
Exceptions specified in the closure order, which could allow for premises to remain open, might include opening during daytime hours rather than evenings or opening on some, but not all, evenings. Exceptions specified to remain open where conditions are satisfied might include the DPS or a certain number of personal licence holders being present on the premises, certain persons, for example, football supporters, not being admitted to the premises, or recorded or amplified music not being played without certain soundproofing precautions being taken.

11.14.18 The criteria that the court must apply, in deciding whether to revoke or extend the closure order, will include whether closure is necessary either in the interests of public safety because of disorder (or likely disorder) or to ensure that no public nuisance is (or is likely to be) caused by noise coming from the premises. Section 165(3) provides:

In determining whether the premises will be, or will remain, closed the relevant magistrates’ court must, in particular, consider whether—

(a) in the case of an order made by virtue of section 161(1)(a), closure is necessary in the interests of public safety because of disorder or likely disorder on the premises, or in the vicinity of and related to, the premises;

(b) in the case of an order made by virtue of section 161(1)(b), closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises.

The criteria specified in the section seem not to be the only ones to which the court can have regard. The section provides that the court must consider the matters specified ‘in particular’, which suggests that there may be other considerations that the court might also take into account. These might include the impact of closure of the premises on the premises licence holder (for example, financial hardship and possible loss of livelihood) and perhaps also the impact on other persons working there (for example possible loss of employment) and on the community generally (for example, possible loss of a facility at which licensable activities are provided). Certainly the impact of closure on the premises licence holder ought to be considered as closure will be an interference with his property under Art 1 of Protocol 1 of the European Convention on Human Rights. In determining whether this is justified, a fair balance will need to be struck between the general interest in closure to advance the public good (the purpose of the interference, in this case closure in accordance with the grounds mentioned above in s 165(3)) and the burden on the individual of the interference and whether the measures taken are proportionate to the aims to be achieved, that is, the impact on property rights (see 3.6.8 above). If an excessive burden is imposed on the premises licence holder and/or the measures taken are disproportionate, there might be a violation of Art 1 of Protocol 1. This might be the case if the premises are ordered to remain closed completely until review, if public safety might be assured or public nuisance by noise prevented by closure subject to exceptions under which the premises might remain open for periods of time (see 11.14.17 above). In determining

128 These are the same criteria as must be considered by the senior police officer when he is deciding whether to make an extension of a closure order – see s 162(2) and 11.14.10 above.
129 As para 11.16 of the Guidance states: ‘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.’
whether to revoke or extend the closure order, the court therefore must consider whether closure is necessary in the interests of public safety or to prevent public nuisance by noise, as it is required to do by s 165(3), but cannot confine its consideration to these matters.

If the court decides to exercise its powers to revoke or extend the closure order, it must notify the licensing authority of its decision if the order concerns licensed premises. Section 165(4) provides:

In the case of licensed premises, the relevant magistrates’ court must notify the relevant licensing authority of any determination it makes under subsection (1)(b).

11.14.19 Where a court has extended the closure order, a person who permits the premises to remain open (see 11.13.5 above) in contravention of the order without reasonable excuse commits an offence punishable both by imprisonment and a fine. Section 165(7) and (8) provides:

(7) A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of an order under subsection (2)(b), (c) or (d).

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

The requirements in respect of this offence are the same as those for the offence in s 161(6) (see 11.14.12 above). There is a right of appeal to the Crown Court against the magistrates’ court order, which must be exercised within 21 days of the court’s decision. Section 166 provides:

(1) Any person aggrieved by a decision of a magistrates’ court under section 165 may appeal to the Crown Court against the decision.

(2) An appeal under subsection (1) must be commenced by notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day the decision appealed against was made.

The right of appeal is available to ‘any person aggrieved’. If the order is revoked by the magistrates’ court, this will include the senior police officer who made the closure order, although it ought not to include the licensing authority, which will be notified of the magistrates’ court’s determination under s 165(4) to enable it to hold a review of the premises licence under s 167. This is because, even if the order is revoked, the licensing authority is still able to hold the review. It would not therefore seem to be ‘aggrieved’ by the decision to revoke and so should have no right of appeal under s 166(1). If the closure order is extended, then any ‘appropriate person’ would seem to be entitled to appeal.130

11.14.20 Review of premises licence following closure order

11.14.21 Where a closure order has been made in respect of licensed premises and the licensing authority receives notification of the magistrates’ court’s determination under s 165(4), it must review the premises licence and reach a decision on the action to be taken (if any) within 28 days of the notice. Section 167(1)–(3) provides:

130 For the definition of ‘appropriate person’ – a person who is in a position to (open or) close the premises – see s 171(5) and 11.14.8 above.
(1) This section applies where—
   (a) a closure order has come into force in relation to premises in respect of which a premises licence has effect, and
   (b) the relevant licensing authority has received a notice under section 165(4) (notice of magistrates’ court’s determination), in relation to the order and any extension of it.

(2) The relevant licensing authority must review the premises licence.

(3) The authority must reach a determination on the review no later than 28 days after the day on which it receives the notice mentioned in subsection (1)(b).

Provision is made for regulations to require notice to be given to the premises licence holder and each responsible authority, for advertisement of the review by the authority and for the making of representations by responsible authorities and interested parties. Section 167(4), which contains a comparable provision to that in s 51(3) for review of a premises licence under s 51 (see 6.12.3 above), provides:

   The Secretary of State must by regulations—
   (a) require the relevant licensing authority to give, to the holder of the premises licence and each responsible authority, notice of—
       (i) the review,
       (ii) the closure order and any extension of it, and
       (iii) any order made in relation to it under section 165(2);
   (b) require the authority to advertise the review and invite representations about it to be made to the authority by responsible authorities and interested parties;
   (c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party;
   (d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

Regulation 37 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, SI 2005/42 requires the authority to give notice in writing to the premises licence holder and each responsible authority of the matters specified in s 167(4)(a), and of the dates between which interested parties and responsible authorities may make representations. This must be done within one working day beginning on the day following the authority being notified (under s 165(4)) of the magistrates’ court’s decision to exercise its powers in relation to closure. Under reg 22(a), the period of time within which representations may be made is seven working days beginning on the day following the authority’s notification under s 165(4). Under regs 38–39, the licensing authority must advertise a review of a premises licence following a closure order in the same as an application for a review of a premises licence under s 51 or a CPC under s 87.

11.14.22 Relevant representations, which need to be relevant to one or more of the licensing objectives, will include those made by responsible authorities and interested

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131 Section 167(14) provides: ‘In this section “interested party” and “responsible authority” have the same meaning as in Part 3.’ See s 13(3) and (4) and 6.4.13–6.4.18 above.

132 The advertisement requirements for reviews have general application and are considered at 6.12.3 above.
parties, as well as those made by the holder of the premises licence whose licence is being reviewed. There is the usual provision for relevant representations not to be considered where they have been withdrawn or when they are regarded as frivolous or vexatious.\(^{133}\) Section 167(9) and (10) provides:

(9) In this section “relevant representations” means representations which—

(a) are relevant to one or more of the licensing objectives, and

(b) meet the requirements of subsection (10).

(10) The requirements are—

(a) that the representations are made by the holder of the premises licence, a responsible authority or an interested party within the period prescribed under subsection (4)(c),

(b) that they have not been withdrawn, and

(c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

Under reg 5 and para 15 of Sched 1 to the Licensing Act 2003 (Hearings) Regulations 2005, SI 2005/44 (LA 2003 (Hearings) Regs 2005), the licensing authority must hold a hearing to review the premises licence within 10 working days beginning with the day after the day the relevant licensing authority is notified by the magistrates’ court under s 165(4) of its determination (see 11.14.18 above). Under reg 6(3)(a) and para 15 of Sched 2, notice of the hearing must be given to the premises licence holder and persons who made relevant representations no later than five working days before the day or the first day on which the hearing is to be held.\(^ {134}\) The authority must take such steps, if any, that it considers necessary to further the licensing objectives.\(^ {135}\) The steps include revocation of the licence, modification of licence conditions, exclusion of certain licensable activities, suspension of the licence for up to three months or the removal of the DPS. For example, where the licensing authority determines that the lack of experience or expertise of the DPS has contributed to the level of disorder that has given rise to a closure order, it may specify that the individual concerned should be removed from that position. Similarly, it may determine that imposing a condition on the licence to the effect that additional security staff should be employed would reduce disorder (Explanatory Note 259). Section 167(5) and (6) provides:

(5) The relevant licensing authority must—

(a) hold a hearing to consider—

(i) the closure order and any extension of it,

(ii) any order under section 165(2), and

(iii) any relevant representations, and

\(^{133}\) Section 167(11) provides: ‘Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.’ Frivolous or vexatious representations are considered at 6.4.20–6.4.22 above and notification procedures at 2.4.19–2.4.22 above.

\(^{134}\) As to the giving of notice of hearing, see 2.4.13 above. Under reg 7(2) and Sched 3, para 14, the premises licence holder must be given the relevant representations with the notice of hearing.

\(^{135}\) These steps are the same ones open to it when reviewing a licence under s 52 where no closure order has been made – see s 52(4) and 6.12.8 above.
(b) take such of the steps mentioned in subsection (6) (if any) as it considers necessary for the promotion of the licensing objectives.

(6) Those steps are–
(a) to modify the conditions of the premises licence,
(b) to exclude a licensable activity from the scope of the licence,
(c) to remove the designated premises supervisor from the licence,
(d) to suspend the licence for a period not exceeding three months, or
(e) to revoke the licence;
and for this purpose the conditions of a premises licence are modified if any of them is altered or omitted or any new condition is added.  

11.14.23 If the authority decides to modify the conditions of the licence or to exclude a licensable activity from the scope of the licence, it can do so either permanently or for a temporary period up to three months. Section 167(8) provides:

Where the authority takes a step within subsection (6)(a) or (b), it may provide that the modification or exclusion is to have effect only for a specified period (not exceeding three months).

Once the authority has conducted the review and made its determination, it must notify the premises licence holder, anyone who made relevant representations and the chief officer of police, giving reasons for its decision.  

Section 167(12) provides:

Where a licensing authority determines a review under this section it must notify the determination and its reasons for making it to–
(a) the holder of the licence,
(b) any person who made relevant representations, and
(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

The authority’s determination takes effect in accordance with the provisions in s 168.  
In some cases the determination will not have effect pending appeal, that is during the appeal period (21 days) or, if an appeal is made, until the appeal is disposed of, whereas in other cases it will have effect once the premises licence holder is notified of the decision. In general, the authority’s decision will not have effect pending appeal. Section 168(1) and (2) provides:

(1) Subject to this section, a decision under section 167 does not have effect until the relevant time.

(2) In this section “the relevant time”, in relation to any decision, means–
(a) the end of the period given for appealing against the decision, or
(b) if the decision is appealed against, the time the appeal is disposed of.
However, in cases where the magistrates’ court, when considering the closure order, made an order under s 165 requiring the premises to remain closed pending a review of the premises licence, the determination of the review will generally take effect when the premises licence holder is notified of the decision. It will thus have effect pending appeal. This is unless either the magistrates’ court to which the appeal is made decides to suspend the decision pending the appeal, which it has power to do under para 18(3) of Sched 5 (see 12.8.4 below), or the licensing authority itself decides to do so in accordance with its power under s 168(5). In cases where premises have remained closed and the licensing authority decides to revoke the premises licence, the authority’s decision will not have effect pending appeal. Section 168(3)–(5) provides:

(3) Subsections (4) and (5) apply where—
(a) the relevant licensing authority decides on a review under section 164 to take one or more of the steps mentioned in subsection (6)(a) to (d) of that section, and
(b) the premises to which the licence relates have been closed, by virtue of an order under section 165(2)(b), (c) or (d), until that decision was made.

(4) The decision by the relevant licensing authority to take any of the steps mentioned in section 167(6)(a) to (d) takes effect when it is notified to the holder of the licence under section 167(12).

This is subject to subsection (5) and paragraph 18(3) of Schedule 5 (power of magistrates’ court to suspend decision pending appeal).

(5) The relevant licensing authority may, on such terms as it thinks fit, suspend the operation of that decision (in whole or in part) until the relevant time.

11.14.24 Where the licensing authority decides to revoke the premises licence, provision is made for premises to remain closed during any appeal against the licensing authority’s decision, although the premises licence itself remains in force. The magistrates’ court, although not, it appears, the licensing authority, may, however, modify the closure order pending appeal and modification might include suspending the effect of the order during the appeal. Section 168(6) and (7) provides:

(6) Subsection (7) applies where—
(a) the relevant licensing authority decides on a review under section 170 to revoke the premises licence, and
(b) the premises to which the licence relates have been closed, by virtue of an order under section 165(2)(b), (c) or (d), until that decision was made.

(7) The premises must remain closed (but the licence otherwise in force) until the relevant time.

This is subject to paragraph 18(4) of Schedule 5 (power of magistrates’ court to modify closure order pending appeal).

Where premises remain closed pending appeal following revocation of the premises licence, a person who permits the premises to remain open in contravention of the

139 Section 168(5), which gives the licensing authority power to suspend, relates to ‘that decision’, which must mean the decision mentioned in s 168(3)(a), to take one or more of the steps mentioned in subsection (6)(a) to (d) of s 164. These steps do not include revocation, which is the step mentioned in s 167(6)(e).
order and without reasonable excuse commits an offence punishable both by
imprisonment and a fine.\textsuperscript{140} Section 168(8) and (9) provides:

(8) A person commits an offence if, without reasonable excuse, he allows premises to
be open in contravention of subsection (7).

(9) A person guilty of an offence under subsection (8) is liable on summary conviction
to imprisonment for a term not exceeding three months or to a fine not exceeding
£20,000, or to both.

The requirements in respect of this offence are the same as those for the offence in
s 161(6) (see 11.14.12 above), except for the reference to ‘allows’, rather than ‘permits’,
although the use of these different terms should not indicate any substantive
difference.

11.14.25 Immunity from damages

The police have immunity from liability for damages in certain types of cases when
they exercise their power to close licensed premises, an immunity that covers both the
police officer exercising the power and the chief officer of police.\textsuperscript{141} Section 170(1) and
(2) provides:

(1) A constable is not liable for relevant damages in respect of any act or omission of
his in the performance or purported performance of his functions in relation to a
closure order or any extension of it.

(2) A chief officer of police is not liable for relevant damages in respect of any act or
omission of a constable under his direction or control in the performance or
purported performance of a function of the constable’s in relation to a closure
order or any extension of it.

The types of cases in question, identified by reference to the term ‘relevant damages’ in
the section, are proceedings for judicial review and the torts of negligence or
misfeasance in public office. Section 170(5) provides:

In this section, “relevant damages” means damages awarded in proceedings for
judicial review, the tort of negligence or misfeasance in public office.

Whilst this confers immunity in these cases, it seems to leave open the possibility of
action on other legal grounds, for example, the torts of trespass to land and (perhaps)
conversion.

There are, however, qualifications to the immunity, in that it does not apply if the
power of closure has been exercised in bad faith or if the conduct involves acting
Section 170(3) provides:

But neither subsection (1) nor (2) applies–

(a) if the act or omission is shown to have been in bad faith, or

\textsuperscript{140} As to what constitutes remaining ‘open’, see 11.13.5 above. Section 169 provides: ‘A constable
may use such force as may be necessary for the purposes of closing premises in compliance
with a closure order.’

\textsuperscript{141} The section has no effect on any other immunity that the police might have. Section 172(4)
provides: ‘This section does not affect any other exemption from liability for damages
(whether at common law or otherwise).’
(b) so as to prevent an award of damages in respect of an act or omission on the 
grounds that the act or omission was unlawful as a result of section 6(1) of the 
Human Rights Act 1998 (c.42) (incompatibility of act or omission with Convention 
rights).

The meaning of ‘bad faith’, when used in statutory provisions, varies according to the 
context and it may or may not be equated with dishonesty. It might be subjectively or 
objectively determined, but, whatever standard is adopted in this context, even if it is a 
relatively low one on the scale of ‘bad faith’, it is likely to be a difficult hurdle to 
surmount.

The act or omission being unlawful as a result of s 6(1) of the Human Rights Act 
1998 is likely to be easier to prove. This requires proof that a public authority, which 
under s 6(3)(b) will include the police, has acted in a way that is incompatible with a 
Convention right. The Convention right in question is likely to be Art 1 of Protocol 1 
(see 3.6 above). In determining whether there is a breach of Art 1 of Protocol 1 (and, in 
turn, whether the public authority is acting unlawfully under s 6(1) of the Human 
Rights Act 1998), the ‘fair balance’ test applies, that is the need for controlling the use 
of property in the general interest for advancing the public good (the purpose of the 
interference) will have to be balanced against the burden on the individual of the 
interference and whether the measures taken are proportionate to the aims to be 
achieved (impact on property rights). Clearly, the State has a need to control the use of 
licensed premises to prevent nuisance and disorder, but the public good is advanced 
by closing licensed premises only in extreme cases where disorder threatens public 
safety or excessive noise causes disturbance, since other mechanisms are available to 
deal with general disorder and noise. Where closure of premises occurs, the burden on 
the individual is particularly severe and the ‘fair balance’ test is likely to require that 
the power be exercised only sparingly and where there is compelling prima facie 
evidence of a likelihood of disorder and a necessity to protect public safety.

**RIGHTS OF ENTRY**

**11.15 RIGHTS OF ENTRY TO INVESTIGATE LICENSABLE 
ACTIVITIES**

11.15.1 Section 179 provides that police officers and authorised persons (on production 
of authority) may enter premises where there is reason to believe that premises are 
being, or are about to be, used for a licensable activity without authorisation, and may 
use reasonable force to gain entry. Section 179(1)–(3) provides:

1. Where a constable or an authorised person\(^{142}\) has reason to believe that any 
premises are being, or are about to be, used for a licensable activity, he may enter 
the premises with a view to seeing whether the activity is being, or is to be, carried 
on under and in accordance with an authorisation.

2. An authorised person exercising the power conferred by this section must, if so 
requested, produce evidence of his authority to exercise the power.

\(^{142}\) Section 181(6) provides: ‘“authorised person” means an authorised person within the 
meaning of Part 3 or 4 or an authorised officer within the meaning of section 108(5).’ For the 
meaning of ‘authorised person’ in Pts 3 (premises licences) and 4 (clubs), see 6.14.2 above and 
8.12.1 above respectively, and, for ‘authorised officer’ under s 108(5), see 9.8.2 above.
(3) A person exercising the power conferred by this section may, if necessary, use reasonable force.

The section expressly confers a right of entry (for which no warrant is needed), but not a power of search. In the case of a constable entering, there will in any event be a power of search under s 180 where the constable has reason to believe that an offence under the Act has been, is being or is about to be committed (see 11.16 below). However, this power in s 180 is confined to constables and does not extend to authorised persons. Although s 179 does not expressly confer a power of search, this may be implicit in that the right of entry is ‘with a view to seeing whether the activity … is carried on under … an authorisation’. Any search of the premises might be with a view to seeing whether this is the case and so would fall within the scope of the section.

11.15.2 Whether activities are carried out under ‘authorisation’ will mean whether they are carried out under a premises licence, a club premises certificate or a TEN. Section 179(6) provides:

In this section—

“authorisation“ means—

(a) a premises licence,
(b) a club premises certificate, or
(c) a temporary event notice in respect of which the conditions of section 98(2) to (4) are satisfied.

This right of entry does not, however, apply in respect of premises for which there is only a CPC in force. Exclusion of the right in such a case reflects the fact that clubs operating under a CPC are private premises to which public access is restricted. However, if there is, additionally, authorisation under either a premises licence or a TEN, the right will apply. Section 179(7) provides:

Nothing in this section applies in relation to premises in respect of which there is a club premises certificate but no other authorisation.

It seems that the right will apply in all cases, provided there is another authorisation in existence, including occasions on which the premises are being operated as a club in accordance with a CPC, and it will not be confined to cases where the premises are being used under another authorisation. Carrying on licensable activities otherwise than in accordance with an authorisation includes, under s 179(6)(b), an authorisation under a CPC so it is clearly envisaged that there can be entry to see whether there is compliance with such an authorisation. The effect of s 179(7) is to exclude the right of entry only where premises are used exclusively as a club under a CPC.

11.15.3 It is an offence to intentionally obstruct an authorised person exercising a right of entry, an offence punishable summarily by a fine not exceeding level 3 on the standard scale. Section 179(4) and (5) provides:

(4) A person commits an offence if he intentionally obstructs an authorised person exercising a power conferred by this section.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
In the case of a constable who is obstructed, a person commits an offence under the general provision of wilfully obstructing a constable in the course of his duties under s 89 of the Police Act 1996, so no provision is made by the 2003 Act in this respect.

11.16 RIGHT OF ENTRY TO INVESTIGATE OFFENCES

Section 180 confers on police officers a right to enter and search premises, and to use reasonable force if necessary, where they have reason to believe an offence under the Act has been, is being or is about to be committed. Section 180(1) and (2) provides:

(1) A constable may enter and search any premises in respect of which he has reason to believe that an offence under this Act has been, is being or is about to be committed.

(2) A constable exercising a power conferred by this section may, if necessary, use reasonable force.

As under s 179, intentionally preventing a constable from exercising these powers will amount to the offence of wilfully obstructing a constable in the course of his duties under s 89 of the Police Act 1996.
CHAPTER 12

APPEALS

APPEALS UNDER THE 2003 ACT

12.1 INTRODUCTION

12.1.1 Section 181 and Sched 5 provide for a right of appeal to the magistrates’ court against decisions of licensing authorities and the court has a number of options when determining an appeal. These include dismissing the appeal, making any decision that the licensing authority itself could have made in substitution for the decision reached by the authority, or remitting the case to the authority with a direction as to how it should be dealt with. The court may also make an order for the award of costs. Section 181 provides:

1. Schedule 5 (which makes provision for appeals against decisions of licensing authorities) has effect.
2. On an appeal in accordance with that Schedule against a decision of a licensing authority, a magistrates’ court may–
   a. dismiss the appeal,
   b. substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
   c. remit the case to the licensing authority to dispose of it in accordance with the direction of the court,
   and may make such order as to costs as it thinks fit.

12.1.2 The section gives no indication as to the nature of the appeal hearing, but, according to para 10.7 of the Guidance, the court may ‘review the merits of the decision on the facts and consider points of law or address both’. The reference to ‘review the merits’ suggests more an examination of the licensing authority’s decision rather than a rehearing of the case. The nature of an appeal against a licensing authority’s decision was considered in *Sagnata Investments Ltd v Norwich Corporation* [1971] 2 QB 614, in a case concerning an appeal to quarter sessions1 against a refusal to grant an amusement with prizes (AWP) permit, where the Court of Appeal held that appeal was by way of a complete rehearing: ‘I cannot see how it is practicable in cases such as the present for an appeal ... to be other than by way of a complete rehearing’, *per* Edmund Davies LJ (at 634). A complete rehearing is a consideration of the case *de novo* by the appeal court, at which new evidence might be admitted, and this decision was regarded as having general application under the previous law prior to the 2003 Act. However, a ‘review the merits of the decision’ seems more restrictive in nature, not extending beyond the original decision and not including new evidence. Notwithstanding this reference in the Guidance, it is submitted that the appeal should take the form of a rehearing for two reasons. First, in the absence of any indication that

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1 Quarter sessions were general sessions of the peace, held quarterly before the whole body of justices in counties or before recorders in boroughs, and they were abolished by the Courts Act 1971, which created the Crown Court to replace quarter sessions and assizes.
the position under the previous law is to be changed, it should continue to apply. Secondly, provision of a re-hearing would more easily ensure compliance with the requirement in Art 6(1) of the European Convention on Human Rights of the right to a fair hearing by an independent tribunal.2

On a re-hearing, the powers of the appeal court to dismiss an appeal or to substitute another decision for that of the licensing authority are the ones that will most obviously be used, but the powers also include, in s 181(2)(c), remitting the case to the licensing authority to dispose of it in accordance with the direction of the court. It is not clear how and when this power will operate, although it may perhaps enable the court to remit the case without a formal hearing of it. If there is an appeal on some procedural matter, for example, the court might, with the agreement of the parties, make a ruling on the matter and remit the case to the licensing authority for it to be heard in accordance with the direction given rather than re-hearing the case itself.3

Although s 181(2) confers a specific power to award costs as the court thinks fit, a magistrates’ court in any event has, under s 64(1) of the Magistrates’ Courts Act 1980, ‘a power in its discretion to make such order as to costs ... as it thinks just and reasonable’ against a defendant where an order is made or against a complainant where the complaint is dismissed.4 It is normally thought to be ‘just and reasonable’ that costs ‘follow the event’ and are paid by the losing party, but in City of Bradford Metropolitan District Council v Booth [2001] LLR 151, where a complainant successfully challenged a licensing decision (in this case, refusal of a private hire operator’s licence), it was recognised (at para 25):

What the court will think is just and reasonable will depend on the relevant facts and circumstances of the case before the court. The court may think it just and reasonable that costs should follow the event but need not think so in all cases ...

Where a complainant has successfully challenged before justices an administrative decision made by a police or regulatory authority acting honestly, reasonably, properly and on grounds that reasonably appeared to be sound, in exercise of its public duty, the court should consider, in addition to any other relevant fact or circumstances, both (i) the financial prejudice to the particular complainant in the particular circumstances if an order for costs is not made in his favour; and (ii) the need to encourage public authorities to make and stand by honest, reasonable and apparently sound administrative decisions made in the public interest without fear of exposure to undue financial prejudice if the decision is successfully challenged.

2 Determination by the licensing authority does not satisfy this requirement, as the licensing authority, being part of the executive, is not an ‘independent’ tribunal for these purposes, but the requirement is satisfied if there is a right of appeal to a body (such as the magistrates’ court in this instance) that is independent. The possibility of appeal to the High Court by way of judicial review may satisfy this requirement, depending on whether the complaint is one that can be addressed in judicial review proceedings, but the requirement is more easily met if there is a right of appeal to court which has ‘full jurisdiction’ to re-hear the case – see 3.5.12–3.5.13 above.

3 Quaere whether, if such a course is taken, there may be a subsequent appeal against any decision reached by the licensing authority and a re-hearing of the case by the magistrates’ court.

4 The appeal against a licensing authority’s decision is by way of complaint for an order – see 12.2.1 below. Whilst costs can be awarded in the magistrates’ court, no order for costs can be made in respect of proceedings before the licensing authority.
It was accordingly held that the principle that costs follow the event did not necessarily apply against local authorities who make decisions on licensing functions that they are required to perform and costs might not be awarded against the licensing authority if the court did not think it just and reasonable to make such an award.

12.2 APPEAL PROCEDURE AND APPEAL HEARINGS

12.2.1 The procedure for appeal against the decision of a local authority or other authority is governed by rule 34 of the Magistrates’ Courts Rules 1981, which provides:

Where under any enactment an appeal lies to a magistrates’ court against the decision or order of a local authority or other authority, or other body or person, the appeal shall be by way of complaint for an order.

Where an appeal is made by way of complaint, a justice of the peace may, under s 51 of the Magistrates’ Courts Act 1980, issue a summons requiring any person against whom an order can be made to appear before the magistrates’ court to answer the complaint. The person against whom an order can be made, and against whom a summons can be issued, will be the licensing authority. As the appeal is by way of complaint, the order of speeches and the calling of evidence will be governed by r 14 of the Magistrates’ Courts Rules 1981, which requires the complainant, that is, the person making the appeal, to present his case first, although it is common with the consent of all the parties for the licensing authority to present its case first if the evidence is more logically presented in such a way.

12.2.2 At appeal hearings, evidence will be admitted on the same basis as it was when the case was heard by the licensing authority. Although the licence appeal hearing is in the nature of a civil proceeding, the court will not be bound by the rules of evidence applicable in civil proceedings and can take into account all matters which were before the licensing authority. Thus, any evidence that is logically probative and goes to prove a relevant issue can be admitted. As Diplock LJ stated, in *R v Deputy Industrial Injuries Comr ex p Moore* [1965] 1 QB 456, 488:

“evidence” is not restricted to evidence which would be admissible in a court of law ...

The requirement that a person exercising quasi-judicial functions must base his
decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means he must not spin a coin or consult an astrologer, but he may take into account any material which, as a matter of reason, has some probative value in the sense mentioned above. If it is capable of having any probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.

Since evidence is not restricted to that admissible before a court, hearsay evidence can be received, even in those instances where such evidence continues to be inadmissible in civil proceedings after the Civil Evidence Act 1995. The right to admit hearsay evidence in licensing appeals was recognised by the Court of Appeal, in Kavanagh v Chief Constable of Devon and Cornwall [1974] QB 624 (affirming [1973] 3 All ER 657), in relation to a Crown Court appeal which took the form of a rehearing (of a decision by the chief constable under the Firearms Act 1968), and the Divisional Court, in Westminster City Council v Zestfair Ltd (1989) 153 JP 613, has taken the view that this principle applies equally to magistrates’ court appeals which constitute a rehearing. In the Westminster case, it was held that the magistrates’ court, when hearing an appeal under s 49(10) of the Greater London Council (General Powers) Act 1968 against the local authority’s refusal to register premises for use as a night café, was wrong to decline to receive any hearsay evidence. The court rejected an argument that by s 53(2) of the Magistrates’ Courts Act 1980, under which the court, after hearing the evidence and the parties, has to make the order for which the complaint was made or dismiss the complaint, only evidence which was admissible in normal judicial proceedings could be considered. The court considered itself bound by the decision in Kavanagh and did not think that that case was (per Pill J at 618) ‘distinguishable on the grounds that the present appeal was to the magistrates’ court whereas the appeal in Kavanagh was to the Crown Court’.

In addition, local knowledge might be taken into account when reaching decisions. It had long been established under the previous law that local knowledge might be considered. There was Court of Appeal authority in support of this in relation to justices and the sale or supply of alcohol, R v Howard ex p Farnham Licensing Justices [1902] 2 KB 363, and this principle was regarded as having application to local authority decisions in the area of entertainment licensing. In Howard, the justices’ attention had been drawn to the excessive number of licensed premises in the area, so an investigation was undertaken by a number of members of the licensing committee and a report compiled. Justices subsequently objected to all renewals and required all

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6 Although s 1 of the 1995 Act abolishes the rule making hearsay evidence inadmissible in civil proceedings, this applies only in respect of hearsay as defined in the Act. The definition, in s 1(2), provides that ‘hearsay’ means ‘a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated’. This may exclude hearsay which does not consist of statements made, but which comprises conduct about which a person gives evidence, eg, as in R v Kearley [1992] 2 AC 228, where police evidence of calls by telephone and calls at the door of a person’s flat inquiring about the purchase of drugs was tendered as evidence of that person being a supplier of drugs. Such evidence was held, by the House of Lords, to be inadmissible hearsay in that case and, as it would fall outside s 1(2), it would continue to be inadmissible after the 1995 Act.
licensees to attend the general annual licensing meeting. Evidence was heard in each case and the justices thereafter refused renewal of nine licences. The Court of Appeal held that the justices were entitled to object themselves and could take into account local knowledge acquired from the report in considering whether to renew. Collins MR stated (at 376):

justices, in dealing with licences, are not a judicial body; they are deliberately appointed because from their circumstances they are likely to have local knowledge; and it cannot have been the intention of the Legislature that they should divest themselves of all such knowledge in dealing with questions of licences.

Whether justices might act solely on local knowledge on an issue was less clear. The Court of Appeal declined to express a view on the matter, Cozens Hardy LJ stating (at 382) that it ‘is not necessary to consider whether the justices can act solely upon their own local knowledge – for example, as to the number of public houses compared with the population ....’. The principle that local knowledge can be taken into account when decisions are being reached, whether by the licensing authority when hearing the case in the first instance or by the magistrates’ court in a re-hearing on appeal, ought to continue to have application under the 2003 Act, although it will be important to ensure that this is consistent with the right to a fair hearing under Art 6(1) of the European Convention on Human Rights (see 3.5 above).

12.2.3 As well as taking into account all matters and evidence before the licensing authority, the court can receive new evidence, including evidence of events occurring between the date of the licensing authority’s decision and the date of the appeal hearing. In Rushmoor Borough Council v Richards (1996) 160 LG Rev 460, the Divisional Court held that magistrates, hearing an appeal against a refusal to vary the terms of a public entertainment licence, were wrong to exclude evidence relating to how a nightclub had been run in the interim period between refusal and the appeal hearing. Tucker J, referring inter alia to the cases of Kavanagh and Zestfair, stated:

These cases support the view that I form from looking at the legislation, that appeals under this legislation are by way of a re-hearing de novo and that Magistrates are not restricted to hearing evidence about events before the authority’s decision under appeal. They are able and, indeed, must consider all the relevant evidence that is put before them whether it relates to events before or after the decision under appeal.7

Any new evidence will clearly need to relate to promotion of the licensing objectives in order for it to be relevant under the 2003 Act, although whether any such relevant evidence might be admitted or whether new evidence is restricted to matters contained in any of the relevant representations received by the authority is less clear. Since the licensing authority is only required to have regard to relevant representations when reaching its decision and can consider other matters that might affect the promotion of the licensing objectives (see 6.5.1 above), the appeal court similarly ought to be able to consider any new evidence that might affect the promotion of the licensing objectives, whether or not it relates to any of the relevant representations made. In each instance, a decision is required on the merits of the case and these might include considerations relevant to promotion of the licensing objectives, but unrelated

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7 This quotation does not appear in the report and is taken from a transcript of his Lordship’s judgment.
to relevant representations received. If any new evidence can be admitted, it seems to follow that the magistrates’ court might either reach a different decision from the licensing authority or reach the same decision, but for different reasons in accordance with this evidence.

12.2.4 Although the licensing authority is required, under s 4(3), to have regard to the authority’s Statement of Licensing Policy and the Secretary of State’s Guidance (see paras 4.4 and 4.5 above) in reaching its decision, there is no express statutory requirement on the magistrates’ court to do so. Nevertheless, it is clearly envisaged that the magistrates’ court will have regard to these, whilst being entitled to depart from them if it considered this was justified because of the individual circumstances of the case. Paragraph 10.8 of the Guidance provides:

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.

That the appeal court should consider the matter as if it were ‘standing in the shoes’ of the licensing authority follows the approach taken in *R (on the application of Westminster City Council) v Middlesex Crown Court and Chorion plc* [2002] LLR 538 (*Chorion*), where Scott Baker J stated, *obiter* (at para 21), that the Crown Court, when hearing an appeal against the grant of a public entertainment licence under Sched 12 to the London Government Act 1963, ‘must accept the policy and apply it as if it was standing in the shoes of the council considering the application’.

Less clear is whether, if there is a dispute as to the legality of some aspect of the Statement of Licensing Policy (SOP) (or the Guidance), the magistrates’ court is entitled to make a determination as to legality and disregard any part of the SOP (or Guidance) which it deems to be *ultra vires* and unlawful. The normal course for challenging legality is by way of an application to the High Court (Administrative Court) for judicial review, as Scott Baker J made clear in *Chorion* (at para 21):

Neither the magistrates’ court nor the Crown Court is the right place to challenge the policy. The remedy, if it is alleged that a policy has been unlawfully established, is an application to the Administrative Court for judicial review.

Nevertheless, this is not how the Guidance anticipates the matter being dealt with, for it is envisaged that the magistrates’ court will determine legality and not apply any part of the SOP which is *ultra vires* the 2003 Act and has a direct bearing on the case before it. Paragraph 10.8 provides:

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,
Indeed, it would be inappropriate for the court to compound the error by relying on the statement, but that does not mean that the magistrates’ court need determine the question of legality. The appropriate course would be for the magistrates’ court to adjourn the appeal pending a determination by the High Court, on an application for judicial review, of the legality of the relevant part of the SOP. This was recognised as the appropriate course of action by the High Court, in *Quietlynn Ltd v Plymouth City Council* [1987] 2 All ER 1040, a sex establishment licensing case, in relation to a challenge before a magistrates’ court as to the validity of a decision. Webster J stated (at 1046):

> If a *bona fide* challenge to the validity of the decision in question is raised before them, then the proceedings should be adjourned to enable an application for judicial review to be made and determined … except in the case of a decision which is invalid on its face, every decision of the licensing authority … is to be presumed to have been validly made and to continue in force unless and until it has been struck down by the High Court; and neither the justices nor a Crown Court have power to investigate and decide on its validity.

These remarks should have application to decisions under the 2003 Act and to matters such as the validity of a SOP on which decisions are based. As Webster J recognised (at 1046), the ‘law relating to judicial review has become increasingly more sophisticated in the past few decades’, there is ‘now a complex body of law’ affecting the validity of decisions and ‘justices are not to be expected to assume the functions of the Divisional Court’. The statements in this case and in *Chorion* represent the legal position and it is submitted that the statements in the Guidance, which run contrary to this, cannot be supported.

### 12.3 RIGHTS OF APPEAL AND PERSONS ENTITLED TO APPEAL

12.3.1 Rights of appeal are set out in Sched 5, which is divided into three parts. Part 1 covers premises licences, Pt 2 covers club premises certificates (CPCs) and Pt 3 covers other appeals, that is, temporary event notices (TENs), personal licences and closure orders. Rights extend to any party involved in the decision – applicants, holders, responsible authorities and interested parties. Thus an applicant for a premises licence may appeal to the magistrates’ court against the inclusion in the licence by the licensing authority of conditions that the applicant saw as unreasonably restrictive. At the same time, the police, for example, or a local resident would have a right of appeal against conditions that appeared to them to fail to promote the licensing objectives (Explanatory Note 307).

Appeal lies to the magistrates’ court for the petty sessions area (or any such area) in which the premises concerned are situated, except in the case of personal licences,

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8 Premises licences are covered by Sched 5, paras 1–9, CPCs by paras 10–15, TENs by para 16, personal licences by para 17 and closure orders by para 18. All references to paras hereafter are to paragraphs in Sched 5 unless otherwise stated.

9 This significantly extends rights of appeal compared to the previous law, under which persons entitled to object did not have any right to appeal.
where the appeal is to the magistrates’ court for the area in which the licensing authority (or any part of it) which made the decision is situated. An appeal is commenced in all cases by the appellant giving a notice of appeal to the justices’ chief executive for the magistrates’ court within ‘the 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’.11

12.3.2 Unless the Act makes provision for the period within which the authority must notify a party of its decision, under reg 28 of the Licensing Act 2003 (Hearings) Regulations 2005, this must be done by the authority ‘forthwith on making its determination’. The meaning of ‘forthwith’ seems to be as soon as reasonably practicable (see 6.6.2 above) and under reg 34(1) this notice ‘must be given in writing’, although reg 34(2) goes on to provide that this requirement is satisfied where the text of the notice is transmitted by electronic means, provided certain requirements are met (see 2.4.13 above). The 21 day period will thus run from the date the written notice is given or, in the case of electronic transmission, when the text is received. Section 184 makes provision for the giving of notices under the Act, so the 21 day period should begin with the day on which notice of decision is given in accordance with that section. Where under s 184 notice is given to a person other than the licensing authority (which will be the case where it is given to the justices’ chief executive), sub-s (3) provides that notice may be given ‘by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address’. A person entitled to appeal may, however, have been aware of the licensing decision prior to being notified under s 184 since the decision may have been announced at the end of the oral hearing to determine it, and it is possible that this may constitute being ‘notified’ under the relevant appeal provisions in Sched 5. Whether an oral announcement of a committee’s decision constitutes being ‘notified’ of the decision, with the 21 day period running from this date rather than the later date of written notification, is a matter that has been considered at magistrates’ court level in an appeal against the refusal to grant a sex establishment licence. In *Quietlynn Ltd v Oldham Borough Council*,13 magistrates took the view that a notice of appeal dated 5 March 1984, which was within 21 days of the date of written notification on 14 February 1984 of refusal to grant a licence, but more
than 21 days from the date of the oral hearing on 9 February 1984, was out of time. Following the dismissal of the appeal, the appellants asked the justices to state a case for the High Court and this was done, but the case stated was not lodged in the required time and did not proceed. Notwithstanding the approach taken in this case, the position under the 2003 Act may well be different. Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 for sex establishment licensing contains no specific provision for the giving of notices, simply providing, in para 27, for appeal within 21 days of ‘the date on which the person in question is notified of the refusal of his application, the imposition of the term, condition or restriction by which he is aggrieved or the revocation of his licence, as the case may be’. There is nothing to which reference can be made when determining what constitutes being ‘notified’. There is, however, in the 2003 Act, with the specific provision in s 184. References, in paragraphs in Sched 5, to the 21 day appeal period beginning with the day on which the appellant was ‘notified’ of the decision can be related to the giving of notices under s 184. If being ‘notified’ of the decision means being given notice in accordance with s 184, the 21 day period runs from the date of written notification in accordance with that section. However, to be on the safe side, it may be prudent to ensure that notice of appeal is given within 21 days of any notification given at an oral hearing.

12.3.3 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant against the representations of a responsible authority or an interested party, or the objections of the police, the holder of the premises licence or CPC or the person who gave an interim authority notice will also be a respondent (and the person who made the relevant representation or the chief officer of police will be the appellant). Similarly, in the case of a personal licence where a favourable decision has been made against a police objection – this will be where, despite the police objection, a personal licence has been granted, renewed or not revoked on convictions coming to light after grant or renewal – the personal licence applicant or holder will also be a respondent. Again, in the case of a TEN, where a favourable decision has been made against a police objection (which will be where the authority decides not to issue a counter-notice), the

14 The appellants were thereafter prosecuted for operating a sex establishment without a licence and sought unsuccessfully, both in the magistrates’ court and on appeal in the Crown Court, to raise by way of defence the alleged invalidity of the licence refusal decision. The appellants thereafter appealed by case stated to the Divisional Court, which heard simultaneously appeals by Quietlynn involving Plymouth and Portsmouth City Councils, where the Crown Court’s decision was upheld: Quietlynn Ltd v Plymouth City Council [1988] QB 114 (approved by the House of Lords in Boddington v British Transport Police [1998] 2 All ER 203). The question of whether the time for notice of appeal against a licence refusal decision ran from the date of the oral hearing or from the written notification was not, however, considered.

15 Guidance, para 10.4. For premises licences, the cases where the licence holder will be a respondent are identified in para 9(3), which provides: ‘On an appeal under paragraph 2(3), 3(2)(b), 4(3), 5(2), 6(2) or 8(2)(a) or (c), the holder of the premises licence is to be the respondent in addition to the licensing authority.’ For club premises certificates, the cases where the certificate holder will be a respondent are identified in para 15(3), which provides: ‘On an appeal under paragraph 11(3), 12(3) or 13(2)(a) or (c), the club that holds or held the club premises certificate is to be the respondent in addition to the licensing authority.’ For interim authority notices, the only case where the person giving the notice will be a respondent is where there is an appeal by the police under para 7(3). Paragraph 9(4) provides: ‘On an appeal under paragraph 7(3), the person who gave the interim authority notice is to be the respondent in addition to the licensing authority.’

16 Paragraph 17(8), which provides: ‘On an appeal under sub-paragraph (2), (3) or (5), the holder of the personal licence is to be the respondent in addition to the licensing authority.’
premises user will also be a respondent. In all of these cases, the person making the application for authorisation will be a respondent, along with the licensing authority, and will be a participant in the appeal process. He will thus be able to challenge any evidence put forward by the appellants opposing the application (responsible authorities or interested parties who have made relevant representations or the police who have made objections).

However, in cases where the person making the application is unsuccessful and he appeals, it may be that only the licensing authority can be a respondent to the appeal, for there are no provisions in Sched 5 enabling those opposing the application to be respondents. Although, equally, there are no provisions precluding them from being respondents, it is perhaps implicit that they cannot be from that the fact that the Schedule contains specific provisions for applicants to be a respondent in cases where an appeal is made by those opposing the application. Such provisions would have been unnecessary if such persons could in any event have been respondents. If those opposing the application cannot be respondents, they will in consequence be denied any right to participate in the appeal process. Whether they can participate will be dependent on whether the licensing authority, as the only respondent to the appeal, chooses to rely on their evidence. If, for instance, on an appeal against the refusal to grant a premises licence where relevant representations had been made by residents about the risk of public nuisance and by the police about the risk to crime and disorder, the licensing authority sought to adduce evidence only on the former issue at the appeal hearing, the police would be unable to be heard. Further, the public nuisance issue might be resolved following discussions between the applicant, the licensing authority and the residents, and the appeal withdrawn. The police may not have been a party to these discussions, but, since they are not a respondent to the appeal, it is open to the licensing authority to settle the appeal without regard to their objections and without them having an opportunity to present their case on appeal. It is arguable that in such cases there would be a violation of the right of the police to a fair hearing under Art 6(1) of the European Convention on Human Rights on the ground that there is no right to be heard by an ‘independent’ tribunal (see 3.5.12–3.5.13 above). Whilst the right will exist in cases where the application has been successful – those opposing the application are entitled to appeal and do have the right to be heard in this instance – there appears to be no such right where the application has been unsuccessful.

12.4 PREMISES LICENCE APPEALS

Appeals may be made in the following circumstances:

• where premises licence applications are rejected;
• where there is a grant, variation, transfer or review of a premises licence;
• where an interim authority notice seeking reinstatement of the licence following lapse is given; and
• where a provisional statement is issued (following which an application may be made for the grant of a premise licence).

17 Paragraph 16(7), which provides: ‘On an appeal under sub-paragraph (3), the premises user is to be the respondent in addition to the licensing authority.’
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The licensing authority’s decision will generally have effect during the 21 day period when notice of appeal can be given and, if notice is given, until the appeal is disposed of (either by determination or withdrawal). Only in the case of an appeal against a review of a premises licence will the authority’s determination not have effect until the end of the appeal period or the disposal of appeal. Section 52(11) makes provision to this effect (see 6.12.8 above), but there is no equivalent provision in the case of any other appeal concerning a premises licence.

12.4.1 Where premises licence applications are rejected

Applications that are rejected may be for the grant of a licence, for its variation (including variation by specifying an individual as the designated premises supervisor (DPS)), or for its transfer. Where any of these are rejected, the applicant has a right of appeal. Paragraph 1 provides:

Where a licensing authority–
(a) rejects an application for a premises licence under section 18,
(b) rejects (in whole or in part) an application to vary a premises licence under section 35,
(c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
(d) rejects an application to transfer a premises licence under section 44,
the applicant may appeal against the decision.

12.4.2 Where there is a grant, variation, transfer or review of a premises licence

12.4.3 Grant

12.4.4 Rights of appeal where a premises licence is granted are governed by para 2, sub-para (1) of which provides: ‘This paragraph applies where a licensing authority grants a premises licence under section 18.’ Rights of appeal are available both to the holder of the licence and persons who made relevant representations.

The holder can appeal against any conditions imposed on the licence (except, of course, mandatory conditions), the exclusion of any licensable activity or the refusal to specify an individual as the DPS. Paragraph 2(2) provides:

The holder of the licence may appeal against any decision–
(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

12.4.5 Those who made relevant representations – responsible authorities or interested parties – may appeal against the grant of the licence, or against the conditions subject to which it was granted (contending that different or additional ones should have been imposed). They may also appeal on the ground that the licensing authority should have excluded one or more of the licensable activities to
which the application related or should have refused to specify the person in the licence as the DPS. Paragraph 2(3) provides:

Where a person who made relevant representations\textsuperscript{18} in relation to the application desires to contend–

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

Where a licence has been granted, it seems that the holder of the licence will be able to operate the premises in accordance with the licensing authority’s decision pending determination of the appeal, for there is no provision that the decision not to have effect until such time as the appeal is disposed of.

\subsection*{12.4.6 Variation}

12.4.7 Applications for variation differ according to whether they are for the variation of conditions or of the licence itself in some way (such as a change in the licensable activities) or whether they are for variation by changing the DPS. Different procedures apply to these two types of variation and separate provisions are contained in paras 4 and 5 for appeals in each case where variation is granted.\textsuperscript{19}

Rights of appeal for the former type of variation application are governed by para 4, sub-para (1) of which provides: ‘This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.’ Rights of appeal are available both to the applicant and persons who made relevant representations. The applicant can appeal against any decision to modify the conditions. Paragraph 4(2) provides:

The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.

Those who made relevant representations may appeal against the variation granted (for example, a change in the licensable activities) or against the modification of any conditions. Paragraph 4(3) provides:

Where a person who made relevant representations\textsuperscript{20} in relation to the application desires to contend–

(a) that any variation made ought not to have been made, or

\begin{itemize}
  \item Paragraph 2(4) provides: ‘In sub-paragraph (3) “relevant representations” has the meaning given in section 18(6).’ For s 18(6), see 6.4.9 above.
  \item Paragraph 3, which makes provision for appeals in respect of the issuing of provisional statements, is considered below – see 12.4.14 below.
  \item Paragraph 4(4) provides: ‘In sub-paragraph (3) “relevant representations” has the meaning given in section 35(5).’ For s 35(5), see 6.9.4 above.
\end{itemize}
(b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section, he may appeal against the decision.

12.4.8 Rights of appeal for a variation by changing the DPS are governed by para 5, sub-para (1) of which provides:

This paragraph applies where an application to vary a premises licence is granted under section 39(2) in a case where a chief officer of police gave a notice under section 37(5) (which was not withdrawn).

If the application is granted, the premises licence holder will not be in any way be ‘aggrieved’ and thus needs no right of appeal available to him. Since the chief officer of police is the only person entitled to object and will be the only person ‘aggrieved’ by the grant, the right to appeal is confined to him. Paragraph 5(2) provides: ‘The chief officer of police may appeal against the decision to grant the application.’

12.4.9 Transfer

Applications to transfer the premises licence must, in general, be granted and can be opposed only by the police giving notice that grant would undermine the crime prevention objective. Accordingly, rights of appeal where a transfer application is granted are confined to cases where the police have opposed the transfer, but the licensing authority has granted it. Paragraph 6 provides:

(1) This paragraph applies where an application to transfer a premises licence is granted under section 44 in a case where a chief officer of police gave a notice under section 42(6) (which was not withdrawn).

(2) The chief officer of police may appeal against the decision to grant the application.

12.4.10 Review

Rights of appeal where there has been a review of a premises licence are governed by para 8, sub-para (1) of which provides: ‘This paragraph applies where an application for a review of a premises licence is decided under section 52.’ Rights of appeal are available to the applicant for the review, the premises licence holder and persons who made relevant representations. Paragraph 8(2) provides:

(2) An appeal may be made against that decision by–
(a) the applicant for the review,
(b) the holder of the premises licence, or
(c) any other person who made relevant representations21 in relation to the application.

21 Paragraph 8(3) provides: ‘In sub-paragraph (2) “relevant representations” has the meaning given in section 52(7).’ For s 52(7), see 6.12.7 above.
Where an interim authority notice seeking reinstatement of the licence following lapse is given

A premises licence, although generally remaining in force indefinitely, can lapse either due to some incapacity on the part of the licence holder or on surrender, but can be reinstated by the giving of an interim authority notice (IAN) under s 47 (see 6.11.4–6.11.8 above). The police (to whom a copy of the IAN is given) can, however, object if satisfied that exceptional circumstances mean that failure to cancel the IAN would undermine the crime prevention objective. The IAN may or may not be cancelled by the licensing authority and para 7 provides for rights of appeal by the person giving the notice (where it is cancelled) and by the police (where their objection is not upheld). Paragraph 7(1)–(3) provides:

(1) This paragraph applies where–
   (a) an interim authority notice is given in accordance with section 47, and
   (b) a chief officer of police gives a notice under section 48(2) (which is not withdrawn).

(2) Where the relevant licensing authority decides to cancel the interim authority notice under subsection (3) of section 48, the person who gave the interim authority notice may appeal against that decision.

(3) Where the relevant licensing authority decides not to cancel the notice under that subsection, the chief officer of police may appeal against that decision.

Where the authority cancels the IAN, provision is made for the court to order its reinstatement pending the determination of the appeal. By their very nature IANs are temporary in nature and their purpose is to enable a business to continue when a premises licence holder dies suddenly or becomes incapacitated in some way. This purpose would be frustrated if the IAN could not be reinstated until the appeal was heard. Accordingly, the court, under para 7(4), has a discretion to order reinstatement of the IAN and, where it does so, the premises licence will, under para 7(5), be reinstated from that time. Paragraph 7(4) and (5) provides:

(4) Where an appeal is brought under sub-paragraph (2), the court to which it is brought may, on such terms as it thinks fit, order the reinstatement of the interim authority notice pending–
   (a) the disposal of the appeal, or
   (b) the expiry of the interim authority period, whichever first occurs.

(5) Where the court makes an order under sub-paragraph (4), the premises licence is reinstated from the time the order is made, and section 47 has effect in a case where the appeal is dismissed or abandoned before the end of the interim authority period as if–

22 The interim authority period is the period within which a transfer application must be made if the licence is not to lapse again following the giving of an IAN. Under s 47(10), the period is two months from the date the IAN was received by the licensing authority (unless the period is terminated earlier by the person giving the IAN). This period applies here, for para 7(6) provides: ‘In this paragraph “interim authority period” has the same meaning as in section 47.’
12.4.14 Where a provisional statement is issued

Rights of appeal where a provisional statement has been issued are governed by para 3, sub-para (1) of which provides: ‘This paragraph applies where a provisional statement is issued under subsection (3)(c) of section 31.’ Rights of appeal are available both to the applicant and persons who made relevant representations. Paragraph 3(2) provides:

An appeal against the decision may be made by—
(a) the applicant, or
(b) any person who made relevant representations\(^{23}\) in relation to the application.

12.5 CLUB PREMISES CERTIFICATE APPEALS

The appeal provisions in Pt 2 for CPCs follow a similar format to those in Pt 1 for premises licences and appeals may be made in the following circumstances:

- where CPC applications are rejected; or
- where there is a grant, variation, review or withdrawal of a CPC.

The licensing authority’s decision will generally have effect during the 21 day period when notice of appeal can be given and, if notice is given, until the appeal is disposed of (either by determination or withdrawal). Only in the case of an appeal against a review of a CPC will the authority’s determination not have effect until the end of the appeal period or the disposal of appeal. Section 88(11) makes provision to this effect (see 8.10.8 above), but there is no equivalent provision in the case of any other appeal concerning a CPC.

12.5.1 Where CPC applications are rejected

Applications that are rejected may be for the grant of a CPC or for its variation and the club that made the application has a right of appeal in these cases. Paragraph 10 provides:

Where a licensing authority—
(a) rejects an application for a club premises certificate under section 72, or
(b) rejects (in whole or in part) an application to vary a club premises certificate under section 85,

the club that made the application may appeal against the decision.

\(^{23}\) Paragraph 3(3) provides: ‘In sub-paragraph (2) “relevant representations” has the meaning given in subsection (5) of that section.’ For s 31(5), see 6.8.7 above.
12.5.2 Where there is a grant, variation, review or withdrawal of a CPC

12.5.3 Grant

Rights of appeal where a CPC is granted are governed by para 11, sub-para (1) of which provides: ‘This paragraph applies where a licensing authority grants a club premises certificate under section 72.’ Rights of appeal are available both to the club holding the CPC and persons who made relevant representations.

The club can appeal against any conditions imposed on the CPC or any exclusion of a qualifying club activity. Paragraph 11(2) provides:

The club holding the certificate may appeal against any decision—
(a) to impose conditions on the certificate under subsection (2) or (3)(b) of that section, or
(b) to take any step mentioned in subsection (4)(b) of that section (exclusion of qualifying club activity).

Those who made relevant representations may appeal against the grant of the CPC, or against the conditions subject to which it was granted (contending that different or additional ones should have been imposed), or on the ground that the licensing authority should have excluded one or more of the qualifying club activities to which the application related. Paragraph 11(3) provides:

Where a person who made relevant representations in relation to the application desires to contend—
(a) that the certificate ought not to have been granted, or
(b) that, on granting the certificate, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) of that section,

he may appeal against the decision.

12.5.4 Variation

Rights of appeal where an application is made for variation of a CPC are governed by para 12, sub-para (1) of which provides: ‘This paragraph applies where an application to vary a club premises certificate is granted (in whole or in part) under section 85.’ Rights of appeal are available both to the club holding the CPC and persons who made relevant representations. The club can appeal against any decision to modify the conditions. Paragraph 12(2) provides:

The club may appeal against any decision to modify the conditions of the certificate under subsection (3)(b) of that section.

Those who made relevant representations may appeal against the variation granted (for example, a change in the qualifying club activities) or against the modification of any conditions. Paragraph 12(3) provides:

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Paragraph 11(4) provides: ‘In sub-paragraph (3) “relevant representations” has the meaning given in section 72(7).’ For s 72(7), see 8.4.5 above.
Where a person who made relevant representations\textsuperscript{25} in relation to the application desires to contend—

(a) that any variation ought not to have been made, or

(b) that, when varying the certificate, the licensing authority ought not to have modified the conditions of the certificate, or ought to have modified them in a different way, under subsection (3)(b) of that section,

he may appeal against the decision.

\textbf{12.5.5 Review}

Rights of appeal where there has been a review of a CPC are governed by para 13, sub-para (1) of which provides: ‘This paragraph applies where an application for a review of a club premises certificate is decided under section 88.’ Rights of appeal are available to the applicant for the review, the club holding the CPC and persons who made relevant representations. Paragraph 13(2) provides:

An appeal may be made against that decision by—

(a) the applicant for the review,

(b) the club that holds or held the club premises certificate, or

(c) any other person who made relevant representations\textsuperscript{26} in relation to the application.

\textbf{12.5.6 Withdrawal}

A CPC can be withdrawn following an application for review, in which case the club can appeal against the decision under para 13(2)(b), but it can also be withdrawn by the licensing authority under s 90 because the club has ceased to meet the qualifying conditions for a CPC. In this latter instance, the club can appeal against the decision to withdraw the CPC under para 14, which provides that:

Where the relevant licensing authority gives notice withdrawing a club premises certificate under section 90, the club which holds or held the certificate may appeal against the decision to withdraw it.

\textbf{12.6 TEMPORARY EVENT NOTICE APPEALS}

TEN appeals, which will arise only where there has been a police objection, are governed by para 16, sub-para (1) of which provides that:

This paragraph applies where—

(a) a temporary event notice is given under section 98, and

\textsuperscript{25} Paragraph 12(4) provides: ‘In sub-paragraph (3) “relevant representations” has the meaning given in section 85(5).’ For s 85(5), see 8.9.3 above.

\textsuperscript{26} Paragraph 13(3) provides: ‘In sub-paragraph (2) “relevant representations” has the meaning given in section 88(7).’ For s 88(7), see 8.10.6 above.
(b) a chief officer of police gives an objection notice in accordance with section 104(2).27

Rights of appeal are available both to the premises user who gave the TEN and to the police. The premises user can appeal where the licensing authority has given a counter-notice and the police can appeal where their objection has not been upheld and no counter-notice has been given. Paragraph 16(2) and (3) provides:

(2) Where the relevant licensing authority28 gives a counter notice under section 105(3), the premises user may appeal against that decision.

(3) Where that authority decides not to give such a counter notice, the chief officer of police may appeal against that decision.

12.7 PERSONAL LICENCE APPEALS

Appeals may be made in the following circumstances:

• where applications for the grant or renewal of a personal licence are rejected;
• where there is a grant or renewal of a personal licence following police objections;
• where there is a revocation of a personal licence following police objections on convictions coming to light after grant or renewal; and
• where there is a decision not to revoke a personal licence following police objections on convictions coming to light after grant or renewal.

In the latter two instances, a decision on whether or not to revoke the personal licence does not have effect during the 21 day period when notice of appeal can be given and, if notice is given, until the appeal is disposed of (either by determination or withdrawal). Section 124(6) makes provision to this effect (see 10.8.3 above), but there is no equivalent provision in the case of an appeal in respect of grant or renewal of a personal licence. In such cases, the licensing authority’s decision will have effect during the appeal period.

12.7.1 Where personal licence applications are rejected

In this case, the applicant has a right of appeal under para 17(1), which provides:

Where a licensing authority—
(a) rejects an application for the grant of a personal licence under section 120, or
(b) rejects an application for the renewal of a personal licence under section 121,
the applicant may appeal against that decision.

In cases where there is a refusal to renew a personal licence and the licence holder gives notice of appeal, the licensing authority or the magistrates’ court to which the appeal is made has the power to order the licence to remain in force if it would cease to have effect before the appeal or, if it has already ceased to have effect, to reinstate it. Paragraph 17(9) and (10) provides:

27 Paragraph 16(8) provides: ‘In this paragraph −“objection notice” has the same meaning as in section 104’. For s 104, see 9.5.1 above.
28 Paragraph 16(8) provides: ‘In this paragraph − ... “relevant licensing authority” has the meaning given in section 99.’ For s 99, see 9.1.1 above.
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(9) Sub-paragraph (10) applies where the holder of a personal licence gives notice of appeal against a decision of a licensing authority to refuse to renew it.

(10) The relevant licensing authority, or the magistrates’ court to which the appeal has been made, may, on such conditions as it thinks fit–
   (a) order that the licence is to continue in force until the relevant time, if it would otherwise cease to have effect before that time, or
   (b) where the licence has already ceased to have effect, order its reinstatement until the relevant time.29

12.7.2 Where there is a grant or renewal of a personal licence following police objections

Police objections to grant or renewal, made respectively under s 120(5) or s 121(6), will be on the ground that grant or renewal will undermine the crime prevention objective. If these objections are not upheld, the police have a right of appeal under para 17(2) and (3), which provides:

(2) Where a licensing authority grants an application for a personal licence under section 120(7), the chief officer of police who gave the objection notice (within the meaning of section 120(5)) may appeal against that decision.

(3) Where a licensing authority grants an application for the renewal of a personal licence under section 121(6), the chief officer of police who gave the objection notice (within the meaning of section 121(3)) may appeal against that decision.

12.7.3 Where there is a revocation of a personal licence following police objections on convictions coming to light after grant or renewal

A licensing authority has the power to revoke a personal licence under s 124(4) in such circumstances where there have been police objections on the ground that continuation of the licence would undermine the crime prevention objective. Where the licence is revoked, the licence holder has a right of appeal under para 17(4), which provides:

Where a licensing authority revokes a personal licence under section 124(4), the holder of the licence may appeal against that decision.

12.7.4 Where there is a decision not to revoke a personal licence following police objections on convictions coming to light after grant or renewal

Where, in the circumstances outlined in the preceding paragraph, the licensing authority decides not to revoke the licence, the police have a right of appeal under para 17(5), which provides:

Where in a case to which section 124 (convictions coming to light after grant or renewal) applies–

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29 Paragraph 17(11) provides: ‘In sub-paragraph (10) “the relevant time” means–
   (a) the time the appeal is dismissed or abandoned, or
   (b) where the appeal is allowed, the time the licence is renewed.’
(a) the chief officer of police for the licensing authority’s area gives a notice under subsection (3) of that section (and does not later withdraw it), and
(b) the licensing authority decides not to revoke the licence,
the chief officer of police may appeal against the decision.

12.8   CLOSURE ORDER APPEALS

12.8.1 Consideration of closure order by magistrates’ court

Rights of appeal to the Crown Court are available by any person aggrieved when a closure order has been upheld or revoked by a magistrates’ court.30

12.8.2 Review of premises licence following closure order

12.8.3 Rights of appeal (to the magistrates’ court) where there has been a review of a premises licence under s 167 following a closure order are governed by para 18, sub-para (1) of which provides:

This paragraph applies where, on a review of a premises licence under section 167, the relevant licensing authority31 decides under subsection (5)(b) of that section–
(a) to take any of the steps mentioned in subsection (6) of that section, in relation to a premises licence for those premises, or
(b) not to take any such step.

The steps, which are mentioned in sub-s (6) are: (a) to modify the conditions of the premises licence; (b) to exclude a licensable activity from the scope of the licence; (c) to remove the designated premises supervisor from the licence; (d) to suspend the licence for a period not exceeding three months; or (e) to revoke the licence.

12.8.4 Rights of appeal are available to the premises licence holder and persons who made relevant representations. Paragraph 18(2) provides:

An appeal may be made against that decision by–
(a) the holder of the premises licence, or
(b) any other person who made relevant representations32 in relation to the review.

When making a decision on which of the above-mentioned steps to take, the licensing authority (except in the case of revocation) may or may not have ordered suspension of the operation of that decision under s 168(5) until the end of the period for making an appeal or, if an appeal is made, until it is disposed of. Where an appeal is made

30 See s 166 and 11.14.19 above.
31 Paragraph 18(7) provides: ‘In this paragraph – “relevant licensing authority” has the same meaning as in Part 3 of this Act.’ The ‘relevant licensing authority’ for the purposes of Pt 3 is defined in s 12 – see 6.3.1 above.
32 Paragraph 18(7) provides: ‘In this paragraph – “relevant representations” has the meaning given in section 167(9).’ For s 167(9), see 11.14.22 above.
against a decision to take any of these steps (except revocation), the magistrates’ court itself may suspend the operation of that decision, if the licensing authority has not so suspended it, or it may cancel any order made by the licensing authority or make an order in substitution for any order made by the licensing authority. Paragraph 18(3) provides:

Where an appeal is made under this paragraph against a decision to take any of the steps mentioned in section 167(6)(a) to (d) (modification of licence conditions etc), the appropriate magistrates’ court may in a case within section 168(3) (premises closed when decision taken)—

(a) if the relevant licensing authority has not made an order under section 168(5) (order suspending operation of decision in whole or part), make any order under section 168(5) that could have been made by the relevant licensing authority, or

(b) if the authority has made such an order, cancel it or substitute for it any order which could have been made by the authority under section 168(5).

12.8.5 In cases where the licensing authority has made a decision to revoke the premises licence, s 168(7) requires that the premises must remain closed until the end of the period for making an appeal or, if an appeal is made, until it is disposed of. The licensing authority has no power under s 168(5) to order suspension of the operation of that decision. However, where an appeal is made, the magistrates’ court may make an order that s 168(7) is not to have application so that the premises are not to remain closed pending appeal. Paragraph 18(4) provides:

Where an appeal is made under this paragraph in a case within section 168(6) (premises closed when decision to revoke made to remain closed pending appeal), the appropriate magistrates court may, on such conditions as it thinks fit, order that section 168(7) (premises to remain closed pending appeal) is not to apply to the premises.

APPEALS TO THE HIGH COURT

12.9 APPEALS TO THE HIGH COURT BY CASE STATED FROM THE MAGISTRATES’ COURT

12.9.1 Under s 111(1) of the Magistrates’ Courts Act 1980, any person who is a party to any proceedings before a magistrates’ court, or (although not a party) who is ‘aggrieved’ by the court’s order, may appeal to the High Court on the ground that the proceedings were wrong in law or in excess of jurisdiction. This right exists provided there is no right of appeal to the High Court itself against the decision and provided the decision is not expressed by statute to be final, neither of which is the case for appeals under the 2003 Act. Thus licence applicants and holders, licensing authorities and persons who made relevant representations, as parties to the proceedings, will have a right of appeal under this provision. So also will any person ‘aggrieved’, which will be anyone whose legal rights are adversely affected by the decision, for example, a person with a legal or equitable interest in the licensed premises.
12.9.2 Before stating a case, the magistrates must finish dealing with the case before them. In *Streames v Copping* [1985] QB 920, the Divisional Court held that, on a proper construction of s 111(1) of the Magistrates’ Courts Act 1980, magistrates had no power to state a case thereunder until they had reached a final determination of the matter before them and, further, the High Court had no jurisdiction to consider and determine a case stated by magistrates in excess of their powers. The magistrates were accordingly held to have acted wrongly in acceding to a request to state a case, following rejection of a defence submission that an information against the defendant for selling an unroadworthy vehicle was bad for duplicity. The case should have proceeded to final determination before a case was stated. The requirement to proceed to final determination will not apply, however, where the magistrates have declined to exercise jurisdiction to hear a case.

12.9.3 Under s 111(2) of the 1980 Act, applications for a case stated need to be made within 21 days of the date of the magistrates’ court’s decision. If magistrates think an application is frivolous, they can refuse to state a case, although they can be required to do so by the High Court issuing an order of *mandamus* in judicial review proceedings. A person exercising the right of appeal by case stated under s 111 of the Magistrates’ Courts Act 1980 must comply with the requirements set out in rr 76–81 of the Magistrates’ Courts Rules 1981. The application must be made in writing, be signed by or on behalf of the applicant and identify the question(s) of law or jurisdiction on which the opinion of the High Court is sought. Where one of the questions is whether there was evidence on which the magistrates’ court could come to its decision, the particular finding of fact that it is claimed cannot be supported by the evidence must, under r 76(2) of the Magistrates’ Courts Rules 1981, be specified in the application. Within 21 days of receiving the application, the magistrates’ clerk must, under r 77(1), send a draft case to the applicant or his solicitor, with a copy to the respondent and his solicitor. Under r 77(2), the applicant and respondent have 21 days in which to make representations as to the contents of the case, which must be in writing and signed. Under r 78(1), the magistrates then have a further 21 days in which to make any adjustments to the stated case, after considering representations received, and to state and sign the case. The stated case must, under r 78(3), thereupon be sent to the applicant or his solicitor. The stated case should contain a full statement of the facts proved or admitted, and should not contain any statement of the evidence unless it is contended that there was no evidence to support a particular finding of fact (r 81(1)–(3)).

12.9.4 The powers of the High Court in respect of a stated case are contained in s 28A(3) of the Supreme Court Act 1981. The High Court can determine the question(s) of law and either reverse, affirm or amend the determination appealed against, or remit the case to the magistrates with a direction to take certain action or with an expression of the opinion of the High Court. It may make such other order in relation

34  Section 111(5) of the Magistrates’ Courts Act 1980.
35  Section 111(6) of the Magistrates’ Courts Act 1980. The order is now called a Mandatory Order, although the reference to *mandamus* in s 111(6) remains.
36  Magistrates’ Courts Rules 1981, r 76(1). Any such application must be sent to the justices’ chief executive for the magistrates’ court whose decision is questioned: r 76(3).
37  Within 21 days after receipt of the draft case under r 78(1), each party may make representations thereon. Any such representations shall be in writing and signed by or on behalf of the party making them and shall be sent to the justices’ chief executive: r 78(2).
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to the matter (including as to costs) as it thinks fit. These powers can be exercised not only to correct errors of law, such as an incorrect interpretation of a statutory provision, but also to correct any decision which is unsupported by the evidence.38

12.10 APPEALS TO THE HIGH COURT BY WAY OF APPLICATION FOR JUDICIAL REVIEW

12.10.1 Section 31 of the Supreme Court Act 1981 embodies the inherent jurisdiction of the High Court to control inferior courts and tribunals and an application can be made, with leave of the High Court, for judicial review of a decision of the magistrates’ court or other tribunal (which will include the licensing committee and subcommittees under the 2003 Act). Under s 31(3), leave will be granted only if the High Court considers that the applicant has a ‘sufficient interest’ in the matter to which the application relates (see 4.3.21 above). If leave is granted, the High Court may grant relief in the form of a Quashing Order (formerly certiorari), a Prohibiting Order (formerly prohibition), a Mandatory Order (formerly mandamus), or it may award a declaration or damages.

The granting of a Quashing Order will be appropriate to quash a decision where there is some element of unlawfulness concerning the process by which the decision was reached. This might arise in a number of ways. First, there may be an error of law on the face of the record. This may be the case, for example, where a TEN is given once the maximum number of notices that can be given in that year has been exceeded (for these numbers, see 9.7.1 above). Secondly, a decision may be made that is invalid through lack of power. This may arise, for instance, under the 2003 Act were a licensing authority to grant a personal licence to an applicant who already holds a personal licence, for under s 113 an individual is permitted to hold only one personal licence (see 10.3 above). Thirdly, there may be the power to make the decision, but there is something about the way in which it is exercised, in the circumstances of the individual case, which constitutes an abuse of that power. This might include exercise of the power for an improper purpose (for example a purpose not falling within promotion of the licensing objectives), taking into account an irrelevant consideration or failing to have regard to a relevant consideration (for example, the SOP or the Secretary of State’s Guidance) or reaching a decision which no reasonable court or tribunal could have reached.39

12.10.2 That there may be an abuse of power does not, however, necessarily mean that the licensing decision itself will be quashed. If, for instance, a condition is attached to a licence that does not promote the licensing objectives, the condition may be invalid, but this may not invalidate the decision itself to grant the licence. Whether or not it does will depend on whether the licence, with the condition deleted from it, is fundamentally different from the licence with the condition incorporated. If it is not, the condition may be severed and the licensing decision upheld, but if severance would alter the essential character or substance of that which remained the entire

38 Bracegirdle v Oxley [1947] 1 KB 349.
39 Such a decision is usually termed ‘Wednesbury unreasonable’, following the principles laid down in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 – see 3.5.13 above.
licences will be invalid. Thus in *R v North Hertfordshire District Council ex p Cobbold* [1985] 3 All ER 486, the respondent local authority granted to the applicant a public entertainment licence to hold two open air musical entertainments on private land, subject to a condition that the concert promoters would reimburse both the local authority and the county council for all reasonable expenses incurred in the provision of additional public services required in connection with the concerts. Expenses incurred by the county council related to policing, but the promoters and the police authority were unable to agree on the appropriate level of police manning (and consequently on the amount of reimbursement). The applicant duly sought an order of certiorari to quash the condition. The respondent accepted that the condition was invalid, on the basis that, as a local authority, although they were concerned with safety under the legislation, they were not concerned with questions of payment for policing and how that payment was to be secured. However, it was contended that the failure of the condition vitiated the entire licence and this contention was upheld by the Divisional Court. Mann J stated (at 492):

> a licence with this provision removed would then be a licence totally silent on policing. I regard policing as fundamental. To remove the requirement as to policing would alter the character of the document. It follows that this clause, failing as it does, brings down with it the whole of the licence.

12.10.3 Whilst a Quashing Order will be the appropriate remedy to quash a decision in instances such as those mentioned above where there has been some element of unlawfulness concerning the way in which the decision was reached, a Prohibiting Order can be sought on the same grounds as a Quashing Order to prevent some future unlawful action being taken. Whereas a Quashing Order quashes past unlawful conduct, a Prohibiting Order is concerned with prevention of any future or continued unlawful conduct by the decision-making body. There is, in addition, a Mandatory Order, which compels a court or tribunal to carry out the proper performance of its functions. This is often sought in addition to a Quashing Order, although it need not be and may be the only order sought, such as where a licensing authority wrongly declines to hear and determine a licence application because the premises in respect of which the application is made are mistakenly considered to fall outside its jurisdictional boundaries.

12.10.4 The High Court may, however, decline to grant relief on an application for judicial review if an alternative remedy is available that is more effective and convenient as regards the applicant and in the public interest. This was made clear by Glidewell J, in *R v Huntingdon District Council ex p Cowan* [1984] 1 WLR 501, where his Lordship stated (at 507):

> where there is an alternative remedy available but judicial review is sought, then in my judgment the court should always ask itself whether the remedy that is sought in the court, or the alternative remedy which is available to the applicant by way of appeal, is the most effective and convenient, in other words, which of them will prove to be the most effective and convenient in all the circumstances, not merely for the applicant, but in the public interest. In exercising discretion whether or not to grant relief, that is a major factor to be taken into account.

Accordingly, the High Court may refuse to grant relief if it considers that an appeal by case stated would have been more appropriate. This may well be the case if the facts are particularly complicated. As McNeill J stated, in *R v Crown Court at Ipswich ex p
Baldwin (1990) 72 Cr App Rep 131, 134, ‘in a case such as this which bristles with factual difficulties the only convenient and proper way to get it before the Divisional Court is by case stated and not by way of application for judicial review’.

12.10.5 Relief may also be refused if the applicant has not exercised other rights of appeal open to him. In *R v Hammersmith and Fulham London Borough Council ex p Earls Court Ltd*, *The Times*, 15 July 1993, the High Court, whilst holding that a condition imposed on a public entertainment licence that did not enable the applicants to know with a reasonable degree of certainty what must be done to comply with it was unreasonable and invalid, declined to grant relief on the ground that the applicants had a right of appeal to a magistrates’ court (and thereafter to the Crown Court), which they should have exercised before making any application for judicial review. Similarly, in *R v Peterborough Magistrates’ Court ex p Dowler* [1996] 2 Cr App Rep 561, the High Court refused an application for judicial review of a defendant’s conviction before magistrates for driving without due care and attention, where there was procedural unfairness because of a failure to disclose to him a potentially helpful witness statement, on the ground that there was a right of appeal to the Crown Court and a complete rehearing of the case could take place there.40

However, the fact that such a right of appeal may exist will not necessarily preclude an application for judicial review. A later High Court, in *R v Hereford Magistrates’ Court ex p Rowlands* [1998] QB 110, held that an applicant was entitled to challenge a conviction in the magistrates’ court by way of judicial review, notwithstanding the existence of a right of appeal to the Crown Court. Lord Bingham CJ, without referring to the *Earl’s Court* case, stated (at 125):

> While we do not doubt that *Dowler* was correctly decided, it should not in our view be treated as authority that a party complaining of procedural unfairness or bias in the magistrates’ court should be denied leave to move for judicial review and left to whatever rights he may have in the Crown Court. So to hold would be to emasculate the long-established supervisory jurisdiction of this court over magistrates’ courts, which has over the years proved an invaluable guarantee of the integrity of proceedings in those courts ...

Two notes of caution should however be sounded. First, leave to move should not be granted unless the applicant advances an apparently plausible complaint which, if made good, might arguably be held to vitiate the proceedings in the magistrates’ court ...

> Secondly, the decision whether or not to grant relief by way of judicial review is always, in the end, a discretionary one ... We do not, however, consider that the existence of a right of appeal to the Crown Court, particularly if unexercised, should ordinarily weigh against the grant of leave to move for judicial review, or the grant of substantive relief, in a proper case.

Whilst the decision in the end is always a discretionary one, the conflicting judicial approaches make it hard to predict how that discretion might be exercised in cases where other rights of appeal open to an applicant have not been exercised. As a general rule, the preferable course would seem to be to exercise, in the first instance, the right of appeal to the magistrates’ court under the 2003 Act. In the event that any

40 The court regarded the judicial review application in this case as having been made with the ulterior object of procuring such delay as would lead to the dropping of the prosecution, which may well have influenced its decision to refuse the application.
complaint has not been properly addressed on a rehearing of the case, it would then be open to an aggrieved party to appeal to the High Court either by case stated or for judicial review of the magistrates’ court decision. The former might be the more appropriate course if the nature of the appeal is essentially ‘fact dependent’, although in appeals by case stated the High Court is a final appeal court and no further appeal is thereafter possible. The Court of Appeal so held, in Westminster City Council v Horseferry Road Justices [2003] EWCA Civ 1007, stating that the provisions of s 18(1) and s 28A(4) of the Supreme Court Act 1981 precluded such an appeal and the court did not have jurisdiction to hear it.41 In contrast, in judicial review appeals, appeal can be made to the Court of Appeal with leave of that court and thereafter to the House of Lords with leave of either the Court of Appeal or House of Lords.

41 Section 18(1)(c) provides that no appeal should lie to the Court of Appeal ‘from any order, judgment or decision of the High Court or any other court or tribunal which by virtue of any provision (however expressed) of this or any other Act is final’, and s 28A(4) provides that a decision of the High Court on an appeal by way of case stated under s 111 of the Magistrates’ Courts Act 1980, which is not in respect of any criminal cause or matter, is final. The appeal by case stated in the case in question was not in respect of a criminal cause or matter, being concerned with whether a special hours certificate could be granted to the holder of a justices’ on-licence for part of premises for which no music and dancing licence had been granted.
13.1 INTRODUCTION TO TRANSITION

13.1.1 Section 200 provides: ‘Schedule 8 (which makes transitional and transitory provision and savings) has effect’ and the transitional arrangements in Sched 8 are set out in three parts. Part 1 covers premises licences, Pt 2 covers club premises certificates (CPCs) and Pt 3 covers personal licences. Provision is made in each Part for the Secretary of State to bring into force by statutory instrument all new licences and certificates on a particular day. This enables the Secretary of State to bring into force each Part on a different day, although perhaps not surprisingly each of the three Parts comes into force on the same day for the commencement of the transition period and, it might be anticipated, for the end of the period so that the new licensing system becomes fully operational in all respects at the same time. Under the transitional arrangements, holders of an existing licence can apply for conversion of their existing licence into a new premises licence (or, in the case of a justices’ licence, into a premises licence and a personal licence) in order to allow them to continue trading under the new licensing scheme when this comes into effect. Similarly, clubs holding a registration certificate can apply for conversion of their certificate into a CPC. The principle underlying this approach is that all of these licences or certificates have already been approved by the licensing justices, the magistrates’ courts or a local authority licensing committee (Guidance, para 13.8). These new licences and certificates, however, remain dormant until they come into force at the end of the transition period.

13.1.2 The period during which such applications can be made, as set out in the Act, is not a uniform one and different provisions are made for personal licences, on the one hand, and premises licences and CPCs, on the other. The method adopted for personal licences is for applications to be made within a ‘transitional period’. Paragraph 23(1) and (2) provides:

(1) Paragraphs 24 to 27 apply where—

(a) during the transitional period, the holder of a justices’ licence applies to the relevant licensing authority for the grant of a personal licence under section 115 …

(2) In this paragraph “transitional period” means such period (of not less than six months) as may be specified for the purposes of this Part.

1 Licensing Act 2003 (First Appointed Day and Personal Licences Transitional Period) Order 2004, SI 2004/1739. At the time of writing, the date for the end of the transitional period has not been specified, although it is anticipated that this will be in or around November 2005.
The transitional period has been specified by the Secretary of State as a six month period commencing on 7 February 2005 and ending on 6 August 2005. Application can be made at any time during this period and all holders of existing justices’ licences authorising the sale by retail of alcohol will be entitled to a personal licence without having to obtain a licensing qualification. On production of an existing licence, an endorsed photograph and a statement as to convictions for relevant offences or (comparable) foreign offences since grant, renewal or transfer to him of the licence (see 13.15.1 below), a personal licence will be granted, subject to any objections by the police on the ground that the grant of the licence would be detrimental to the prevention of crime and disorder.

The term ‘transitional period’ is used in Sched 8 only in relation to personal licences and, for premises licences and CPCs, there is no reference to any such period. Instead, there is a ‘first appointed day’ and a ‘second appointed day’. These are days appointed by the Secretary of State by statutory instrument and the days may be different for premises licences and for CPCs, although the Secretary of State has in fact specified the same day, 7 February 2005, for the first appointed day and it is anticipated that the same day, probably in or around November 2005, will be specified for the second appointed day. Since the second appointed day is the day on which the new licences take effect and the period during which applications for conversion can be made is the period after the first appointed day, the transitional period is effectively the period between these two days. However, unlike in the case of personal licences, an applicant cannot make an application for conversion of an existing licence during the whole of this period. Paragraph 2(2) provides, for premises licences:

A person may, within the period of six months beginning with the first appointed day, apply to the relevant licensing authority for the grant of a licence under paragraph 4 to succeed one or more of those existing licences.

Paragraph 14(2) provides, for CPCs:

The club may, within the period of six months beginning with the first appointed day, apply to the relevant licensing authority for the grant of a certificate under paragraph 16 to succeed the existing club certificate so far as it relates to those premises.

Thus applications have to be made within six months after the first appointed day, that is by 6 August 2005, although the second appointed day is likely to be in or around November 2005. Applicants for premises licences and CPCs do not therefore have the whole of the ‘transitional period’ within which to make an application.

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3 For details of the licensing qualification, see s 120(8) and 10.5.3 above.
4 Both Pt 1 (premises licences) and Pt 2 (CPCs) provide that ‘first appointed day’ means such day as may be specified as the first appointed day for the purposes of this Part and ‘second appointed day’ means such day as may be specified as the second appointed day for the purposes of this Part (see paras 1(1) and 13(1)).
6 For premises licences, para 6(4) provides that: ‘The new licence takes effect on the second appointed day.’ For CPCs, para 18(2) provides that: ‘The new certificate takes effect on the second appointed day.’
7 The Guidance, para 13.2, provides: ‘In this document the term “transitional period” is taken to be the period between the first appointed day and the second appointed day.’
13.1.3 Under Art 2(1)(2) of the Licensing Act 2003 (Transitional Provisions) Order 2005, SI 2005/40 (LA 2003 (TP) Order 2005), applications for conversion of existing licences into premises licences and existing club registration certificates into CPCs may be accompanied – on the same application form contained in Sched 1 to the Order – by an application to vary the hours, terms and conditions, and restrictions of the existing licences or certificates. Part A of the application form covers conversion and Pt B provides for variation. Paragraph 13.10 of the Guidance explains variation under Pt B (described in the Guidance as Pt 2 of the form8):

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 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 [sic] 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 proposed variations applied for and not the new licence or certificate derived from the conversion of the existing authorisation; ie the converted hours, terms and conditions which are not subject to variation.9

13.1.4 Conversion of existing licences and certificates into premises licences and CPCs under the transitional provisions in Sched 8 will be appropriate for those providing licensable activities on a regular and ongoing basis and perhaps for some holders of occasional licences and occasional permissions, but not all of them. Occasional licences could be granted by local authorities for public entertainments and theatrical performances (although not film exhibitions), where these activities took place only on one or more occasions.10 Occasional licences could also be granted by licensing justices, under s 180 of the Licensing Act 1964, to holders of justices’ on-licences, authorising the sale of alcohol at a place other than the premises in respect of which the licence was granted for a period not exceeding three weeks and, under the Licensing (Occasional Permissions) Act 1983, licensing justices could grant occasional permissions for the sale of alcohol for up to 24 hours to members of organisations not carried on for private gain. Under the 2003 Act, temporary event notices (TENs) rather than premises licences or CPCs may well be appropriate in some of these cases. It

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8 When the Guidance was published (ahead of the secondary legislation) reference was to Pts 1 and 2 of the form, although under Art 2(1)(2) of the LA 2003 (TP) Order 2005 reference is to Pts A and B.

9 Although there is no requirement in the 2003 Act for an operating schedule in respect of applications to vary a licence under s 34 – see 6.9.2 above – under s 34(2)(a) such applications are subject to regulations made under s 54 by the Secretary of State as regards the form of applications and both the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, SI 2005/42 (LA 2003 (PL and CPC) Regs 2005) (in reg 12 and Sched 4, Pt 4) and the LA 2003 (TP) Order 2005 (in Art 2(2) and Sched 1, Pt B2) make provision for an operating schedule.

10 See Sched 1, paras 1(5), 2(5) and 4(3) of the Local Government (Miscellaneous Provisions) Act 1982 for public entertainments and Sched 1, para 1(3) of the Theatres Act 1968 for theatrical performances. There was no such thing as an ‘occasional cinema licence’ and premises used only occasionally for film exhibitions were exempted under s 7 of the Cinemas Act 1985 from the need to obtain a licence, provided certain conditions were met and the premises were not used on more than six occasions in any one calendar year.
seems that where an occasional licence or occasional permission has been obtained during transition after the first appointed day, for events that take place after the second appointed day when the new scheme is fully operational, a TEN will still need to be given to provide authorisation in respect of the activities. No provision is made by Sched 8 in this respect but this is the view taken by the Department of Culture, Media and Sport (DCMS) on this matter: ‘any occasional licences or permissions granted for an event occurring after the new arrangements come into force will be invalid and a new authorisation will be required.’

13.1.5 Conversion to premises licences and CPCs is only possible where existing licences and certificates are held on 7 February 2005, the first appointed day. Those who obtain existing licences and certificates after that date and before the second appointed day cannot convert them and have to make application for new premises licences and CPCs under the provisions of the 2003 Act. These must be obtained before the second appointed day when they are needed to authorise licensable activities. Where an application for a new premises licence is made by the holder of justices’ licence, para 11 ensures that the licence holder retains, under the premises licence, the permitted hours at which alcohol can be sold under the justices’ licence (including any extensions in the normal permitted hours). The licensing authority is precluded from granting the new premises licence with a condition preventing the sale of alcohol during permitted hours. The protection afforded by para 11 applies ‘within such period (of not less than six months) as may be specified’ and under Art 5 of the LA 2003 (TP) Order 2005, this is from 7 February 2005 until the second appointed day. Further protection is afforded, under para 12(1)(a) of Sched 8, to those persons holding a provisional justices’ licence who make an application for a new premises licence, for in such cases the licensing authority is required to ‘have regard to’ the provisional grant when determining the premises licence application. The requirement applies ‘during such period as may be specified’, provided certain requirements are met, and the period specified by Art 6 of the LA 2003 (TP) Order 2005 is the period from 7 February 2005 until a year after the second appointed day.

PREMISES LICENCES

13.2 CONVERSION OF EXISTING LICENCES INTO PREMISES LICENCES

13.2.1 Persons entitled to make an application

13.2.2 Application for conversion of existing licences into premises licences is covered by Pt 1 of Sched 8. The existing licences in force on the first appointed day, in respect of which application for conversion can be made, are: a justices’ licence for the sale or supply of intoxicating liquor, a canteen licence, a public entertainment licence, a

12 The requirements are that the premises are substantially the same, have been completed in a manner that substantially complies with the plans and the provisional licence has not been declared final – see 13.8 below.
private entertainment licence, a cinema licence, a theatre licence, a late night refreshment house licence and a night café licence. Paragraph 1(1) provides:

“existing licence” means—
(a) a justices’ licence, 13
(b) a canteen licence, 14
(c) a licence under Schedule 12 to the London Government Act 1963 (licensing of public entertainment in Greater London),
(d) a licence under the Private Places of Entertainment (Licensing) Act 1967,
(e) a licence under the Theatres Act 1968 (c.54),
(f) a licence under the Late Night Refreshment Houses Act 1969 (c.53),
(g) a licence under Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 (licensing of public entertainments outside Greater London),
(h) a licence under section 1 of the Cinemas Act 1985 (c.13), or
(i) a licence under Part 2 of the London Local Authorities Act 1990 (c.vii) (night café licensing).

13.2.3 Where any such licence is in force on the first appointed day, application for the issue of a new (premises) licence can be made within six months by a person holding the licence or anyone else with his consent. The provision for application with the licence holder’s consent is to cover cases where no application is being made by the holder himself, for example, where an off-licence for a supermarket is held by an individual employee and the business owning the supermarket makes the application for a new licence (Guidance, para 13.16). 15 Where application is made by the licence holder, it is not necessary that the applicant was the holder of the licence on the first appointed day. It is necessary only that the licence is in existence on that day. The applicant need not have been the holder of it at that time and all that is required is that he is the holder of it at the time of making the application. Thus, where a licence has been transferred after the first appointed day to another person, who may be either a new licensee within the same company or a new operator following acquisition of the premises, that person may, as holder of the licence, make an application for conversion of it. Who holds the licence on the first appointed day is irrelevant. Paragraph 2(1)–(3) provides:

(1) This paragraph applies where, in respect of any premises, one or more existing licences have effect on the first appointed day.

13 Paragraph 34 provides: ‘In this Schedule – “justices’ licence” means a justices’ licence under Part 1 of the 1964 Act … and “the 1964 Act” means the Licensing Act 1964 (c.26).’ Justices’ licences were renewable every three years and were last renewed on 4 April 2004.

14 Paragraph 1 goes on to provide: ““canteen licence” has the same meaning as in section 148 of the 1964 Act (licences for seamen’s canteens).’ This licence can be granted where the Minister of Transport has certified the need for a seaman’s canteen and it is provided by a body approved by him. The licence authorises the manager of the canteen to sell alcohol for consumption in the canteen. Given that Sched 7 to the 2003 Act repeals the whole of the Licensing Act 1964, it might have been better if the definition in s 148 of that Act had been incorporated into Sched 8, para 1(1) of the 2003 Act.

15 In such cases, the individual employee, not being a person who carries on a business that involves the use of the premises for licensable activities under s 16(1), is not a person entitled to make an application for a premises licence – see 6.2.1 above.
(2) A person may, within the period of six months beginning with the first appointed day, apply to the relevant licensing authority\textsuperscript{16} for the grant of a licence under paragraph 5 to succeed one or more of those existing licences.

(3) But an application may be made under this paragraph in respect of an existing licence only if–

(a) it is held by the applicant, or

(b) the holder of the licence consents to the application being made.

Licences having effect on the first appointed day include not only those in existence prior to the passage of the 2003 Act, but also new licences (obtained under the previous legislation) between the passing of the Act and the first appointed day. Those obtaining a new licence after the first appointed day need to obtain a new (premises) licence by the second appointed day in order to continue trading when the new licensing scheme comes into effect on the second appointed day.

Those who do not hold an existing licence self-evidently cannot make an application for conversion and need to make an application for a new (premises) licence. This includes persons who operate takeaway food premises which provide late night refreshment where the premises are outside London. Those operating such premises in London are already licensed as night cafés and can make application for conversion of their existing licence, but those operating such premises in provincial areas required no licence for late night refreshment prior to the 2003 Act. This is now a licensable activity under the Act and a new (premises) licence needs to be obtained by the second appointed day if the premises are to continue trading lawfully after the new licensing scheme comes into effect.

13.2.4 Making an application

13.2.5 The application must specify the existing licensable activities that can be carried on under the existing licence(s) and, where a justices’ licence is held, information about the person who will be the designated premises supervisor (DPS), along with any further information as may be specified by the Secretary of State in a statutory instrument. Paragraph 2(4) provides:

(4) An application under this paragraph must specify–

(a) the existing licensable activities under the relevant existing licence or, if there is more than one, the relevant existing licences,

(b) if any relevant existing licence authorises the supply of alcohol, specified information about the person whom the applicant wishes to be the premises supervisor under the licence granted under paragraph 5,\textsuperscript{17} and

(c) such other information as may be specified.\textsuperscript{18}

The ‘existing licensable activities’ under an existing licence include not only those authorised by the licence, but also those that may be carried on by virtue of the

\textsuperscript{16} Paragraph 1 provides: “relevant licensing authority” has the same meaning as in Part 3 of this Act (premises licences) – see s 12 and 6.3.1 above.

\textsuperscript{17} Under Art 2(3) of the LA 2003 (TP) Order 2005, the specified information is the name and address of the premises supervisor.

\textsuperscript{18} Paragraph 34 provides: ‘In this Schedule – ... “specified” means specified by order …’, which will be an order made by the Secretary of State. The Secretary of State does not intend currently to specify any additional information or documents that must be provided under para 2(4)(c): Consultation on Draft Regulations and Order to be Made under the Licensing Act 2003, para 6.11.
existence of the licence. The latter, which may be described as an ‘embedded benefit’, includes the retail sale of alcohol at premises with an existing theatre licence where notice has been given under s 199(c) of the Licensing Act 1964 to the justices’ chief executive of an intention to make such sales and this must therefore be specified in the application.\(^\text{19}\) It does not, however, include the provision of public entertainment consisting of music and singing provided by not more than two performers on premises for which there is a justices’ licence for the sale of alcohol, for which an exemption (the so-called ‘two in a bar’ rule) was provided by s 182 of the Licensing Act 1964.\(^\text{20}\) As this entertainment is not included within the ‘existing licensable activities’ on conversion of the justices’ licence into a premises licence, a variation application is required to include this entertainment to enable it to be provided under the new premises licence (Guidance, para 13.29; and see 13.3.6–13.3.8 below). Paragraph 1(1) and (2) provides:

\(^{19}\) Section 199 provides:

Nothing in this Act shall—

... (c) make unlawful the sale or exposure for sale by retail without a justices’ licence of any intoxicating liquor at any premises in respect of which a licence under the Theatres Act 1968 is for the time being in force, or which by virtue of any letters patent of the Crown may lawfully be used for the public performance of plays without a licence under that Act being held in respect thereof, if the proprietor of those premises has given to the clerk to the licensing justices notice in writing of the intention to sell such liquor by retail at those premises and that notice has not been withdrawn.

The application will also need to include specified information about the person whom the applicant wishes to be the premises supervisor under the licence (para 2(4)(b)), which under Art 2(3) of the LA 2003 (TP) Order 2005 is the name and address of the premises supervisor. It would seem that, on conversion to a premises licence, whoever is to be premises supervisor will have to obtain a new personal licence during the transition period. This is because only the holder of a justices’ licence can apply for conversion of the justices’ licence into a personal licence under the transitional arrangements in Sched 8, Pt 3—see 13.15 below. The holder of the theatre licence is unable to apply for conversion and so either he or another person will have to obtain a new personal licence to be the premises supervisor. For a more detailed consideration of this point, see (2004) 56 Licensing Review 38.

\(^{20}\) Section 182 provides:

No statutory regulations for music and dancing shall apply to licensed premises so as to require any licence for the provision in the premises of public entertainment by the reproduction of wireless (including television) broadcasts or of programmes included in any programme service (within the meaning of the Broadcasting Act 1990) other than a sound or television broadcasting service, or of public entertainment by way of music and singing only which is provided solely by the reproduction of recorded sound, or by not more than two performers, or sometimes in one of those ways and sometimes in the other.
Reference to any notice in force under section 199(c) of the Licensing Act 1964 (notice of intention to sell alcohol by retail at licensed theatre premises) in relation to that licence.

Exclusion from the ‘existing licensable activities’ under para 1(2)(a), however, applies only where the public entertainment under s 182 takes the form of music and singing provided by not more than two performers. Thus public entertainment consisting of music and singing provided solely by the reproduction of recorded sound, which is also covered by the s 182 exemption, should not be disregarded under para 1(2)(a). Since this falls within ‘any other licensable activities which may be carried on … by virtue of the licence’ (that is the justices’ on-licence) in para 1(1)(b), it is one of the ‘existing licensable activities’ and must therefore be specified in the application for conversion of the justices’ licence.21 No variation application for the inclusion of public entertainment consisting of music and singing provided solely by the reproduction of recorded sound is therefore needed. However, where there is a combination of recorded sound and a performer, as in the case of karaoke entertainment or where a disc jockey introduces recorded soundtracks when playing discotheque music, a variation application is necessary as in this instance the music and singing is not provided solely by the reproduction of recorded sound.

There are further instances of where licensable activities may be carried on by virtue of the existence of a licence. One seems to be where the provisions of the Private Places of Entertainment (Licensing) Act 1967 have been adopted by a local authority, and premises which are a ‘licensed canteen’ or ‘licensed premises’ under the Licensing Act 1964 are used for music, dancing or other entertainment of a like kind which is not public entertainment but is promoted for private gain (hereafter ‘private entertainment’). In general, where premises are used for private entertainment in areas where the 1967 Act has been adopted, a licence is required under s 2(1) but under s 2(2)(b) no licence is required where private entertainment takes place on the above-mentioned premises, that is, a licensed canteen or licensed premises. Thus the provision of private entertainment in such premises could, under para 1(1)(b), be encompassed within ‘any other licensable activities that may be carried on … by virtue of the existence of the licence’, that is, the licence under the 1964 Act. However, this will be the case only if the licence under the 1964 Act falls within the meaning of ‘existing licence’ in para 1(1), since conversion applies only in respect of existing licensable activities under an ‘existing licence’. In order to determine whether this is the case, it is necessary to consider the meaning of the expressions ‘licensed canteen’ and ‘licensed premises’ as defined in the Licensing Act 1964.

A ‘licensed canteen’ is defined in s 201 of the 1964 Act as ‘a canteen within the meaning of Part X of this Act in respect of which a canteen licence is in force’ and a canteen licence is an ‘existing licence’ under para 1(1) (see 13.2.2 above). Provision of private entertainment in a licensed canteen is therefore an embedded benefit, as a licensable activity that can be carried on by virtue of the existence of the (canteen) licence, and must therefore be specified in the application for conversion. ‘Licensed premises’ is defined in s 200 of the 1964 Act as premises in respect of which there is in force a justices’ licence, a notice given to the justices’ chief executive by the holder of a licence.

21 The provision of public entertainment by radio and television broadcasts, which is also covered by the s 182 exemption, falls within the exemptions in Sched 1, Pt 2 of the 2003 Act whereby the provision of regulated entertainment does not constitute a licensable activity – see para 8 and 5.3.38 above. It is not therefore included within the existing licensable activities.
theatre licence of his intention to sell alcohol (hereafter ‘notice’) or an occasional licence. A justices’ licence, like a canteen licence, is an ‘existing licence’ under para 1(1) and the provision of private entertainment in premises in respect of which a justices’ licence is in force must similarly be specified in the application for conversion. Less clear is the position in respect of a notice. A notice is not an ‘existing licence’ under para 1(1), although a theatre licence is, and the notice itself is an embedded benefit under the theatre licence. Under para 1(1)(b), retail sale of alcohol under a notice is included within ‘any other licensable activities that may be carried on … by virtue of the existence of the licence’, that is, the theatre licence; indeed, specific provision to this effect is made by para 1(2)(b) (see above). Whether there can be an embedded benefit (private entertainment) under a notice, which itself is an embedded benefit (under a theatre licence) is uncertain. This may be possible if para 1(1)(b) is read in conjunction with para 1(2)(b). Paragraph 1(1)(b) refers to ‘any other licensable activities that may be carried on … by virtue of the existence of the licence’ and, under para 1(2)(b), in the case of an existing theatre licence, ‘reference in that paragraph to the licence is to be read as including a reference to any … notice of intention to sell alcohol by retail at licensed theatre premises’. If the reference to ‘licence’ in para 1(1)(b) includes a notice, the licensable activity of private entertainment is one that may be carried on by virtue of the existence of the licence, that is, the licence read as including the notice. The notice could be regarded as falling within the meaning of ‘existing licence’ in para 1(1) as an extension of the meaning of ‘theatre licence’ in that section, having regard to the provision of para 1(2)(b). As such, private entertainment could be an embedded benefit and specified in the application for conversion. An occasional licence, however, is not an ‘existing licence’ under para 1(1) and so should not be specified in the application for conversion. Further, although under s 2(2)(b) of the 1967 Act no licence is required for private entertainment where it takes place on premises for which there is in force a club registration certificate, this has no application in respect of conversion of existing licences to premises licences. A club registration certificate is not an ‘existing licence’ under para 1(1) and there can be no conversion of such a certificate to a premises licence. No question of specifying private entertainment in an application for conversion to a premises licence therefore arises.

Private entertainment as a licensable activity that may be carried on by virtue of a canteen licence or a justices’ licence will apply, however, only if the provisions of the 1967 Act have been adopted. If they have not, provision of private entertainment is not a licensable activity carried on by virtue of the existence of those licences. It is carried on by virtue of the fact that no licence is needed for the activities in question and, as these are licensable activities under the 2003 Act for which authorisation is needed under the premises licence, an application for variation of the premises licence is needed.

Another instance seems to be where there is a justices’ on-licence and there is the provision of hot food after 11.00 pm, which constitutes late night refreshment. The provision of substantial refreshment to which the sale of alcohol is ancillary was a necessary condition for the holder of a justices’ on-licence to obtain an extension in permitted hours for the sale of alcohol beyond the normal 11.00 pm closing time under a ‘supper hour’ certificate under s 68, an extended hours’ order under s 70 or a special hours certificate under s 77 of the Licensing Act 1964,22 and the substantial

22 See 13.3.4 below.
refreshment provided often comprised hot food (although it need not do so). In these cases no licence was needed for the provision of the hot food after 11.00 pm. Under s 1 of the Late Night Refreshment Houses Act 1969, premises licensed for the sale of beer, cider, wine or spirits were excluded from the definition of ‘late night refreshment house’ in s 1(1) and, for night cafés in London, under s 4(1) of the London Local Authorities Act 1990, premises in respect of which there was in force a justices’ on licence were excluded from the definition of ‘night café’. These exclusions applied in respect of the provision of hot food until the expiration of 30 minutes after the end of permitted hours under the justice’s licence (11.00 pm or the time to which there was an extension in permitted hours under s 68, s 70 or s 77 of the 1964 Act). Accordingly, the provision of hot food after 11.00 pm, a licensable activity under the 2003 Act, is not an existing licensable activity authorised by the 1969 or 1990 Acts (because no licence is required under those Acts), but it may be an existing licensable activity carried on at the premises in respect of which the justices’ licence has effect by virtue of the existence of the justices’ licence.\(^{23}\)

Whilst conversion of the existing licence into a premises licence provides authorisation for existing licensable activities under the licence or other licensable activities that may be carried on by virtue of the existence of the licence, it does not provide any authorisation for other activities that take place on the premises. Thus, where a justices’ on-licence is converted into a premises licence and there are on the premises Amusement with Prizes (AWP) machines with a gaming permit issued under s 34 of the Gaming Act 1968, the premises licence provides no authorisation for the AWP machines. Indeed, para 20(1)(a) of Sched 9 to the Gaming Act 1968 provides that a permit ‘shall not be transferable, and … shall cease to have effect’ if the holder of the permit ceases to be the holder of the justices’ licence. However, it is understood that secondary legislation, in draft form at the time of writing as the Licensing Act 2003 (Cessation of gaming permit) (Disapplication of Gaming Act 1968) Order 2005, will be introduced prior to the second appointed day, and that will have the effect of disapplying the provision in para 20(1)(a) of Sched 9. The Order will accordingly prevent gaming permits from ceasing to have effect and a gaming permit will be deemed to have effect as if it had been granted to the holder of the premises licence.\(^{24}\)

\(^{23}\) A useful test for determining whether an existing licensable activity can be carried by virtue of the existence of a licence might be to pose the question, ‘By what authority is the activity taking place?’ The activity in this instance is the service of hot food after 11.00 pm and the authority for it taking place seems to be the justices’ licence. It is thought that this is the better view, but an alternative view would be that the authority is the exemption contained in the 1969 and 1990 Acts. If this view is taken, the service of hot food is not carried on by virtue of the existence of the justices’ licence, but by virtue of the exemption provided by the 1969 and 1990 Acts from the need for a licence under those Acts for late night refreshment. On this view an application for variation of the premises licence to include the provision of hot food after 11.00 pm is needed.

\(^{24}\) AWP permits were granted by magistrates under the previous law, but Sched 6, para 52 of the 2003 Act has amended the 1968 Act so that they are now granted by local authorities. For the issuing of AWP permits under a premises licence, see 6.3.3 above. The Order amending the Gaming Act 1968 can be made in accordance with s 198(2) of the 2003 Act, under which the Secretary of State may ‘in consequence of any provision of this Act … by order make such amendments (including repeals or revocations) as appear to him to be appropriate in – (a) any Act passed … before that provision comes into force’.
13.2.6 The application for conversion needs to be accompanied by a fee and various documents, including the existing licence(s) or a certified copy, a plan of the premises, any existing children’s certificate (where a justices’ licence is held) or a certified copy, a consent from the person named as the DPS, a consent from the holder of the licence if the applicant is applying with the licence holder’s consent, and any other documents as specified (by the Secretary of State). Paragraph 2(5) and (6) provides:

(5) The application must also be in the specified form and accompanied by–
(a) the relevant documents, and
(b) the specified fee.26

(6) The relevant documents are–
(a) the relevant existing licence or, if there is more than one, each of them (or a certified copy of the licence or licences in question),
(b) a plan in the specified form of the premises to which the relevant existing licence or licences relate.27

25 Paragraph 1(7) provides:
In this paragraph any reference to a certified copy of a document is a reference to a copy of that document certified to be a true copy–
(a) in the case of a justices’ licence, children’s certificate or canteen licence, by the chief executive of the licensing justices for the licensing district in which the premises are situated,
(b) in any other case by the chief executive of the local authority which issued the licence,
(c) by a solicitor or notary, or
(d) by a person of a specified description.
A document purporting to be a certified copy is presumed to be a true copy. Paragraph 1(8) provides: ‘A document which purports to be a certified copy of an existing licence or children’s certificate is to be taken to be such a copy unless the contrary is shown.’

26 See Art 2(1)(2) and Sched 1 to the LA 2003 (TP) Order 2005 for the specified form for the conversion application and the Licensing Act 2003 (Transitional Conversion Fees) Order 2005, SI 2005/80 (LA 2003 (TCF) Order 2005) for the fee to accompany the conversion application. As in the case of premises licence applications, premises are allocated to specific bands based on non-domestic rateable value for the purposes of determining the appropriate level of fee to be paid; there is provision for increased fees for certain types of premises and for additional fees based on the maximum number of persons allowed on the premises in cases where this exceeds 5,000 persons. The provisions in the Order are very similar to those in the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79 – see 6.3.1 above.

27 Ibid, Art 3. Where, in the case of a justices’ on-licence, consent has been obtained under s 20 of the Licensing Act 1964 for alterations, but these have not been carried out at the time of the conversion application, it seems that the plan should be of the premises in their unaltered form. Paragraph 2(6)(b) requires that the plan is of ‘the premises to which the relevant existing licence or licences relate’ and this will be the premises as they presently stand. If the alterations are to be subsequently carried out (which they may or may not be, as there is no requirement for them to be made), an application for variation of the premises licence will be needed. Where the alterations have been partly carried out at the time of the conversion application, it seems that the plan submitted should show the state of the premises as at the date of the application, with a later application for variation to complete the work. See Hepher, C, ‘Late Eating Can Lead to Indigestion’ (2004) 59 Licensing Review 21.
(c) if any relevant existing licence authorises the supply of alcohol,\(^{28}\) any children's certificate\(^{29}\) in force in respect of the premises (or a certified copy of any such certificate),

(d) a form of consent in the specified form,\(^{30}\) given by the individual (if any) named in the application in accordance with sub-paragraph (4)(b),

(e) a form of consent in the specified form,\(^{31}\) given by any person who is required to consent to the application under sub-paragraph (3), and

(f) such other documents as may be specified.\(^{32}\)

The specified form and the requirements for the plan are the same as for an application for a premises licence (see 2.4.2 above), except in one respect. There is, under Art 3(3)(e) of the LA 2003 (TP) Order 2005, an additional requirement, where an existing licensable activity relates to the supply of alcohol, for inclusion on the plan of 'the location or locations on the premises which is or are used for consumption of alcohol'. Under a justices' licence there may be areas such as gardens and terraces where consumption of alcohol takes place that may or may not form part of the 'licensed premises'. Since Art 3(3)(e) requires the plan to indicate the areas for consumption 'on the premises', it seems these areas need to be included on the plan only if they form part of the 'licensed premises' under the justices' licence. This accords with the provision in para 2(6)(b), which requires 'a plan … of the premises to which the relevant existing licence or licences relate'. In the case of a justices' licence, the relevant existing licence presumably relates to the premises that constitute the 'licensed premises' under that licence and if this includes gardens and terraces they need to be included on the plan. If, on the other hand, they do not form part of the 'licensed premises' they will not be areas 'on the premises' under Art 3(3)(e) where consumption takes place. Rather they will be areas off the premises where consumption may take place. Details of such areas need to be included on the application form for conversion of an existing licence to a premises licence. Part A1 of the application form requires details of the premises and Guidance Note 1, which covers completion of this Part, states: 'Where your application includes off-supplies of alcohol and provide a place for consumption of these off-supplies you must include a description of where the place is and its proximity to the premises.' As these details need to be included on the form (which is also the case for premises licence applications – see 2.4.2 above), it might reasonably be assumed that they need not in addition be included on the plan.

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28 Paragraph 1(1) provides: 'In this Part – … “supply of alcohol” means–
(a) sale by retail of alcohol, or
(b) supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.’

29 Paragraph 1(1) provides: 'In this Part – … “children’s certificate” has the same meaning as in section 168A of that Act [ie the Licensing Act 1964] …’ Under s 168A(1) and (2), a children’s certificate is a certificate granted to the holder of a justices’ licence in relation to any area of the premises for which the licence is in force that consists of or includes a bar, where the justices are satisfied that the area constitutes an environment in which it is suitable for persons under the age of 14 to be present and that meals and non-alcoholic beverages will be available for consumption in that area. Given that Sched 7 to the 2003 Act repeals the whole of the Licensing Act 1964, it might have been better if the definition in s 168A(1) and (2) of that Act had been incorporated into (Sched 8, para 1(1) of the 2003 Act).

30 Article 2(4) and Sched 2 to the LA 2003 (TP) Order 2005.

31 Ibid, Art 2(5) and Sched 3.

32 No other documents have been specified.
It is not clear what will be the effect of a failure to comply with the requirements in para 2(5)(6). It may be that there will not be a valid application and, if so, there may not be a valid determination of the conversion application under para 4. This is because para 4(1) requires that ‘an application is made in accordance with paragraph 2’ for the provisions on determination in para 4 to apply. Further, the application may perhaps be invalid not only where a relevant document does not accompany it, but also where the document accompanying it does not comply with the requirements as specified in the above provisions. For example, if alterations have been made to premises for which there is a justices’ on-licence in force, without obtaining consent under s 20 of the Licensing Act 1964 and a plan of the premises accompanying the application reflects the unauthorised alterations, it may be said that there is not a ‘plan … to which the relevant existing licence or licences relate’ under para 2(6)(b). Clearly, to render an application and the grant of a licence invalid where there are only minor errors would be wrong and it may be that invalidity will occur only where there is a substantial deficiency in respect of the relevant documentation. The LA 2003 (TP) Order 2005 contains no provisions in respect of a failure to comply with requirements other than to provide, in Art 12, that an authority ‘shall not reject any application or other document by reason only of the fact that it is given on a form provided otherwise than from the relevant licensing authority but which complies with the requirements of this Order’. The only effect of this is to prevent a licensing authority from insisting that applicants use only its own forms.

13.2.7 Within 48 hours of making the application to the licensing authority, the applicant must send a copy of the application and accompanying documentation to the police. This is to give the police an opportunity to object to the conversion of the existing licence, which they can do by giving notice within 28 days to the licensing authority and the applicant. Notice can be given in cases where an appeal is pending against revocation or non-renewal of a licence, or where there has been a material change in circumstances since the time when the licence was granted or last renewed, and (in either instance) the police are satisfied that conversion would undermine the crime prevention objective. Paragraph 3 provides:

(1) Where a person makes an application under paragraph 2, he must give a copy of the application (and any documents which accompanied it) to the chief officer of police for the police area (or each police area) in which the premises are situated no later than 48 hours after the application is made.

(2) Where–

(a) an appeal is pending against a decision to revoke, or to reject an application for the renewal of, the relevant existing licence or, if there is more than one such licence, a relevant existing licence, and

(b) a chief officer of police who has received a copy of the application under sub-paragraph (1) is satisfied that converting that existing licence in accordance with this Part would undermine the crime prevention objective, he must give the relevant licensing authority and the applicant a notice to that effect.

(3) Where a chief officer of police who has received a copy of an application under sub-paragraph (1) is satisfied that, because of a material change in circumstances

33 The police cannot object except in these circumstances. The rationale is that the police would have had an opportunity to object at the last renewal of the licence, and either did not do so or any objection was not upheld, and therefore there should be no further opportunity to object unless there has been a material change of circumstances.
since the relevant time, converting the relevant existing licence or, if there is more than one such licence, a relevant existing licence in accordance with this Part would undermine the crime prevention objective, he must give the relevant licensing authority and the applicant a notice to that effect.

(4) For this purpose “relevant time” means the time when the relevant existing licence was granted or, if it has been renewed, the last time it was renewed.

(5) The chief officer of police may not give a notice under sub-paragraph (2) or (3) after the end of the period of 28 days beginning with the day on which he receives a copy of the application under sub-paragraph (1).

13.2.8 Determination of an application

13.2.9 Where an application is made in accordance with paras 2 and 3, the licensing authority must grant the application unless the police have given a notice of objection. Where notice is given, the authority must, within 10 working days of the end of the period within which notice may be given, hold a hearing to consider it, unless the parties agree that this is unnecessary. Notice of the hearing must be given to the applicant and the police no later than five working days before the day or the first day on which the hearing is to be held. If it considers it necessary for the promotion of the crime prevention objective to do so, the authority must reject the application or part of the application to the extent that it relates to that licence. Paragraph 4(1)–(3) provides:

(1) This paragraph applies where an application is made in accordance with paragraph 2 and the applicant complies with paragraph 3(1).

(2) Subject to sub-paragraphs (3) and (5), the relevant licensing authority must grant the application.

(3) Where a notice is given under paragraph 3(2) or (3) in respect of an existing licence (and not withdrawn), the authority must–
   (a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and
   (b) having regard to the notice–
      (i) in a case where the application relates only to that licence, reject the application, and
      (ii) in any other case, reject the application to the extent that it relates to that licence,
   if it considers it necessary for the promotion of the crime prevention objective to do so.

34 This is subject to the provision in para 4(5), which requires that the applicant has not ceased to hold the existing licence(s) at the time of the determination of the application – see 13.2.10 below.


36 Ibid, reg 6(3)(b), and Sched 2, para 16.

37 The requirement to hold a hearing to consider the notice is not a function that can be delegated by the authority to an officer. Paragraph 4(7) provides: ‘Section 10 applies as if the relevant licensing authority’s functions under sub-paragraph (3) were included in the list of functions in subsection (4) of that section (functions which cannot be delegated to an officer of the licensing authority).’ For the provision in s 10, see 2.4.12 above.
In cases where the notice was given because of a material change of circumstances, it will be for the authority to determine what constitutes a material change. Materiality, however, must be directed to the crime prevention objective, which would be the case, for instance, if the police wished to present evidence relating to the development of a drugs problem at the premises in question since the licence was last renewed. The licensing authority may refuse to convert the licence in such a case if it is necessary to do so for the promotion of the crime prevention objective, but it can only refuse to convert on this ground (Guidance, para 13.20).

13.2.10 Applications must be determined within two months of receipt or the application will be deemed to be granted. This is provided that the applicant has not ceased to be the holder of the existing licence(s) at the time of determination of the application or at the end of the two month period (whichever is applicable). In cases where application is made not by the licence holder, but by another person with the holder’s consent (under para 2(3)(b)), the application of that person must similarly be determined within two months of receipt or the application will be deemed to be granted. Paragraph 4(4)–(6) provides:

(4) If the relevant licensing authority fails to determine the application within the period of two months beginning with the day on which it received it, then, subject to sub-paragraph (5), the application is to be treated as granted by the authority under this paragraph.

(5) An application must not be granted (and is not to be treated as granted under sub-paragraph (4))–

(a) if the relevant existing licence has or, if there is more than one, all the relevant existing licences have ceased to be held by the applicant before the relevant time, or

(b) where there is more than one relevant existing licence (but paragraph (a) does not apply), to the extent that the application relates to an existing licence which has ceased to be held by the applicant before the relevant time.

(6) For the purposes of sub-paragraph (5)–

(a) where, for the purposes of paragraph 2(3)(b) a person has consented to an application being made in respect of a relevant existing licence, sub-paragraph (5)(a) and (b) applies in relation to that licence as if the reference to the applicant were a reference to–

(i) that person, or

(ii) any other person to whom the existing licence has been transferred and who has given his consent for the purposes of this paragraph, and

(b) “the relevant time” is the time of the determination of the application or, in a case within sub-paragraph (4), the end of the period mentioned in that sub-paragraph.

Instances of where an applicant may have ceased to be the holder of an existing licence could include where the licence has been revoked or (in the case of a justices’ licence) declared forfeit in criminal proceedings. Here the application must not be granted or

38 See 13.2.3 above.

39 Quaere whether this will be the case if the licence is held in joint names and is revoked due to the actions of one party, but, before revocation, an application for transfer into the sole name of the other party has been made. Such a course of action in these circumstances was advocated in Buchanan v Gresswell [1995] COD 355, where it was held that partial revocation was not possible – see 6.2.5 above.
treated as granted. This will also be the case where, since making the application, the applicant has died or the (existing) licence has been transferred from the applicant into the name of another person. In these circumstances, it would seem that a new application for a premises licence is required. In the event of a proposed transfer of a licence into the name of another person, it is therefore important to ensure that no transfer takes place prior to the conversion of an existing licence, otherwise the opportunity for conversion is lost and a new application has to be made.

13.2.11 Notification of determination and issue of new licence

Where an application to convert an existing licence or licences is granted, in whole or in part, the licensing authority must forthwith give the applicant a notice to that effect, with a copy to the police, and issue the applicant with a new licence (a premises licence) and a summary of it. If the authority rejects the application, it must similarly forthwith give a notice to that effect to the applicant, with a copy to the police, stating the reasons for its decision. Paragraph 5(1)–(3) provides:

(1) Where an application is granted (in whole or in part) under paragraph 4, the relevant licensing authority must forthwith–
   (a) give the applicant a notice to that effect, and
   (b) issue the applicant with–
      (i) a licence in respect of the premises (a “new licence”) in accordance with paragraph 6, and
      (ii) a summary of the new licence.

(2) Where an application is rejected (in whole or in part) under paragraph 4, the relevant licensing authority must forthwith give the applicant a notice to that effect stating the authority’s reasons for its decision to reject the application.

(3) The relevant licensing authority must give a copy of any notice it gives under sub-paragraph (1) or (2) to the chief officer of police for the police area (or each police area) in which the premises to which the notice relates are situated.

13.3 THE NEW PREMISES LICENCE

13.3.1 Scope and effect

The new licence authorises the premises in question to be used for the existing licensable activities under the existing licence or licences where conversion applications have been granted in respect of those licences, but not where they have been rejected. The new licence is to be treated as if it were a premises licence and mandatory conditions (see ss 19–21 and 6.4.2–6.4.5 above) will apply in respect of it. However, it will in effect be a dummy licence lying dormant until it is brought into force on the second appointed day, with the result that existing licences will continue in force throughout the transitional period. Paragraph 6(1)–(5) provides:

40 For the meaning of ‘forthwith’, see 6.6.2 above.
41 Paragraph 6(7) provides: ‘Where the new licence authorises the supply of alcohol, the new licence must designate the person named in the application under paragraph 2(4)(b) as the premises supervisor.’
(1) This paragraph applies where a new licence is granted under paragraph 4 in respect of one or more existing licences.

(2) Where an application under paragraph 2 is granted in part only, any relevant existing licence in respect of which the application was rejected is to be disregarded for the purposes of the following provisions of this paragraph.

(3) The new licence is to be treated as if it were a premises licence (see section 11), and sections 19, 20 and 21 (mandatory conditions for premises licences) apply in relation to it accordingly.

(4) The new licence takes effect on the second appointed day.

(5) The new licence must authorise the premises in question to be used for the existing licensable activities under the relevant existing licence or, if there is more than one relevant existing licence, the relevant existing licences.

Whilst it is clear from para 6(3) that the new licence is to be treated as if it were a premises licence, with mandatory conditions applying in relation to it, it is less clear whether other provisions in the 2003 Act relating to premises licences will have application in respect of the new licence. In cases where provisions have been brought into force on the first appointed day (on which, see, in particular, the Licensing Act 2003 (Commencement No 5) Order 2004, SI 2004/2360) it might be assumed that they do. These include, for example, s 37, so a premises licence holder can make application to vary the licence so as to specify the individual named as the designated premises supervisor. However, other provisions have not been brought into force on the first appointed day (7 February 2005), for example, s 42, under which any person may apply to the licensing authority for a transfer of a premises licence to him and s 27(1)(a), under which a premises licence lapses if the premises licence holder dies (see 6.7.2–6.7.3 above). It is uncertain in these instances whether a transfer application might be made by a person before the new licence takes effect on the second appointed day or whether the new licence would lapse if death were to occur before it takes effect on the second appointed day.42 As these provisions have not been brought into force on the first appointed day, it may be that they do not have application, in which case it may be necessary for an application for a new licence to be made in the above instances. However, para 6(3) provides that the new licence is to be ‘treated as if it were a premises licence’, so it is not impossible that these other provisions could be regarded as having application. Since little would seem to be achieved by requiring a new application and, given that licensing authorities are not likely to be short of applications to deal with without finding any more for them, the better view might be to regard the other provisions as having application.

13.3.2 Conditions on new licence

13.3.3 All of the conditions attached to the existing licence or licences, and this includes both standard conditions and any special conditions, must be attached to the new licence. The new licence thus replicates the terms under which an applicant was

42 See 6.7.3–6.7.4 above. Quaere whether, if the licence were to lapse, it might be reinstated by the giving of an interim authority notice under s 47 or by a transfer application having immediate effect under s 50. These provisions are obviously designed to ensure continuity of the business, which will not be necessary where the new licence has not yet taken effect and where the business can continue to trade under the authority of the existing licence. However, there would seem to be no reason in principle why a dummy licence, if it were to lapse, should not be reinstated through use of these provisions.
operating prior to obtaining it. When it comes to attaching the conditions, there is
some measure of discretion available to the authority, for it is required to ‘reproduce
the effect’ of the conditions rather than simply transfer them verbatim to the new
licence. This enables duplication to be avoided, for existing licences may contain
similar conditions and clearly the new licence should have only one condition
covering any particular matter. Since all the conditions are attached to the new licence,
not only will these include ones that regulate the use of the premises, but also ones that
impose a restriction on the use of the premises for any licensable activity under an
existing licence. Thus for on-licences granted under Pt IV of the Licensing Act 1964 –
restaurant or residential or combined (restaurant and residential) licences – there may
be a number of restricting conditions. For restaurant licences, these include use of the
premises for the purpose of habitually providing the customary main meal at midday
or in the evening and alcohol being sold or supplied only to persons taking table meals
and for consumption by them as an ancillary to the meal (s 94(1)). For residential
licences, these include use of the premises for the purpose of habitually providing for
reward board and lodging, including breakfast and one other at least of the customary
main meals, and alcohol being sold or supplied on the premises only to persons
residing there or their guests (s 94(2)). For combined licences, these include all of the
above conditions (s 94(3)). Similarly, conditions attached to public entertainment
licences might regulate the hours at which such entertainment may take place. All of
these conditions, which act as restrictions, continue to apply.43 Paragraph 6(6)
provides:

Subject to sections 19, 20 and 21 and the remaining provisions of this paragraph, the
new licence must be granted subject to such conditions as reproduce the effect of–

(a) the conditions subject to which the relevant existing licence has effect at the time
the application is granted, or

(b) if there is more than one relevant existing licence, all the conditions subject to
which those licences have effect at that time.

13.3.4 It is not only conditions on existing licences that are attached to the new
licence, but also any restrictions imposed on the use of the premises for the existing
licensable activities under the existing licence(s). The purpose of this provision is to
carry forward into the new licence any ‘embedded restrictions’ that apply in respect of
the existing licence(s). Specific mention is made of children’s certificates and all
embedded restrictions must be reproduced as conditions, where the restrictions are
contained in any enactment specified by the Secretary of State. Paragraph 6(8) and (9)
provides:

(8) The new licence must also be granted subject to conditions which reproduce the
effect of any restriction imposed on the use of the premises for the existing
licensable activities under the relevant existing licence or licences by any
enactment specified for the purposes of this Part.

(9) In determining those restrictions, the relevant licensing authority must have
regard to any children’s certificate which accompanied (or a certified copy of
which accompanied) the application and which remains in force.

The Secretary of State has specified four enactments for the purposes of para 6(8). Under
Art 4 of the LA 2003 (TP) Order 2005, these are the Children and Young Persons

43 This is, however, subject to an application for variation of the new licence – see 13.3.6–13.3.8
below.
Act 1933, the Cinematograph (Safety) Regulations 1955, the Licensing Act 1964 and the Sporting Events (Control of Alcohol Etc) Act 1985. The 1933 Act and the 1955 Regulations both contain provisions designed to promote safety, the former concerning safety for entertainments at which large numbers of children are present, and the latter concerning public safety in cinemas, and under para 6(8) conditions must be attached to the licence which reproduce the effect of these provisions. The Sporting Events (Control of Alcohol Etc) Act 1985 makes provision for regulating the sale or supply of alcohol where premises have a justices’ licence or are registered club premises and are situated within the area of a designated sports ground. Under s 3, the permitted hours during which alcohol may be sold or supplied in the premises generally must not include any part of the period of any designated sporting event taking place at the ground, nor during the event can alcohol be supplied for consumption off the premises, although provision is made for sale or supply to take place during the event under and in accordance with a magistrates’ court order. Again, under para 6(8) conditions, which reproduce the effect of these provisions, must be attached to the premises licence.

The largest number of restrictions are contained in the Licensing Act 1964 and these are perhaps most likely to arise in respect of permitted hours at which the sale of alcohol can take place, although they may not be confined to such cases. Thus, where premises sell alcohol and have a Children’s Certificate under s 168A, the mandatory condition specified in para 4(1) of Sched 12A that meals and beverages other than alcohol are to be available for consumption in the area to which the Certificate relates at all times when it is operational might be a restriction imposed on the use of the premises and require reproduction as a condition on the new licence. This seems to be the effect of para 6(9) requiring the Certificate to be taken into account when determining restrictions. Similarly, the prohibition in s 168 on children under 14 being in the bar of licensed premises during permitted hours may be a restriction requiring reproduction as a condition. This appears to be envisaged by para 13.7 of the Guidance, which provides:

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.

Restrictions concerning permitted hours might relate to the normal permitted hours under Pt III of the Licensing Act 1964 or extensions or restrictions to those hours. The normal permitted hours for the sale or supply of alcohol in licensed premises are not attached as conditions to existing justices’ licences, but they are a restriction imposed by the 1964 Act on the times at which the licensable activity of sale or supply of alcohol

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Section 12(1) of the 1933 Act provides:

Where there is provided in any building an entertainment for children, or an entertainment at which the majority of the persons attending are children, then, if the number of children attending the entertainment exceeds one hundred, it shall be the duty of the person providing the entertainment to station and keep stationed wherever necessary a sufficient number of adult attendants, properly instructed as to their duties, to prevent more children or other persons being admitted to the building, or to any part thereof, than the building or part can properly accommodate, and to control the movement of the children and other persons admitted while entering and leaving the building or any part thereof, and to take all other reasonable precautions for the safety of the children.
can take place on the premises. Under para 6(8), therefore, they must be reproduced as a condition.

This would similarly seem to be the case with extensions in hours – ‘supper hour’ certificates under s 68, extended hours’ orders under s 70 and special hours certificates under s 77 of the 1964 Act – which extend the permitted hours beyond the normal 11.00 pm closing time. These extensions required the sale of alcohol to be ancillary to other activities, that is the provision of ‘substantial refreshment’ (s 68), ‘substantial refreshment’ and musical or other entertainment (s 70), or ‘substantial refreshment’ and gaming facilities in the case of casino premises or music and dancing in the case of any other premises (s 77). Since these are restrictions on the licensable activity of the sale of alcohol under the existing justices’ licence, they should be reproduced as conditions on conversion of the licence to a premises licence.45 This should also be the case with restrictions on hours under s 67A of the 1964 Act, which provided for restriction orders to restrict the permitted hours to avoid or reduce disturbance or annoyance or disorderly conduct. Extensions and restrictions to hours, unlike the normal permitted hours, did not have general application and their grant was dependent upon the exercise of judicial discretion. Nevertheless, these should still be regarded as ‘imposed … by any enactment’ for the purposes of para 6(8). Although not literally imposed by the 1964 Act, they are imposed by virtue of the 1964 Act, through judicial discretion. It is submitted that the legislative purpose must have been to include such restrictions and the provision in para 6(8) should be interpreted accordingly. Further, extensions or restrictions to hours should be included and reproduced as conditions on conversion of the licence where, although not in existence on the first appointed day, they have been obtained after that date. The new licence is reproducing the effect of restrictions imposed under the relevant existing licence and the extensions or restrictions to hours, provided they are in existence at the time the conversion application is granted, are such restrictions.

It seems, however, that undertakings given to justices on the grant of an off-licence (because there was no power to impose conditions on such licences in the 1964 Act), although they may be a restriction on the use of the premises, are not to be attached to the new licence under para 6(8). This is because undertakings are not a restriction on the existing licensable activity under the licence ‘by any enactment’. There is no statutory authority for the practice of requiring undertakings from those seeking the grant of an off-licence and these cannot be enforced, although the courts have recognised that a failure to adhere to undertakings given might be a relevant consideration when deciding whether to renew the licence.46 As para 13.14 of the Guidance states:

... such undertakings are without legal force and lack any statutory support. They are in effect non-binding personal assurances. As such, it would be wholly inappropriate

45 Quaere whether other requirements will also need to be reproduced as conditions, eg, the need for provision every week, subject to any break for a period or periods not exceeding two weeks in any 12 successive months, of the entertainment under an extended hours order (see s 70(4)) or of the gaming facilities or music and dancing under a special hours certificate (see s 83(2)).

46 See R v Windsor Licensing Justices ex p Hodes [1983] 2 All ER 551, 563, where Dunn LJ stated: ‘Justices have a wide discretion whether or not to renew such a licence [ie an off-licence], and the practice of requiring undertakings limiting the terms on which the licence will be renewed is a well-established and convenient one, so long as it is understood that such undertakings are not legally enforceable, and the only sanction available to the justices if they are broken is not to renew the licence when application is made for its further renewal.’
for the effect of transition to be to give legal force to such an assurance or undertaking where no such force existed before …

Whilst conditions will reproduce restrictions on hours for the sale of alcohol, the position is less clear in respect of the period of ‘drinking up’ time, specified in s 63(1) of the Licensing Act 1964, for the consumption of alcohol on licensed premises after the end of permitted hours. Section 63(1) provides an exception, in respect of the ‘drinking up’ time period, from the prohibition in s 59 on consumption of alcohol on licensed premises except during the permitted hours. It will depend on whether this is regarded as ‘a restriction imposed on the use of the premises for the existing licensable activities under the relevant existing licence’ under para 6(8). If it is, conditions must be attached that reproduce the effect of it, but, if not, no such restriction need be imposed. The outcome may depend on whether para 6(8) is interpreted closely in accordance with its wording or whether it is given a broad, purposive approach. The term ‘existing licensable activities’ is defined in para 1(1), which provides:

“existing licensable activities” under an existing licence, are–
(a) the licensable activities authorised by the licence, and
(b) any other licensable activities which may be carried on, at the premises in respect of which the licence has effect, by virtue of the existence of the licence (see subparagraph (2)) …

The licensable activity authorised by a justices’ licence is the retail sale or supply (sale) of intoxicating liquor (alcohol), for s 1(1) of the Licensing Act 1964 provides that “justices’ licence” means a licence under this Part of this Act authorising … the sale by retail of intoxicating liquor (and also, in the case of a licence granted to a club for club premises, for its supply to or to the order of members otherwise than by way of sale). Section 59 contains a prohibition on both the sale and consumption of alcohol except within permitted hours. The prohibition on sale is clearly a restriction imposed on the use of the premises for the existing licensable activity of sale under s 1(1), but the prohibition in s 59 on consumption except within permitted hours, and the exception from the prohibition in respect of the ‘drinking up’ time period, may not be. The ‘drinking up’ time period relates to consumption, not sale, and this is not a licensable activity authorised by the justices’ licence. Authorisation for consumption during the ‘drinking up’ period is provided by s 63(1) by way of an exception to the prohibition in s 59 on consumption except during permitted hours. It is not provided by the licence itself and may therefore, under para 1(1)(a), not be a licensable activity authorised by the licence. Nor may consumption during the ‘drinking up’ period be said to be another licensable activity that may be carried on by virtue of the existence of the licence under para 1(1)(b). It may be therefore that no condition should be attached reproducing the effect of the ‘drinking up’ time period.

47 Section 63(1) provides:

Where any intoxicating liquor is supplied in any premises during the permitted hours, section 59 of this Act does not prohibit or restrict–
(a) during the first twenty minutes after the end of any period forming part of those hours, the consumption of the liquor on the premises, nor, unless the liquor was supplied or is taken away in an open vessel, the taking of the liquor from the premises;
(b) during the first half hour after the end of such a period, the consumption of the liquor on the premises by persons taking meals there, if the liquor was supplied for consumption as an ancillary to their meals.
However, an alternative view might be advanced if para 6(8) is given a broad, purposive interpretation. The view might be taken that Parliament’s intention was for restrictions to be reproduced as conditions on the licence where they are connected with or relate in a general sense to the licensable activity of sale. The restriction on children under the age of 14 being in the bar of licensed premises during permitted hours is not concerned directly with the licensable activity of sale, although para 13.7 of the Guidance envisages this being reproduced as a condition on the licence (see above). If this is an ‘embedded restriction’, its basis must be its connection with the licensable activity of sale, and consumption may be seen as similarly connected. The circumstances under which authorised sales under the justices’ licence take place encompass consumption and, on this view, sale and consumption can be regarded as integrally linked with, or an integral part of, the licensable activity of sale. The restriction on consumption, and the ‘drinking up’ period within which consumption might take place, might thus be seen as a restriction imposed on the use of the premises for the licensable activity authorised by the licence. On this view, ‘drinking up’ time needs to be reproduced as a restriction on a conversion application.

Either interpretation is possible and it is a question of what, as a matter of policy, would be the best approach for the law to adopt; but this question admits of no easy answer, for the policy considerations are finely balanced. If para 6(8) is given a broad, purposive interpretation, ‘drinking up’ time may need to be reproduced as a condition and an application for variation made to remove it. From a pragmatic point of view, this might be considered undesirable since it might increase the number of variation applications. This could be avoided if para 6(8) is closely interpreted in accordance with its wording, but such an interpretation might preclude other restrictions from being reproduced as conditions, such as children under the age of 14 being in the bar of licensed premises during permitted hours when there is some indication in the Guidance that this restriction should be reproduced (see above). Insofar as this statement in the Guidance provides an indication of Parliamentary intent, it might support the reproduction of ‘drinking up’ time as a condition. However, this is advanced as no more than a tentative view of the law, and it is hard to say that there is a better view on the matter of how para 6(8) should be interpreted.

13.3.5 Where conditions are attached to existing licences, they might in some cases restrict the duration of the licence, for example under s 64 of the Licensing Act 1964, a justices’ on-licence, known as a seasonal licence, could be granted with a condition that there shall be no permitted hours in the premises during such part or parts of the year as specified in the condition. It seems, however, that such a condition is not to be attached to the new licence as a matter of course along with other conditions. Rather it is to be attached only if the application for the new licence includes a request that it shall have effect for a limited period. Paragraph 6(10) and (11) provides:

(10) Nothing in sub-paragraph (6) or (8) requires the new licence to be granted for a limited period.

48 For variation, see 13.3.6–13.3.8 below. Quaere whether there will be any period within which alcohol will have to be consumed if the ‘drinking up’ period is not reproduced as a condition on the licence. It would seem not and, provided a ‘sale’ (of any number of drinks) takes place within the permitted hours (reproduced as a condition on the licence), consumption may continue thereafter without restriction.
(11) But, where the application under paragraph 2 includes a request for the new licence to have effect for a limited period, the new licence is to be granted subject to that condition.

13.3.6 Variation of new licence

13.3.7 Applications for conversion of existing licences may be accompanied by an application to vary the new licence (from its inception), either in respect of the person who is to be the DPS or in any other way. Paragraph 7(1) provides:

A person who makes an application under paragraph 2 may (notwithstanding that no licence has yet been granted in consequence of that application) at the same time apply—

(a) under section 37 for any licence so granted to be varied so as to specify the individual named in the application as the premises supervisor, or

(b) under section 34 for any other variation of any such licence, and for the purposes of an application within paragraph (a) or (b) the applicant is to be treated as the holder of that licence.

Applications for other variations than the DPS might include the extension of opening hours beyond those currently permitted by the existing licence – this is likely to be a commonly sought variation – and the provision of regulated entertainment where this is currently carried on without a licence under the exemption in s 182 of the Licensing Act 1964 (see 13.2.5 above). Applications might also include removal of certain conditions on existing licences that are to be attached to the new licence under para 6(6), where these conditions are no longer valid because they do not promote the licensing objectives (see 7.2.1 above), and any ‘embedded restrictions’ imposed on the use of the premises for the existing licensable activities under the existing licence(s), such as children under the age of 14 being in the bar area of the premises (see 13.3.4 above). Since applications for variation are under s 37 (DPS) or s 34 (other variations), the requirements of these sections need to be complied with. This means, in the case of applications for variation of the DPS under s 37, that notice needs to be given to the police and, in the case of applications for other variations under s 34, that applications must be advertised, notice given to responsible authorities and representations received within a prescribed period.49

Paragraph 7(1) makes provision for a person to apply for a variation ‘at the same time’ as an application is made for a conversion of the existing licence and Art 2(2) and Pt A of Sched 1 to the LA 2003 (TP) Order 2005 incorporates the form of such applications. Where a variation application is made at the same time, in general no fee is payable in respect of the application (see 6.3.1 above) and only a fee for the conversion application is required. However, if the variation relates in any way to, or to any extent to, the supply of alcohol for consumption on the premises, then a

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49 See ss 37(4) and 34(5) and 6.9.9 and 6.9.2 above. Section 34(5) applies to variation applications the provision in s 17(5) for grants of premises licences that the Secretary of State must make regulations for the advertising of applications, the giving of notice to responsible authorities and the making of representations within a prescribed period. For the regulations made under this provision, see LA 2003 (PL and CPC) Regs 2005 and 2.4.2 above. Advertisement is not needed in the case of variation of the DPS under s 37 and notice needs to be given only to the police (and not the other responsible authorities), since only the police can object to the variation on the ground that it is necessary to promote the crime prevention objective – see 6.9.9 above.
variation fee at a reduced level from that which normally applies (see 6.3.1 above) is payable. This reduced fee, as with the conversion application fee (see 13.2.6 above), is based on the band to which the premises are allocated according to their non-domestic rateable value. Under reg 4(6) and Sched 4 to the Licensing Act 2003 (Fees) Regulations 2005, SI 2005/79, the reduced variation fee is £20 for Band A, £60 for Band B, £80 for Band C, £100 for Band D and £120 for Band E. Further, if the variation sought is to authorise licensable activities on the premises for 5,000 or more persons an additional fee is payable based on the maximum number of persons that the applicant proposes should be allowed on the premises (see 6.3.1 above). This is payable in addition to the conversion application fee.

Whilst this seems to encourage application to be made at the same time, with inclusion on the form of a Pt B for variation (see 13.1.3 above), there is no reason why an application for variation of the new premises licence could not be made at a later date. However, if variation is sought at a later date a fee for that variation is payable in addition to the fee for conversion, so it might be anticipated that most, if not all, variation applications will be made at the same time as the conversion application.

13.3.8 Where a variation application is made at the same time as a conversion application, the variation application can be determined by the licensing authority once the application for conversion of the existing licence(s) has been granted and a failure to determine the application within two months of receipt will be a deemed refusal. Paragraph 7(2) and (3) provides:

(2) In relation to an application within sub-paragraph (1)(a) or (b), the relevant licensing authority may discharge its functions under section 35 or 39 only if, and when, the application under paragraph 2 has been granted.

(3) Where an application within sub-paragraph (1)(a) or (b) is not determined by the relevant licensing authority within the period of two months beginning with the day the application was received by the authority, it is to be treated as having been rejected by the authority under section 35 or 39 (as the case may be) at the end of that period.

Since determination is in accordance with s 35 (other variations) or s 39 (DPS), this will mean that a hearing needs to be held by the licensing authority where representations have been received from interested parties or responsible authorities or notice given by the police. The two month period begins to run from receipt of the application, but there is a prescribed period of 28 consecutive days, under reg 22(b) of the LA 2003 (PL and CPC) Regs 2005, within which representations can be received before the application can be considered. Further, under reg 6(4) of the Licensing Act 2003 (Hearings) Regulations 2005, a period of 10 working days’ notice of the hearing has to be given to parties to the hearing. This leaves authorities only a short period of time in which to hold a hearing to determine the contested application. A failure to determine within the two month period will be a deemed refusal under para 7(3), with the consequence of a possible appeal being made to the magistrates’ court or a possible re-submission of the application in the hope that it will be determined within the following two month period.
13.4 EXISTING LICENCE REVOKED AFTER GRANT OF NEW PREMISES LICENCE

13.4.1 If an existing licence is revoked after it has been converted to a new premises licence, but before the new licence comes into effect on the second appointed day, the new licence either lapses or must be amended by the licensing authority to remove from it any provision included in it by virtue of the existing licence.\(^{50}\) The former situation might arise if, for example, a new premises licence provided for the sale of alcohol for consumption off the premises and the existing justices’ off-licence for the premises were revoked. In this case, the new licence would lapse. The latter situation might arise if, for example, a new premises licence for a public house provided for the sale of alcohol and the provision of regulated entertainment in the form of music and dancing and the existing public entertainment licence for the premises were revoked. In this case, the new licence would need to be amended so that the licensable activities no longer included the provision of regulated entertainment and were confined to the sale of alcohol.\(^{51}\)

Paragraph 8(1)–(4) provides:

1. This paragraph applies where the relevant licensing authority grants a new licence under this Part in respect of one or more existing licences.

2. If sub-paragraph (4) applies to the existing licence (or each of the existing licences) which the new licence succeeds, the new licence lapses.

3. If–
   (a) where the new licence relates to more than one relevant existing licence, sub-paragraph (4) applies to one or more, but not all, of those licences, or
   (b) sub-paragraph (4) applies to a children’s certificate in respect of the premises, the licensing authority must amend the new licence so as to remove from it any provision which would not have been included in it but for the existence of any existing licence or certificate to which sub-paragraph (4) applies.

4. This sub-paragraph applies to an existing licence or children’s certificate if–
   (a) it is revoked before the second appointed day, or
   (b) where an appeal against a decision to revoke it is pending immediately before that day, the appeal is dismissed or abandoned.

The rationale for this seems to be that conversion is, in essence, a continuation of the right to operate under the existing licence(s) and, if that right is lost because of revocation of the existing licence(s), there is no justification for continuing that right under the premises licence when it comes into effect. Less clear is the position where there is a failure to renew an existing licence after conversion to a new premises licence, but before this has effect on the second appointed day and the licensing authority then refuses to renew the existing licence in the interim period. In principle, the position is no different from the case where an existing licence is revoked and in

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50 This is also the case where a decision to revoke has been made before the second appointed day, with an appeal pending, where the appeal is subsequently dismissed or abandoned – see para 8(4)(b) below.

51 Amendment will similarly be required where there is revocation before the second appointed day (or a decision to revoke which is subsequently upheld on appeal) of a Children’s Certificate for premises licensed for the sale of alcohol – see paras 8(3)(b) and 8(4)(b) and below.
this instance the rationale seems to have equal application. In both instances the existing licence ceases to have effect in the period before the second appointed day. However, no provision is made by para 8 (or elsewhere in the 2003 Act) for the new premises licence to lapse where the existing licence has not been renewed and, in the absence of any such provision, it must be assumed that the premises licence will continue to exist. This will produce the odd situation that, up until the second appointed day (from the date of non-renewal of the existing licence) licensable activities cannot take place, but can do so thereafter under the new premises licence.

Further, para 8 makes no provision for cases where terms and conditions of existing licences are modified during this period. Accordingly, it seems that conditions attached to the existing licence at the time of conversion must be attached to the new premises licence, even though one or more of these conditions might subsequently be modified on appeal prior to the new licence coming into effect on the second appointed day. If, for instance, the terminal hour for the provision of music and dancing under a public entertainment licence is 2.00 am at the time of conversion of the licence, but an appeal is pending and an earlier terminal hour of 12.00 am is specified following the hearing of the appeal, this earlier terminal hour will have effect whilst the public entertainment licence remains in force until the second appointed day. However, on the second appointed day, when the new premises licence takes effect, the terminal hour condition becomes 2.00 am, which was the terminal hour at the time of conversion. An earlier terminal hour cannot be specified on conversion and, if this was felt to be necessary in respect of the operation of the premises, it would have to be effected by means of a review of the premises licence once it came into effect on the second appointed day.

13.4.2 Where an amendment is made to a new licence following revocation of an existing one, the licensing authority must give notice of the amendment to the holder of the new licence and a copy to the police. Paragraph 8(5) and (6) provides:

(5) Any amendment under sub-paragraph (3) takes effect when it is notified to the holder of the new licence by the relevant licensing authority.

(6) The relevant licensing authority must give a copy of any notice under subparagraph (5) to the chief officer of police for the police area (or each police area) in which the premises to which the new licence relates are situated.

13.5 APPEALS

13.5.1 Paragraph 9 makes provision for appeal by the applicant where an application for conversion has been rejected, in full or in part, or where an application has been granted subject to conditions. Provision is also made for appeal by the police where an application is granted despite a notice of objection being given by the police and for appeal by the licence holder where a new licence has been amended following revocation of an existing licence before the second appointed day. Paragraph 9(1)–(3) provides:

(1) Where an application under paragraph 2 is rejected (in whole or in part) by the relevant licensing authority, the applicant may appeal against that decision.

(2) Where a licensing authority grants such an application (in whole or in part), any chief officer of police who gave a notice in relation to it under paragraph 3(2) or (3) (that was not withdrawn) may appeal against that decision.
(3) Where a licence is amended under paragraph 8, the holder of the licence may appeal against that decision.

13.5.2 The provisions for appeals in respect of premises licences, contained in Sched 5 to the 2003 Act, have application to the above appeals (see 12.3.1 above). Paragraph 9(4) and (5) provides:

(4) Section 181 and paragraph 9(1) and (2) of Schedule 5 (general provision about appeals against decisions under Part 3 of this Act) apply in relation to appeals under this paragraph as they apply in relation to appeals under Part 1 of that Schedule.

(5) Paragraph 9(3) of that Schedule applies in relation to an appeal under subparagraph (2).

Thus, appeal is to the magistrates’ court for the area in which the licensing authority (or any part of it) is situated and appeal is commenced by giving of a notice of appeal 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 appealed against.52

In cases where an application for variation has been rejected, in full or in part, no provision is made by para 9 for appeal, but the appeal provisions in Sched 5 have application in these cases. This is because variation applications are made under s 34 and s 37 (see 13.3.7 above), and determinations under s 35 and 39, and Sched 5 provides for rights of appeal in respect of determinations under those sections.53 Thus, rights of appeal are available both to the applicant, in cases where the application is rejected, and to persons who made relevant representations, in cases where the application is granted.

13.6 FALSE STATEMENTS RELATING TO APPLICATIONS

Paragraph 10 makes it an offence knowingly or recklessly to make a false statement in, or in connection with, an application to convert an existing licence. This offence is comparable to that in s 158, of making such statements in, or in connection with, applications generally under the 2003 Act. (For details of this offence, see 11.10 above.) Paragraph 10 provides:

(1) A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with an application under paragraph 2.

(2) For the purposes of sub-paragraph (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

52 Schedule 5, para 9(1) and (2); and see 12.3.1 above. Where a favourable decision has been made in favour of the licence applicant and the police appeal under Sched 8, para 9(2), the licence holder will be a respondent to the appeal as well as the licensing authority: Sched 5, para 9(3).

53 See Sched 5, paras 1(b)(c), 4 and 5.
13.7 NEW GRANTS OF PREMISES LICENCES AND OPENING HOURS

13.7.1 Paragraph 11 makes provision for cases where a holder of a justices’ licence applies for the new grant of a premises licence to include the sale of alcohol. The holder of such a licence may well apply for a conversion of his existing licence if he holds the licence on the first appointed day (although he need not do so and could apply for a new premises licence), but, if the existing licence is granted to him after that day, it is necessary for him to apply for a new licence. Where application is made for a new licence, para 11(2) states that the authority may not grant the application with a condition preventing the sale of alcohol ‘during the permitted hours’, and this effectively prevents any reduction in existing opening hours. This is unless there has been a material change in circumstances since the licence was granted or last renewed and the police have made ‘relevant representations’ in relation to the crime prevention objective. Paragraph 11 provides:

(1) This paragraph applies where—
   (a) within such period (of not less than six months) as may be specified, the holder of a justices’ licence for any premises applies, in accordance with Part 3 of this Act, for the grant of a premises licence in respect of those premises, and
   (b) the licence, if granted in the form applied for, would authorise the sale by retail of alcohol.

(2) In determining the application for the premises licence under section 18, the relevant licensing authority may not, by virtue of subsection (3)(b) of that section, grant the licence subject to conditions which prevent the sale of alcohol on the premises during the permitted hours.

(3) But sub-paragraph (2) does not apply where—
   (a) there has been a material change in circumstances since the relevant time, and
   (b) the relevant representations made in respect of the application include representations made by the chief officer of police for the police area (or any police area) in which the premises are situated advocating that, for the purposes of promoting the crime prevention objective, the premises licence ought to authorise the sale of alcohol during more restricted hours than the permitted hours.

(4) In this paragraph—
   “permitted hours” means the permitted hours during which the holder of the justices’ licence is permitted to sell alcohol on the premises under Part 3 of the 1964 Act;
   “relevant representations” has the meaning given in section 18(6); and
   “relevant time” means the time when the justices’ licence was granted or, if it has been renewed, the last time it was renewed.

Under Art 5 of the LA 2003 (TP) Order 2005, this protection for permitted hours lasts for the whole of the transition period, extending from 7 February 2005, which is the first appointed day, until the second appointed day.

13.7.2 The holder of the justices’ licence who is applying for a new premises licence may well be seeking longer hours than the permitted hours, but, in the event that these longer hours are not granted (or are not sought), the authority, in order to comply with para 11(2), will presumably attach to the licence a condition to the effect that the
permitted hours will operate in respect of the new grant. The ‘permitted hours’ are, by para 11(4), ‘the permitted hours during which the holder of the justices’ licence is permitted to sell alcohol on the premises under Part 3 of the 1964 [Licensing] Act’. Since reference is to the permitted hours that the holder of the justices’ licence can sell alcohol, the permitted hours are those that apply to the particular holder of the justices’ licence rather than the permitted hours that apply generally to a holder of a justices’ licence. These might, but not necessarily will, be the normal permitted hours of 11.00 am to 11.00 pm, if the licence is an on-licence, or 8.00 am to 11.00 pm, if the licence is an off-licence. If, the holder of the justices’ licence has an on-licence with a special hours certificate (SHC) in respect of the premises, granted under s 77 of the Licensing Act 1964, the permitted hours will be those that operate under the SHC.

Where a SHC has been granted, the hours under the SHC replace the normal permitted hours and become the permitted hours. Where, however, the holder of an on-licence has an extension in hours under a ‘supper hour’ (or ‘restaurant’) certificate by virtue s 68 of the Licensing Act or an extended hours order under s 70 of that Act, these extensions are added to the permitted hours. They ‘bolt on’ to the permitted hours, do not form part of them and do not replace the normal permitted hours.

Paragraph 11(2) would therefore not seem to prevent the grant of a licence subject to a condition precluding the sale of alcohol during the extension of hours’ period since this would not be preventing sale during permitted hours.

13.7.3 It is uncertain whether para 11(2) precludes a licensing authority from granting a new licence with a condition making provision for ‘drinking up’ time to have application after the end of permitted hours. Paragraph 11(2) provides only that conditions cannot prevent the ‘sale’ of alcohol on the premises during the permitted hours and no mention is made as to consumption after the end of those hours during ‘drinking up’ time. Arguably, therefore, a licensing authority is not precluded from granting a new licence with a condition making provision for ‘drinking up’ time after the end of permitted hours. On the other hand, a new premises licence will authorise ‘licensable activities’ under the 2003 Act, but these are confined in s 1(1) to the sale or

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54 These are the normal permitted hours during weekdays: s 60(1)(a) and (6) of the Licensing Act 1964. The permitted hours on Sundays are 12.00 pm to 10.30 pm for on-licences and 10.00 am to 10.30 pm for off-licences: s 60(1)(b) and (6).

55 SHCs can be obtained where there is a justices’ on-licence and substantial refreshment and gaming facilities in the case of casino premises or music and dancing in the case of any other premises are provided to which the sale of alcohol is ancillary. They may authorise the sale of alcohol up until 2.00 am (or 3.00 am in London).

56 A s 68 certificate adds one hour to the end of normal permitted hours where substantial refreshment is provided to which the sale of alcohol is ancillary, enabling alcohol to be served until midnight, and a s 70 order adds a further one hour where (live) musical or other entertainment is provided on premises with a s 68 certificate, enabling alcohol to be served until 1.00 am.

57 This is apparent from the wording of the provisions, s 68(1) stating that ‘there shall be added to the permitted hours … the hour following the general licensing hours’ and s 70 referring to the ‘time added’ by s 68(1) extending until 1.00 am.

58 The period of ‘drinking up’ under s 63(1) of the Licensing Act 1964 is a period after the end of permitted hours – see 13.3.4 above.
supply of alcohol and do not include its consumption. It may therefore be that it is not open to an authority to attach a condition relating to ‘drinking up’ time since conditions will need to relate to the licensable activities to fall within the scope of the Act.

13.8 NEW GRANTS OF PREMISES LICENCES AND EXISTING PROVISIONAL LICENCES

Paragraph 12 makes provision for cases where an application is made for a premises licence and a provisional grant of a justices’ licence is in existence under the Licensing Act 1964. Where the application is made during a specified period, which under Art 6 of the LA 2003 (TP) Order 2005 is the period extending from 7 February 2005 until a year after the second appointed day, the licensing authority is required to ‘have regard to’ the provisional grant when determining the premises licence application. This is provided the premises are substantially the same, the provisional grant has not been declared final and the premises have been completed substantially in accordance with the plans. Paragraph 12 provides:

(1) Where–
   (a) during such period as may be specified the relevant licensing authority receives an application in accordance with Part 3 of this Act for the grant of a premises licence in respect of any premises (“the relevant premises”),
   (b) under section 6 of the 1964 Act, a provisional grant of a justices’ licence has been made for–
      (i) the relevant premises or a part of them, or
      (ii) premises that are substantially the same as the relevant premises or a part of them, and
   (c) the conditions of sub-paragraph (2) are satisfied,

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.

(2) The conditions are–
   (a) that the provisional grant of the justices’ licence has not been declared final, and
   (b) that the premises to which the provisional grant 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 consented to under section 6(3) of that Act.

Where these circumstances prevail, it would seem very difficult for an authority not to grant the premises licence. The provisional grant would in all probability have been declared final in due course and a justices’ licence issued had an application not been necessary for a premises licence. Although the authority is required only to ‘have

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60 If the provisional grant is declared final during the specified period, the provisions of para 12 will not apply. If, therefore, the premises are going to become operational ahead of the second appointed day, it will be necessary to obtain a new premises licence before that date in order to continue trading on the second appointed day.
regard to the provisional grant, the instances where it might justifiably reject a premises licence application may be few and far between.61

However, it may be that the grant of the premises licence is not in the same terms as the provisional grant of the justices’ licence. If relevant representations are received, the licensing authority may impose restrictions on the premises licence (which were not on the provisional licence) if it feels these are necessary to promote the licensing objectives. Conversely, if there are no relevant representations or if any made are discounted by the licensing authority, there may be less restrictive hours under the premises licence than under the provisional licence.

**CLUB PREMISES CERTIFICATES**

Paragraphs 13–22 relate to conversion, variation and new applications for premises with existing club (registration) certificates and, in large measure, reflect the procedures for conversions, new grants and variations of premises licences which have been considered above.

### 13.9 CONVERSION OF EXISTING CLUB CERTIFICATES INTO CLUB PREMISES CERTIFICATES

#### 13.9.1 Persons entitled to make an application

Paragraph 14 provides that, where a club holds a club (registration) certificate on the first appointed day, ‘the club’ may apply within six months for the grant of a CPC to succeed its existing club certificate. It is not specified by whom the application must be made, but presumably this will be the club secretary. Paragraph 14(1) and (2) provides:

1. This paragraph applies where, in respect of any premises, a club holds an existing club certificate on the first appointed day.
2. The club may, within the period of six months beginning with the first appointed day, apply to the relevant licensing authority for the grant of a certificate under paragraph 16 to succeed the existing club certificate so far as it relates to those premises.

#### 13.9.2 Making an application

13.9.3 The application must specify the existing qualifying club activities and any other specified information, and needs to be accompanied by a fee and various

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61 Perhaps an instance might be where the provisional grant has been in existence for some time and there has been a material change in circumstances in the vicinity of the premises.
documents, including the existing certificate or a certified copy,\textsuperscript{62} a plan of the
premises and any other documents as specified. Paragraph 14(3)–(5) provides:

(3) An application under this Part must specify the existing qualifying club activities
and such other information as may be specified.

(4) The application must also be in the specified form and accompanied by–
(a) the relevant documents, and
(b) the specified fee.

(5) The relevant documents are–
(a) the relevant existing club certificate (or a certified copy of it),
(b) a plan in the specified form of the premises to which that certificate relates,
   and
(c) such other documents as may be specified.

Under para 13(1) the ‘existing qualifying club activities’ means ‘the qualifying club
activities authorised by the relevant existing club certificate in respect of those
premises’. The ‘qualifying club activities’ are set out, as follows, in s 1(2) of the 2003
Act:

(a) the supply of alcohol by or on behalf of a club to, or to the order of, a member of
   the club,
(b) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the
   club for consumption on the premises where the sale takes place, and
(c) the provision of regulated entertainment where that provision is by or on behalf of
   a club for members of the club or members of the club and their guests.

The ‘relevant existing club certificate’ is the club registration certificate granted under
Pt II of the Licensing Act 1964 and authorisation is provided under s 39 for supply of
alcohol to members and guests and, under s 49, if the rules of the club provide for the
admission of persons other than members and guests, sale of alcohol to such persons
for consumption by them on the premises (see 8.2.4 above). Since the existing
certificate authorises only supply and sale of alcohol and not provision of any
entertainment, it will be immediately apparent that entertainment is not included
within the ‘existing qualifying club activities’. It cannot be specified in the application
and an application to vary the CPC is needed if entertainment is to be provided (see
13.1.3).

The qualifying club activities includes, under s 1(2)(a) of the 2003 Act, the supply
of alcohol by a club to a member, which will include supply for consumption both on
and off the premises. However, under s 73(1), a CPC cannot authorise supply of
alcohol for consumption off the premises unless it also authorises supply for

\textsuperscript{62} Paragraph 14(6) provides:

\begin{itemize}
\item In this paragraph any reference to a certified copy of a document is a reference to a copy
   of that document certified to be a true copy–
\item (a) by the chief executive of the licensing justices for the licensing district in which the
   premises are situated,
\item (b) by a solicitor or notary, or
\item (c) by a person of a specified description.
\end{itemize}

A document purporting to be a certified copy is presumed to be a true copy. Paragraph
14(7) provides: ‘A document which purports to be a certified copy of an existing club
certificate is to be taken to be such a copy unless the contrary is shown.’
consumption on the premises and, further, under s 73(2), it can authorise consumption off the premises only if certain conditions are met (see 8.4.2 above). These conditions, under s 73(3)–(5), are that the club is open at the time for consumption of alcohol on the premises, the alcohol is supplied in a sealed container and the supply is to a member in person. Supply for consumption off the premises, provided these conditions are met, is therefore included within ‘qualifying club activities’. Supply for consumption off the premises may also be authorised by the relevant existing club certificate, which, in accordance with s 39(2) of the Licensing Act 1964, requires only that supply must be to a member in person. It is not necessary, under s 39(2), for the alcohol to be supplied in a sealed container or for the club to be open for consumption of alcohol on the premises at the time of supply, but supply for consumption off the premises will be within the ‘qualifying club activities’ only if these requirements are met. Where the conditions in s 73(3)–(5) are met, therefore, supply will be both within the ‘qualifying club activities’ under s 1(2)(a) and ‘authorised by the relevant existing club certificate’ (as the only requirement in s 39(2), sale to a member in person, is met). As such, supply of alcohol to a member for consumption off the premises, where the requirements of s 73 are met, is within the ‘existing qualifying club activities’. This, along with supply to a member for consumption on the premises, which is also within the ‘existing qualifying club activities’, must be specified in the application in accordance with para 14(3).

The qualifying club activities also include, under s 1(2)(b), sale by retail of alcohol by a club to a guest of a member for consumption on the premises. Under the relevant existing club certificate, a ‘supply’ to the guest of a member is authorised by s 39(1). A ‘supply’ to a guest, under s 39(1), seems to encompass both alcohol being obtained by a member for the guest (where the supply is seen as part of the supply transaction between the club and the member) and, where club rules make provision for a guest to purchase alcohol on his own behalf, a sale to the guest (see 8.1.2 above). A supply to a guest, where alcohol is obtained by a member, is not a sale by retail to the guest, is not within the qualifying club activities under s 1(2)(b) and ought not to be specified in the application. Where provision is made in club rules for a sale to a guest, the transaction seems to be a sale by retail to the guest, although it is classified as a ‘supply’ under s 39(1). As such, the sale to the guest is authorised by the relevant existing club certificate, which means it is within the ‘existing qualifying club activities’ under para 13(1), and it should be specified in the application.

As well as sales to guests of members under s 39(1), sales of alcohol to persons other than members and guests might also be made under s 49 where club rules made provision for this. This enabled sales to be made to other persons admitted to the club on occasions when the club might be used for purposes other than supply to members and guests. Such occasions might include ‘outside events’, such as functions to which the public are admitted and private functions held by members (for example, a wedding reception), as well as use by sports teams and their supporters in the case of club sporting events. Whilst these activities are ‘authorised by the relevant existing club certificate’ they are not ‘qualifying club activities’. The qualifying club activities in s 1(2)(a) and (b) are confined to supply of alcohol by a club to members and sale by retail by a club to guests for consumption on the premises. They do not include sale of alcohol to other persons. None of the cases mentioned above, including private functions held by members, involve the supply of alcohol by a club to a member or a sale by retail of alcohol by a club to a guest of a member. They are not therefore
‘existing qualifying club activities’ under para 13(1) and cannot be specified in the application.

The qualifying club activities can take place only under the authority of a CPC, which under s 60(1)(a) can be granted in respect of premises occupied by, and habitually used for the purposes of, a club and, under s 60(2)(a), the premises may be used by the club for one or more qualifying club activities specified in the certificate (see 8.2.2 above). It seems clear from these provisions that qualifying club activities can take place only on the premises specified in the CPC, notwithstanding that no reference to this is included in s 1(2)(a) and (b) when specifying the qualifying club activities. Supply to members and sales by retail to guests at premises other than those specified will not therefore be ‘qualifying club activities’ under s 1(2)(a) and (b). Under the relevant existing club certificate, supply to members and guests might, under s 39(3) of the Licensing Act 1964, take place at any premises or place that the club is using on a special occasion for the accommodation of members and to which persons other than members and guests are not permitted access. Although such supply is ‘authorised by the relevant existing club certificate’, it is not within ‘the qualifying club activities authorised by the relevant existing club certificate’. It is not therefore within the ‘existing qualifying club activities’ as defined in para 13(1) and cannot be specified in the application.

Whilst the facility of using other premises on a special occasion cannot be specified in the application, the relevant existing club certificate will authorise qualifying club activities at any premises in respect of which it has application and this might include more than one set of premises. Under s 52 of the Licensing Act 1964, a single registration certificate ‘may relate to any number of premises of the same club’ (see 8.3.1 above). Supply of alcohol to members and sale by retail to guests on any premises in respect of which the certificate has effect fall within ‘qualifying club activities authorised by the relevant existing club certificate in respect of those premises’ under para 13(1). The reference to ‘those premises’ must mean the premises in respect of which the relevant existing club certificate has effect. Accordingly, such activities are ‘existing qualifying club activities’ as defined in para 13(1) and must be specified in the application. Qualifying club activities taking place at a number of premises is not inconsistent with the provisions of the 2003 Act. Although there is no comparable provision to s 52 for a CPC to have application in respect of more than one premises, s 71 of the 2003 Act does provide that a club can apply for a CPC ‘in respect of any premises which are occupied by, and habitually used for the purposes of, the club’ (emphasis added) and the wording is wide enough to encompass more than one premises (see 8.3.1 above).

Although in the case of premises licences in Pt 1 of Sched 8, ‘existing licensable activities’ under para 1(1) includes licensable activities that may be carried on by virtue of the existence of the licence, as well as licensable activities authorised by the licence (see 13.2.5 above), there is no comparable provision in Pt 2 of Sched 8 for conversion of existing club certificates. Paragraph 13(1) confines ‘existing qualifying club activities’ to activities authorised by the club certificate. The explanation for exclusion may be that there are no licensable activities carried on by virtue of the existence of the certificate that can constitute qualifying club activities. Qualifying club activities under s 1(2) comprise supply of alcohol to members and sale of alcohol to guests of members, for which the club certificate itself provides authorisation, and provision of regulated entertainment for members and guests, for which no licence
was required under the previous law. Provision was only licensable where
entertainment was public or promoted for private gain. Thus, in respect of
entertainment in clubs, there are no licensable activities which may be carried on by
virtue of the existence of the certificate.

Article 7(1) and Pt A of Sched 4 to the LA 2003 (TP) Order 2005 specify the form the
application shall take and the information that it must contain in addition to the
existing qualifying club activities, and Art 7(3) specifies a copy of the club rules as a
relevant document to accompany the application. Article 8 specifies the form for the
plan and this is the same as for applications for both a premises licence and conversion
of an existing licence to a premises licence (see 2.4.2 above). Under Art 5 and Sched 2 to
the LA 2003 (TCF) Order 2005, the specified fee to accompany the application, as in the
case of conversion applications of existing licences to premises licences and new
premises licence applications, depends on the specific band to which the premises are
allocated based on their non-domestic rateable value (see 13.2.6 above and 6.3.1
above).

13.9.4 Within 48 hours of making the application to the licensing authority, the
applicant must send a copy of the application and accompanying documentation to
the police. This is to give the police an opportunity to object to the conversion of the
existing certificate, which they can do by giving notice within 28 days to the licensing
authority and the applicant. Notice can be given in cases where an appeal is pending
against revocation or non-renewal of a certificate, or where there has been a material
change in circumstances since the time when the certificate was granted or last
renewed, and (in either instance) the police are satisfied that conversion would
undermine the crime prevention objective. Paragraph 15 provides:

(1) Where a person makes an application under paragraph 14, he must give a copy of
the application (and any documents which accompany it) to the chief officer of
police for the police area (or each police area) in which the premises are situated
no later than 48 hours after the application is made.

(2) Where–
(a) an appeal is pending against a decision to revoke, or to reject an application
for the renewal of, the relevant existing club certificate, and
(b) a chief officer of police who has received a copy of the application under sub-
paragraph (1) is satisfied that converting that existing club certificate in
accordance with this Part would undermine the crime prevention objective,

he must give the relevant licensing authority and the applicant a notice to that effect.

(3) Where a chief officer of police who has received a copy of the application under
sub-paragraph (1) is satisfied that, because of a material change in circumstances
since the relevant time, converting the relevant existing club certificate in
accordance with this Part would undermine the crime prevention objective, he
must give the relevant licensing authority and the applicant a notice to that effect.

(4) For this purpose “the relevant time” means the time when the relevant existing
club certificate was granted or, if it has been renewed, the last time it was
renewed.

(5) The chief officer of police may not give a notice under sub-paragraph (2) or (3)
after the end of the period of 28 days beginning with the day on which he received
a copy of the application under sub-paragraph (1).
13.9.5 Determination of an application

13.9.6 Where an application is made in accordance with paras 14 and 15, the licensing authority must grant the application unless the police have given a notice of objection. Where notice is given, the authority must, within 10 working days of the end of the period within which notice may be given, hold a hearing to consider it, unless the parties agree that this is unnecessary. Notice of the hearing must be given to the club and the police no later than five working days before the day or the first day on which the hearing is to be held. If it considers it necessary for the promotion of the crime prevention objective to do so, the authority must reject the application or part of the application to the extent that it relates to that licence. Paragraph 16(1)–(3) provides:

(1) This paragraph applies where an application is made in accordance with paragraph 14 and the applicant complies with paragraph 15(1).

(2) Subject to sub-paragraphs (3) and (5), the licensing authority must grant the application.

(3) Where a notice is given under paragraph 15(2) or (3) (and not withdrawn), the authority must–

(a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and

(b) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.

As in the case of an application for conversion of a premises licence, where the notice was given because of a material change of circumstances, it is for the authority to determine what constitutes a material change, the notice has to be directed towards the crime prevention objective and refusal to convert has to be necessary to promote that objective (see 13.2.9 above).

13.9.7 Applications must be determined within two months of receipt or the application will be deemed to be granted. This is provided that the existing certificate has not ceased to have effect at the time of determination of the application or at the end of the two month period (whichever is applicable), for example, where it has been revoked. (Where this is the case, it would seem that a new application for a CPC will have to be made.) Paragraph 4(4)–(6) provides:

(4) If the relevant licensing authority fails to determine the application within the period of two months beginning with the day on which it received it, then, subject to sub-paragraph (5), the application is to be treated as granted by the authority under this paragraph.

(5) An application must not be granted (and is not to be treated as granted under sub-paragraph (4)) if the existing club certificate has ceased to have effect at–

(a) the time of the determination of the application, or

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63 This is subject to the provision in para 16(5), which requires that the applicant has not ceased to hold the existing club certificate at the time of the determination of the application – see 13.9.7 below.

64 Schedule 1, para 17 of the Licensing Act 2003 (Hearings) Regulations 2005.

65 Ibid, reg 6(3)(c) and para 17 of Sched 2.
(b) in a case within sub-paragraph (4), the end of the period mentioned in that sub-paragraph.

(6) Section 10 applies as if the relevant licensing authority’s functions under sub-paragraph (3) were included in the list of functions in subsection (4) of that section (functions which cannot be delegated to an officer of the licensing authority).

13.9.8 Notification of determination and issue of new certificate

Where an application to convert an existing certificate is granted, in whole or in part, the licensing authority must forthwith give the applicant a notice to that effect, with a copy to the police, and issue the applicant with a new certificate and a summary of it. If the authority rejects the application, it must similarly forthwith give a notice to that effect to the applicant, with a copy to the police, stating the reasons for its decision. Paragraph 17(1)–(3) provides:

(1) Where an application is granted under paragraph 16, the relevant licensing authority must forthwith–
   (a) give the applicant a notice to that effect, and
   (b) issue the applicant with–
       (i) a certificate in respect of the premises (“the new certificate”) in accordance with paragraph 18, and
       (ii) a summary of the new certificate.

(2) Where an application is rejected under paragraph 16, the relevant licensing authority must forthwith give the applicant a notice to that effect containing a statement of the authority’s reasons for its decision to reject the application.

(3) The relevant licensing authority must give a copy of any notice it gives under sub-paragraph (1) or (2) to the chief officer of police for the police area (or each police area) in which the premises to which the notice relates are situated.

13.10 THE NEW CLUB PREMISES CERTIFICATE

13.10.1 Scope and effect

The new certificate is to be treated as if it were a club premises certificate, mandatory conditions (set out in ss 73 and 74) will apply in respect of it and no condition may be attached preventing the sale of alcohol to associate members and their guests (in accordance with s 75). The certificate must authorise the premises in question to be used for the existing qualifying club activities, but it is in effect a dummy certificate lying dormant until it is brought into force on the second appointed day and the existing certificate continues in force throughout the transitional period. Paragraph 18(1)–(3) provides:

(1) The new certificate is to be treated as if it were a club premises certificate (see section 60), and sections 73, 74 and 75 apply in relation to it accordingly.

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66 For the meaning of ‘forthwith’, see 6.6.2 above.

67 See 8.4.3 above.
(2) The new certificate takes effect on the second appointed day.

(3) The new certificate must authorise the premises to be used for the existing qualifying club activities.

Whilst ss 73–75 apply in respect of the new CPC, it is less clear whether other provisions in the 2003 Act relating to CPCs have application in respect of the new certificate before it takes effect on the second appointed day. Under s 81, a CPC can be surrendered, in which case it lapses, but it is uncertain whether a CPC can be surrendered before it takes effect on the second appointed day. Similarly, a CPC may be withdrawn under s 90 if the club ceases to meet the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates, but it is uncertain whether there can be withdrawal before the CPC takes effect on the second appointed day. The position here is, in essence, the same as with premises licences, where there is similar uncertainty (see 13.3.1 above).

13.10.2 Conditions on new certificate

Conditions must be attached to the new certificate that ‘reproduce the effect’ of the conditions attached to the existing certificate. In fact, the only conditions that may be attached to the existing certificate are ones restricting sales of alcohol (to non-members), including conditions prohibiting an alteration to club rules to authorise sales not authorised at the time of application for the certificate. Apart from these conditions, which could be imposed under s 49(3) of the Licensing Act 1964, there was no general power to attach conditions to a certificate. In addition, any restriction imposed on the use of the premises for the existing qualifying club activities under the existing certificate must also be reproduced as a condition, where the restriction is contained in any enactment specified by the Secretary of State. Paragraph 18(4) and (5) provides:

(4) Subject to sections 73, 74 and 75, the new certificate must be granted subject to such conditions as reproduce the effect of the conditions subject to which the relevant existing club certificate has effect at the time the application is granted.

(5) The new certificate must also be granted subject to conditions which reproduce the effect of any restriction imposed on the use of the premises for the existing qualifying club activities by any enactment specified for the purposes of this Part.

The Secretary of State has specified the same four enactments for the purposes of para 18(5), as for para 6(8) in relation to premises licences. As these include the Licensing Act 1964, it seems that restrictions imposed by the 1964 Act in relation to matters such as qualification for a registration certificate (for example, management of the club in relation to the purchase and supply of alcohol through an elective committee) will need to be reproduced as conditions. Similarly, if a club has obtained a special hours certificate (SHC) under s 78 of the Licensing Act 1964, having been issued with a certificate of suitability under s 79 indicating that the club fulfils the requirements for the grant of a public entertainment licence, the supply of alcohol under the SHC has to be ancillary to the provision of music and dancing and substantial refreshment. The supply of alcohol as ancillary under the SHC will therefore need to be reproduced as a condition on the CPC. The certificate of suitability

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68 See 13.3.4 above.
itself, however, does not seem to impose any restriction on the use of the premises for the existing qualifying club activities and no condition is needed to reproduce the effect of it. Its only purpose is to enable a club to obtain a SHC under s 78 and it is the SHC that imposes restrictions on the use of the premises. The certificate of suitability does not, in itself, authorise anything or impose any restriction, although, of course, it needs to be in existence because this is a necessary requirement for the SHC.

As in the case of premises licences, any condition or restriction limiting the duration of the certificate does not have effect as far as the new certificate is concerned. Paragraph 18(6) provides:

Nothing in sub-paragraph (4) or (5) requires the new certificate to be granted for a limited period.

### 13.10.3 Variation of new certificate

Applications for conversion of an existing certificate may be accompanied by an application under s 84 to vary the new one (from its inception) and Art 7(2) and Pt B of Sched 4 to the LA 2003 (TP) Order 2005 incorporate the form of such applications. Where such applications are made together, under reg 6(2) of the Licensing Act 2003 (Fees) Regulations 2005, only the conversion application fee (see 13.2.6 above) is payable and no additional fee for the variation is required. Further, the variation application can be determined by the licensing authority only when the application for conversion has been granted and a failure to determine within two months of receipt will be a deemed refusal. Paragraph 19 provides:

(1) A person who makes an application under paragraph 14 may (notwithstanding that no certificate has yet been granted in consequence of that application) at the same time apply under section 84 for a variation of the certificate, and, for the purposes of such an application, the applicant is to be treated as the holder of that certificate.

(2) In relation to an application within sub-paragraph (1), the relevant licensing authority may discharge its functions under section 85 only if, and when, the application under this Part has been granted.

(3) Where an application within sub-paragraph (1) is not determined by the relevant licensing authority within the period of two months beginning with the day the application was received by the authority, it is to be treated as having been rejected by the authority under section 85 at the end of that period.

Since an existing club certificate authorises only the supply of alcohol to members and guests, a variation application is needed if clubs wish to provide regulated entertainment, such as music and dancing, under a CPC. Under the previous law, if clubs provided such entertainment only for members and guests no public entertainment licence was required as the entertainment was not public (see 5.3.8 above) nor was a licence required under the Private Places of Entertainment (Licensing) Act 1967, if the provisions of this Act had been adopted, as the entertainment was not provided for private gain (see 1.3.9 above). Under para 1(2)(b) of Sched 1 to the 2003 Act, however, there is ‘provision’ of regulated entertainment where this is provided ‘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’ (see 5.3.3 and 5.3.8 above), so authorisation for this entertainment is
needed under the CPC. It might be anticipated that a significant number of clubs will apply for such a variation when submitting a conversion application.

As in the case of premises licences, variation applications must be advertised, notice given to responsible authorities and representations received within a prescribed period, with a hearing held by the licensing authority where representations have been received from interested parties or responsible authorities (see 13.3.6–13.3.8 above).

13.11 EXISTING CLUB CERTIFICATE REVOKED AFTER GRANT OF NEW CLUB PREMISES CERTIFICATE

If an existing certificate is revoked after it has been converted to a new CPC, but before the new CPC comes into effect on the second appointed day, the new CPC lapses. This is also the case where a decision to revoke has been made before the second appointed day, with an appeal pending, where the appeal is subsequently dismissed or abandoned. Paragraph 20 provides:

Where the relevant licensing authority grants a new certificate under this Part, that certificate lapses if and when–

(a) the existing club certificate is revoked before the second appointed day, or
(b) where an appeal against a decision to revoke it is pending immediately before that day, the appeal is dismissed or abandoned.

Although provision is made for lapse where an existing certificate is revoked, there is no equivalent provision for non-renewal of an existing certificate. Thus, as in the case of non-renewal of an existing licence (see 13.4.1 above), it must be assumed that qualifying club activities can take place under the new CPC when it has effect on the second appointed day, even though existing qualifying club activities cannot be provided before that date as there is no existing certificate to authorise them. The position is similar where conditions attached to an existing certificate are modified in the period between conversion to a new CPC and the CPC coming into effect on the second appointed day. The conditions effective at the time of the conversion, before their modification, are the ones that take effect under the CPC. In this respect, the position, again, is the same as with conversion of existing licences to premises licences (see 13.4.1 above).

13.12 APPEALS

Paragraph 21 makes provision for appeal by the applicant where an application for conversion has been rejected or where an application has been granted subject to conditions. Provision is also made for appeal by the police where an application is granted despite a notice of objection being given by the police. The provisions for
appeals in respect of club premises certificates, contained in Sched 5 to the Act, have application to the above appeals.\(^69\) Paragraph 21(1)–(3) provides:

(1) Where an application under paragraph 14 is rejected by the relevant licensing authority, the applicant may appeal against that decision.

(2) Where a licensing authority grants such an application, any chief officer of police who gave a notice under paragraph 15(2) or (3) (that was not withdrawn) may appeal against that decision.

(3) Section 181 and paragraph 15(1) and (2) of Schedule 5 (general provision about appeals against decisions under Part 4 of this Act) apply in relation to appeals under this paragraph as they apply in relation to appeals under Part 2 of that Schedule.

(4) Paragraph 15(3) of that Schedule applies in relation to an appeal under subparagraph (2).

In cases where an application for variation has been rejected, no provision is made by paragraph 21 for appeal, but the appeal provisions in Sched 5 have application in these cases. This is because variation applications are made under s 84 and determinations under s 85, and Sched 5 provides for rights of appeal in respect of determinations under that section 85.\(^70\) Thus, rights of appeal are available both to the applicant, in cases where the application is rejected, and to persons who made relevant representations, in cases where the application is granted.

### 13.13 FALSE STATEMENTS RELATING TO APPLICATIONS

Paragraph 22 makes it an offence knowingly or recklessly to make a false statement in or in connection with an application to convert an existing club certificate. This offence is comparable to that, in s 158, of making such statements in or in connection with applications generally under the 2003 Act (see 11.10 above). Paragraph 22 provides:

(1) A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with an application under paragraph 14.

(2) For the purposes of sub-paragraph (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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\(^{69}\) Thus, appeal is to the magistrates’ court for the area in which the premises are situated and appeal is commenced by giving of a notice of appeal 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 appealed against – see 12.3.1 above.

\(^{70}\) See Schedule 5, paras 10(b) and 12; and 13.5.2 above.
13.14 NEW GRANTS OF CLUB PREMISES CERTIFICATES AND OPENING HOURS

There are no provisions in Pt 2 for CPCs comparable to those in Pt 1 (in para 11) for new grants of premises licences and conditions in respect of opening hours. The effect of para 11 is that, where application for a new premises licence is made by the holder of a justices’ licence, the authority may not grant the application with a condition preventing the sale of alcohol ‘during the permitted hours’ that the holder is permitted to sell alcohol (see 13.7 above). This ensures that, in the absence of any material change in circumstances since the licence was granted or last renewed and any police representations in relation to the crime prevention objective, the holder of the justices’ licence does not receive any less in the way of permitted hours under the new premises licence than under his existing licence.

There seems to be no obvious reason why a comparable provision should not have been included for clubs holding a club registration certificate where application is made for a new CPC. The absence of such a provision will mean that, in the case of clubs, a licensing authority will not be prevented from granting a CPC with a condition preventing the sale of alcohol during the current permitted hours of the club under its club registration certificate. It is not apparent whether the exclusion, from Pt 2 for clubs, of a comparable provision to para 11 was deliberate (and, if so, what the rationale for exclusion was) or whether it was inadvertent and an oversight.

PERSONAL LICENCES

13.15 ISSUE OF PERSONAL LICENCES TO HOLDERS OF JUSTICES’ LICENCES

13.15.1 During an initial period of at least six months after the first appointed day (7 February 2005), the holder of an existing justices’ licence granted under the Licensing Act 1964 will be entitled to apply for the grant to him of a personal licence without having to possess the licensing qualification ordinarily required under Pt 6 of the 2003 Act, provided that certain requirements are met. Unlike in the case of conversion applications into premises licences and CPCs, it is not necessary for the applicant to be the holder of an existing (justices’) licence on the first appointed day. It is sufficient that the applicant has obtained a justices’ licence within the six month period after that day. In order to obtain a justices’ licence, applicants are commonly required to have a licensing qualification, the National Certificate for Licensees (NCL), awarded by the British Institute of Innkeeping Associated Board (BIIAB). The BIIAB National Certificate for Personal Licence Holders (NCPLH), an accredited qualification for personal licence holders under the 2003 Act (see 10.5.3 above), replaces the NCL and during the six month period the Justices’ Clerks’ Society and the Magistrates’ Association have recommended that justices accept the NCPLH as evidence of an applicant’s fitness to hold a justices’ licence under the Licensing Act 1964.

71 Persons holding licences granted by the University of Cambridge and by the Board of the Green Cloth may also do so – see 10.5.3 above.
The requirements that need to be met are that the applicant produces his current justices’ licence (or a certified copy),\(^\text{72}\) two photographs of himself, one of which is endorsed, and a statement (if appropriate) relating to his convictions for relevant offences or (comparable) foreign offences\(^\text{73}\) on or after the date of the grant, last renewal or transfer to him of the licence (where there has been no renewal since transfer). This entitlement to a licence, where these requirements are met, is provided because these licence holders will have been considered fit and proper to retail alcohol by the licensing justices (Guidance, para 13.33). Application is made to the licensing authority in whose area the applicant is ordinarily resident and a copy of the application must be given to the police within 48 hours of making it.

Paragraph 23(1)–(3) provides:

1. Paragraphs 24 to 27 apply where—
   a. during the transitional period, the holder of a justices’ licence applies to the relevant licensing authority\(^\text{74}\) for the grant of a personal licence under section 117,
   b. the application is accompanied by the documents mentioned in sub-paragraph (3), and
   c. the applicant gives a copy of the application to the chief officer of police for the relevant licensing authority’s area within 48 hours from the time the application is made.

2. In this paragraph “transitional period” means such period (of not less than six months) as may be specified for the purposes of this Part.

3. The documents are—
   a. the justices’ licence (or a certified copy of that licence),
   b. a photograph of the applicant in the specified form which is endorsed, by a person of a specified description, with a statement verifying the likeness of the photograph to the applicant, and

\(^{72}\) Paragraph 23(4) provides:

In this paragraph any reference to a certified copy of a justices’ licence is to a copy of that licence certified to be a true copy—

a. by the chief executive of the licensing justices for the licensing district concerned,

b. by a solicitor or notary, or

c. by a person of a specified description.

A document purporting to be a certified copy is presumed to be a true copy. Paragraph 23(5) provides: ‘A document which purports to be a certified copy of a justices’ licence is to be taken to be such a copy, unless the contrary is shown.’

\(^{73}\) For the meaning of ‘relevant offence’ and ‘foreign offence’, see s 113 and 10.5.6–10.5.12 above. There is no reference in para 23 to these terms having the same meaning as in s 113, although there is little doubt that this is their intended meaning. A reference to s 113 is made in para 25 (see sub-s (4) and 13.16 below) where the terms also appear. A reference to s 113 should have been included in para 28, which covers the interpretation of terms used for personal licences in the whole of Pt 3 of Sched 8, rather than in para 25.

\(^{74}\) Paragraph 28 provides: ‘“relevant licensing authority”, in relation to an application for a personal licence under section 117, means the authority to which the application is made in accordance with that section.’ This will be the licensing authority in whose area the applicant is ordinarily resident – see s 117(2) and 10.4.1 above.
(c) where the applicant has been convicted of any relevant offence or foreign offence on or after the relevant date,\(^75\) a statement giving details of the offence.

Although para 23(3)(b) makes provision for only one photograph, reg 8(2)(b) of the Licensing Act 2003 (Personal Licences) Regulations 2005, SI 2005/41 requires a ‘second photograph of the applicant in identical form’ to the requirements set out in Art 10 of the LA 2003 (TP) Order 2005, which specifies the form for the photograph under para 23(3)(b),\(^76\) except that the second photograph does not need to be endorsed with a statement verifying the likeness of the photograph to the applicant. Persons who can endorse the photograph are the same as in respect of a personal licence application, except that they can also include the chief executive of the licensing justices for the relevant licensing authority. The application is made in accordance with reg 8(1) and Sched 4 to the above Regulations and the statement as to details of convictions for relevant offences and foreign offences required by para 23(3)(c) is in the form of a declaration under Sched 3, which is the specified form for applications for premises licences generally (see 10.4.2 above). In addition to these documents, the application, which is made under s 117 (see 10.4 above), needs to be accompanied by the fee and, under reg 8 and Sched 6 to the Licensing Act 2003 (Fees) Regulations 2005, this is £37.

13.15.2 The reference in para 23(1)(a) is to ‘holder of a justices’ licence’, but in some cases justices’ licences have been issued in joint or multiple names. In these cases, all those named as holders of the licence are entitled to apply for a personal licence (Guidance, para 13.35). On the other hand, a person holding a provisional licence is not able to make an application for a personal licence without obtaining the licensing qualification. A provisional licence is a licence subject to a condition that it shall not have effect until the justices are satisfied that the applicant is a fit and proper person to hold it and, until declared final, is not a justices’ licence.

Where an applicant complies with the above requirements, the application is determined in accordance with paras 24–27. Paragraph 24, as a preliminary to the succeeding paragraphs, provides that s 120, which normally governs the determination of personal licence applications, does not apply.\(^77\) Paragraph 25 makes provision for the making of objections by the police, para 26 for the determination of personal licence applications, and para 27 for the making of appeals.

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\(^75\) Paragraph 28 provides:

For the purposes of this Part – “relevant date”, in relation to the holder of a justices’ licence, means—

(a) the date when the licence was granted, or

(b) where it has been renewed, the last date when it was renewed, or

(c) where it has been transferred to the holder and has not been renewed since the transfer, the date when it was transferred.

\(^76\) The form is the same as when an application is made for a personal licence – see 10.4.2 above.

\(^77\) Paragraph 24 provides: ‘Section 120 (determination of application for grant) does not apply in relation to the application.’
13.16 POLICE OBJECTIONS TO PERSONAL LICENCE APPLICATIONS

Objections can be made by the police only where the applicant has been convicted of a relevant offence or foreign offence on or after the ‘relevant date’ (see 13.15.1), that is, the date of the grant, last renewal or transfer to him of the justices’ licence (where there has been no renewal since transfer). Further, the police have to be satisfied that the granting of the licence would, in the ‘exceptional circumstances’ of the case, undermine the crime prevention objective. Paragraph 25(1) provides:

(1) Sub-paragraph (2) applies where—
(a) the applicant has been convicted of any relevant offences or foreign offences on or after the relevant date, and
(b) having regard to—
(i) any conviction of the applicant for a relevant offence, and
(ii) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence,
whether occurring before or after the relevant date, the chief officer of police is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective.

It can be seen that, in deciding whether or not they are so satisfied, the police are not confined to considering the conviction for the relevant offence or foreign offence sustained by the applicant on or after the date of the grant, last renewal or transfer. They can also have regard to any other such convictions of the applicant incurred before that date. Thus, the conviction on or before that date entitles the police to object, but they do not have to be satisfied that the effect of this conviction, if the licence were granted, would be to undermine the crime prevention objective. They can be satisfied that the objective would be undermined by earlier convictions of the applicant. Presumably the rationale of this is that convictions cumulatively might undermine the crime prevention objective, although a particular conviction might not do so, and that the applicant’s criminal record relating to relevant offences and foreign offences should be considered in full.

Where the police object, a notice stating reasons for the objection must be given to the licensing authority and the applicant within 28 days. Paragraph 25(2) and (3) provides:

(2) The chief officer of police must give a notice stating the reasons why he is so satisfied (an “objection notice”)—
(a) to the relevant licensing authority, and
(b) to the applicant.

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78 Paragraph 25(4) provides: ‘For the purposes of this paragraph—
(a) “relevant offence” and “foreign offence” have the meaning given in section 113 …’
For the meaning of these terms, see 10.5.6–10.5.12 above.

79 This is except for spent convictions, whether incurred before or after the date in question. Paragraph 25(4)(b) provides: ‘For the purposes of this paragraph – … section 114 (spent convictions) applies for the purposes of this paragraph as it applies for the purposes of section 120.’ On spent convictions, see 10.5.13–10.5.16 above.
The objection notice must be given no later than 28 days after the day on which the chief officer of police receives a copy of the application in accordance with paragraph 23(1)(c).

13.17 DETERMINATION OF PERSONAL LICENCE APPLICATIONS

13.17.1 If no objection has been made by the police 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. Presumably the authority will not be so satisfied if the applicant cannot produce the existing justices' licence or a certified copy of it, or if there are doubts about his identity. Paragraph 26(1) and (2) provides:

(1) The relevant licensing authority must grant the application if—
   (a) it is satisfied that the applicant holds a justices' licence, and
   (b) no objection notice has been given within the period mentioned in paragraph 25(3) or any notice so given has been withdrawn.

(2) Where the authority is not satisfied that the applicant holds a justices' licence, it must reject the application.

In cases where an objection notice is given by the police, the licensing authority must hold a hearing, within 10 working days of the end of the period within which notice may be given, to consider the objection notice and any evidence presented by the applicant. Notice of the hearing must be given to the applicant and the police no later than five working days before the day on which the hearing is to be held. As in all contested cases, the hearing must be before the licensing committee or (more probably) a subcommittee and it cannot be delegated to an officer of the authority. The application must be rejected if it is considered necessary for the promotion of the crime prevention objective to do so, or in any other case must be granted. Applications must be determined within three months of receipt or the application will be deemed to be granted. Paragraph 26(3)–(5) provides:

(3) Where the authority is so satisfied, but sub-paragraph (1)(b) does not apply, it—
   (a) must hold a hearing to consider the objection notice, and
   (b) having regard to the notice, must—
      (i) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and
      (ii) grant the application in any other case.

(4) If the authority fails to determine the application within the period of three months beginning with the day on which it receives it, then the application is to be treated as granted by the authority under this paragraph.

(5) Section 10 applies as if the relevant licensing authority’s functions under sub-paragraph (3) were included in the list of functions in subsection (4) of that section (functions which cannot be delegated to an officer of the licensing authority).

80 Regulation 5 and para 18 of Sched 1 to the Licensing Act 2003 (Hearings) Regulations 2005.
81 Ibid, reg 6(3)(d) and para 18 of Sched 2.
13.17.2 When the application is determined, the licensing authority is required to notify its decision to the applicant and the police. If the licence is granted and the police objected, the notification must include a statement of the authority’s reasons for granting the licence. Similarly, if the licence is refused, notification must be given stating the reasons for rejection of the application. Paragraph 26(6) makes provision to this effect by applying s 122:

In the application of section 122 (notification of determinations) to a determination under this paragraph, the references to an objection notice are to be read as references to an objection notice within the meaning of paragraph 25(2).

13.18 APPEALS

Paragraph 27 makes provision for appeal by the applicant where an application has been rejected and for appeal by the police where an application is granted despite a notice of objection being given by the police. Paragraph 27(1) and (2) provides:

(1) Where a licensing authority rejects an application under paragraph 26, the applicant may appeal against that decision.

(2) Where a licensing authority grants an application for a personal licence under paragraph 26(3), the chief officer of police who gave the objection notice may appeal against that decision.

The provisions for appeals in respect of personal licences, contained in Sched 5 to the Act, have application to the above appeals. Paragraph 27(3) and (4) provides:

(3) Section 181 and paragraph 17(6) and (7) of Schedule 5 (general provision about appeals relating to personal licences) apply in relation to appeals under this paragraph as they apply in relation to appeals under paragraph 17 of that Schedule.

(4) Paragraph 17(8) of that Schedule applies in relation to an appeal under subparagraph (2) above.

Thus appeal is to the magistrates’ court for the area in which the licensing authority (or any part of it) is situated and appeal is commenced by giving of a notice of appeal 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 appealed against.

13.19 FALSE STATEMENTS RELATING TO APPLICATIONS

Unlike in Pts 1 and 2 of Sched 8, no provision is made in Pt 3 for an offence of knowingly or recklessly making a false statement in or in connection with an

82 For the provision in s 122, see 10.7.1 above.
83 Schedule 5, para 17(6) and (7); and see 12.3.1 above. Where a favourable decision has been made for the licence applicant and the police appeal under Sched 8, para 27(2), the licence holder will be a respondent to the appeal as well as the licensing authority: Sched 5, para 17(8).
application for a personal licence. There is no comparable provision to paras 10(1) and 22(1), which make such provision for conversions to premises licences and CPCs.\textsuperscript{84} The reason for this seems to be that applications under Pt 3 are for the grant of a personal licence and not for the conversion of an existing justices’ licence to a personal licence. The application by the holder of the justices’ licence is, by para 23(1)(a), for ‘the grant of a personal licence under section 117’ and knowingly or recklessly making a false statement in or in connection with such an application is an offence under s 158(1)(d).\textsuperscript{85} It is not therefore necessary for Pt 3 to make separate provision to this effect. This is necessary for Pts 1 and 2 since these relate to conversions, which arise only on transition, and no provision for this is made by s 158.

CONCLUSION

13.20 The transitional period, as para 13.4 of the Guidance recognises, will be a ‘difficult and demanding period’ for licensing authorities, responsible authorities and for applicants. It is therefore important that, so far as possible, all parties concerned should work together to ensure a smooth transition both before and from the first appointed day at the start of the transitional period. In particular, this might include agreeing arrangements for applications to be staggered throughout the first six months of the transitional period to avoid large numbers of applications being made on the same day. While applicants are entitled to make applications under the provisions of the 2003 Act and 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. It remains to be seen whether this will be the case.

\textsuperscript{84} See 13.6 and 13.13 above.

\textsuperscript{85} See 11.10 above.
APPENDIX 1: LICENSING ACT 2003

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2003 Chapter 17

An Act to make provision about the regulation of the sale and supply of alcohol, the provision of entertainment and the provision of late night refreshment, about offences relating to alcohol and for connected purposes. [10th July 2003]

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

PART 1
LICENSEABLE ACTIVITIES

1 Licensable activities and qualifying club activities

(1) For the purposes of this Act the following are licensable activities-
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(a) the sale by retail of alcohol,
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club,
(c) the provision of regulated entertainment, and
(d) the provision of late night refreshment.

(2) For those purposes the following licensable activities are also qualifying club activities—
(a) the sale by retail of alcohol by or on behalf of a club to, or to the order of, a member of the club,
(b) the sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place, and
(c) the provision of regulated entertainment where that provision is by or on behalf of a club for members of the club or members of the club and their guests.

(3) In this Act references to the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club do not include a reference to any supply which is a sale by retail of alcohol.

(4) Schedule 1 makes provision about what constitutes the provision of regulated entertainment for the purposes of this Act.

(5) Schedule 2 makes provision about what constitutes the provision of late night refreshment for those purposes (including provision that certain activities carried on in relation to certain clubs or hotels etc, or certain employees, do not constitute provision of late night refreshment and are, accordingly, not licensable activities).

(6) For the purposes of this Act premises are “used” for a licensable activity if that activity is carried on on or from the premises.

(7) This section is subject to sections 173 to 175 (which exclude activities from the definition of licensable activity in certain circumstances).

2 Authorisation for licensable activities and qualifying club activities

(1) A licensable activity may be carried on—
(a) under and in accordance with a premises licence (see Part 3), or
(b) in circumstances where the activity is a permitted temporary activity by virtue of Part 5.

(2) A qualifying club activity may be carried on under and in accordance with a club premises certificate (see Part 4).

(3) Nothing in this Act prevents two or more authorisations having effect concurrently in respect of the whole or a part of the same premises or in respect of the same person.

(4) For the purposes of subsection (3) “authorisation” means—
(a) a premises licence;
(b) a club premises certificate;
(c) a temporary event notice.

PART 2
LICENSING AUTHORITIES
The authorities

3 Licensing authorities

(1) In this Act “licensing authority” means—
(a) the council of a district in England,
(b) the council of a county in England in which there are no district councils,
(c) the council of a county or county borough in Wales,
(d) the council of a London borough,
(e) the Common Council of the City of London,
(f) the Sub-Treasurer of the Inner Temple,
(g) the Under-Treasurer of the Middle Temple, or
(h) the Council of the Isles of Scilly.

(2) For the purposes of this Act, a licensing authority’s area is the area for which the authority acts.

Functions of licensing authorities etc

4 General duties of licensing authorities
(1) A licensing authority must carry out its functions under this Act (“licensing functions”) with a view to promoting the licensing objectives.

(2) The licensing objectives are-
(a) the prevention of crime and disorder;
(b) public safety;
(c) the prevention of public nuisance; and
(d) the protection of children from harm.

(3) In carrying out its licensing functions, a licensing authority must also have regard to-
(a) its licensing statement published under section 5, and
(b) any guidance issued by the Secretary of State under 5 Statement of licensing policy

5 Statement of licensing policy
(1) Each licensing authority must in respect of each three year period-
(a) determine its policy with respect to the exercise of its licensing functions, and
(b) publish a statement of that policy (a “licensing statement”) before the beginning of the period.

(2) In this section “three year period” means-
(a) the period of three years beginning with such day as the Secretary of State may by order appoint, and
(b) each subsequent period of three years.

(3) Before determining its policy for a three year period, a licensing authority must consult-
(a) the chief officer of police for the licensing authority’s area,
(b) the fire authority for that area,
(c) such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority,
(d) such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority,
(e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
(f) such other persons as the licensing authority considers to be representative of businesses and residents in its area.

(4) During each three year period, a licensing authority must keep its policy under review and make such revisions to it, at such times, as it considers appropriate.

(5) Subsection (3) applies in relation to any revision of an authority’s policy as it applies in relation to the original determination of that policy.

(6) Where revisions are made, the licensing authority must publish a statement of the revisions or the revised licensing statement.

(7) Regulations may make provision about the determination and revision of policies, and the preparation and publication of licensing statements, under this section.

6 Licensing committees
(1) Each licensing authority must establish a licensing committee consisting of at least ten, but not more than fifteen, members of the authority.

(2) This section does not apply in relation to the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple.

7 Exercise and delegation of functions
(1) All matters relating to the discharge by a licensing authority of its licensing functions are, by virtue of this subsection, referred to its licensing committee and, accordingly, that committee must discharge those functions on behalf of the authority.
(2) Subsection (1) does not apply to—
(a) any function conferred on the licensing authority by section 5 (statement of licensing policy), or
(b) any function discharged under subsection (5)(a) below by a committee (other than a licensing committee), or any matter relating to the discharge of any such function.

(3) A licensing authority may arrange for the discharge by its licensing committee of any function of the authority which—
(a) relates to a matter referred to that committee by virtue of subsection (1), but
(b) is not a licensing function.

(4) Where the licensing authority does not make arrangements under subsection (3) in respect of any such function, it must (unless the matter is urgent) consider a report of its licensing committee with respect to the matter before discharging the function.

(5) Where a matter relates to a licensing function of a licensing authority and to a function of the authority which is not a licensing function ("the other function"), the authority may—
(a) refer the matter to another of its committees and arrange for the discharge of the licensing function by that committee, or
(b) refer the matter to its licensing committee (to the extent it is not already so referred under subsection (1)) and arrange for the discharge of the other function by the licensing committee.

(6) In a case where an authority exercises its power under subsection (5)(a), the committee to which the matter is referred must (unless the matter is urgent) consider a report of the authority’s licensing committee with respect to the matter before discharging the function concerned.

(7) Before exercising its power under subsection (5)(b), an authority must consult its licensing committee.

(8) In a case where an authority exercises its power under subsection (5)(b), its licensing committee must (unless the matter is urgent) consider any report of any of the authority’s other committees with respect to the matter before discharging the function concerned.

(9) Where a licensing committee is unable to discharge any function delegated to it in accordance with this section because of the number of its members who are unable to take part in the consideration or discussion of any matter or vote on any question with respect to it, the committee must refer the matter back to the licensing authority and the authority must discharge that function.

(10) This section does not apply in relation to the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple.

8 Requirement to keep a register

(1) Each licensing authority must keep a register containing—
(a) a record of each premises licence, club premises certificate and personal licence issued by it,
(b) a record of each temporary event notice received by it,
(c) the matters mentioned in Schedule 3, and
(d) such other information as may be prescribed.

(2) Regulations may require a register kept under this section to be in a prescribed form and kept in a prescribed manner.

(3) Each licensing authority must provide facilities for making the information contained in the entries in its register available for inspection (in a legible form) by any person during office hours and without payment.

(4) If requested to do so by any person, a licensing authority must supply him with a copy of the information contained in any entry in its register in legible form.

(5) A licensing authority may charge such reasonable fee as it may determine in respect of any copy supplied under subsection (4).
(6) The Secretary of State may arrange for the duties conferred on licensing authorities by this section to be discharged by means of one or more central registers kept by a person appointed pursuant to the arrangements.

(7) The Secretary of State may require licensing authorities to participate in and contribute towards the cost of any arrangements made under subsection (6).

Licensing committees

9 Proceedings of licensing committee

(1) A licensing committee may establish one or more subcommittees consisting of three members of the committee.

(2) Regulations may make provision about-
   (a) the proceedings of licensing committees and their subcommittees (including provision about the validity of proceedings and the quorum for meetings),
   (b) public access to the meetings of those committees and subcommittees,
   (c) the publicity to be given to those meetings,
   (d) the agendas and records to be produced in respect of those meetings, and
   (e) public access to such agendas and records and other information about those meetings.

(3) Subject to any such regulations, each licensing committee may regulate its own procedure and that of its sub-committees

10 Sub-delegation of functions by licensing committee etc.

(1) A licensing committee may arrange for the discharge of any functions exercisable by it-
   (a) by a sub-committee established by it, or
   (b) subject to subsection (4), by an officer of the licensing authority.

(2) Where arrangements are made under subsection (1)(a), then, subject to subsections (4) and (5), the sub-committee may in turn arrange for the discharge of the function concerned by an officer of the licensing authority.

(3) Arrangements under subsection (1) or (2) may provide for more than one sub-committee or officer to discharge the same function concurrently.

(4) Arrangements may not be made under subsection (1) or (2) for the discharge by an officer of-
   (a) any function under-
     (i) section 18(3) (determination of application for premises licence where representations have been made),
     (ii) section 31(3) (determination of application for provisional statement where representations have been made),
     (iii) section 35(3) (determination of application for variation of premises licence where representations have been made),
     (iv) section 39(3) (determination of application to vary designated premises supervisor following police objection),
     (v) section 44(5) (determination of application for transfer of premises licence following police objection),
     (vi) section 48(3) (consideration of police objection made to interim authority notice),
     (vii) section 72(3) (determination of application for club premises certificate where representations have been made),
     (viii) section 85(3)(determination of application to vary club premises certificate where representations have been made),
     (ix) section 105(2) (decision to give counter notice following police objection to temporary event notice),
     (x) section 120(7) (determination of application for grant of personal licence following police objection),
(xi) section 121(6) (determination of application for renewal of personal licence following police objection), or
(xii) section 124(4) (revocation of licence where convictions come to light after grant etc.),
(b) any function under section 52(2) or (3) (determination of application for review of premises licence) in a case where relevant representations (within the meaning of section 52(7)) have been made,
(c) any function under section 88(2) or (3) (determination of application for review of club premises certificate) in a case where relevant representations (within the meaning of section 88(7)) have been made, or
(d) any function under section 167(5) (review following closure order), in a case where relevant representations (within the meaning of section 167(9)) have been made.

(5) The power exercisable under subsection (2) by a subcommittee established by a licensing committee is also subject to any direction given by that committee to the subcommittee.

PART 3
PREMISES LICENCES

Introductory

11 Premises licence
In this Act “premises licence” means a licence granted under this Part, in respect of any premises, which authorises the premises to be used for one or more licensable activities.

12 The relevant licensing authority
(1) For the purposes of this Part the “relevant licensing authority” in relation to any premises is determined in accordance with this section.
(2) Subject to subsection (3), the relevant licensing authority is the authority in whose area the premises are situated.
(3) Where the premises are situated in the areas of two or more licensing authorities, the relevant licensing authority is-
(a) the licensing authority in whose area the greater or greatest part of the premises is situated, or
(b) if there is no authority to which paragraph (a) applies, such one of those authorities as is nominated in accordance with subsection (4).
(4) In a case within subsection (3)(b)-
(a) an applicant for a premises licence must nominate one of the licensing authorities as the relevant licensing authority in relation to the application and any licence granted as a result of it, and
(b) an applicant for a statement under section 29 (provisional statement) in respect of the premises must nominate one of the licensing authorities as the relevant licensing authority in relation to the statement.

13 Authorised persons, interested parties and responsible authorities
(1) In this Part in relation to any premises each of the following expressions has the meaning given to it by this section-
“authorised person”,
“interested party”,
“responsible authority”.
(2) “Authorised person” means any of the following-
(a) an officer of a licensing authority in whose area the premises are situated who is authorised by that authority for the purposes of this Act,
(b) an inspector appointed under section 18 of the Fire Precautions Act 1971 (c.40),
(c) an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974 (c.37),
(d) an officer of a local authority, in whose area the premises are situated, who is authorised by that authority for the purposes of exercising one or more of its statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health,
(e) in relation to a vessel, an inspector, or a surveyor of ships, appointed under section 256 of the Merchant Shipping Act 1995 (c.21),
(f) a person prescribed for the purposes of this subsection.

(3) “Interested party” means any of the following-
(a) a person living in the vicinity of the premises,
(b) a body representing persons who live in that vicinity,
(c) a person involved in a business in that vicinity,
(d) a body representing persons involved in such businesses.

(4) “Responsible authority” means any of the following-
(a) the chief officer of police for any police area in which the premises are situated,
(b) the fire authority for any area in which the premises are situated,
(c) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 for any area in which the premises are situated,
(d) the local planning authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 for any area in which the premises are situated,
(e) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health,
(f) a body which-
   (i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
   (ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters,
(g) any licensing authority (other than the relevant licensing authority) in whose area part of the premises is situated,
(h) in relation to a vessel-
   (i) a navigation authority (within the meaning of section 221(1) of the Water Resources Act 1991 (c.57) having functions in relation to the waters where the vessel is usually moored or berthed or any waters where it is, or is proposed to be, navigated at a time when it is used for licensable activities,
   (ii) the Environment Agency,
   (iii) the British Waterways Board, or
   (iv) the Secretary of State,
   (i) a person prescribed for the purposes of this subsection.

(5) For the purposes of this section, “statutory function” means a function conferred by or under any enactment.

14 Meaning of “supply of alcohol”
For the purposes of this Part the “supply of alcohol” means-
(a) the sale by retail of alcohol, or
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

15 Meaning of “designated premises supervisor”
(1) In this Act references to the “designated premises supervisor”, in relation to a premises licence, are to the individual for the time being specified in that licence as the premises supervisor.
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(2) Nothing in this Act prevents an individual who holds a premises licence from also being specified in the licence as the premises supervisor.

Grant of premises licence

16 Applicant for premises licence
(1) The following persons may apply for a premises licence-
(a) a person who carries on, or proposes to carry on, a business which involves the use of the premises for the licensable activities to which the application relates,
(b) a person who makes the application pursuant to-
   (i) any statutory function discharged by that person which relates to those licensable activities, or
   (ii) any function discharged by that person by virtue of Her Majesty’s prerogative,
(c) a recognised club,
(d) a charity,
(e) the proprietor of an educational institution,
(f) a health service body,
(g) a person who is registered under Part 2 of the Care Standards Act 2000 (c.14) in respect of an independent hospital,
(h) the chief officer of police of a police force in England and Wales,
(i) a person of such other description as may be prescribed.
(2) But an individual may not apply for a premises licence unless he is aged 18 or over.
(3) In this section—
   “charity” has the same meaning as in section 96(1) of the Charities Act 1993 (c.10);
   “educational institution” means—
   (a) a school, or an institution within the further or higher education sector, within the meaning of section 4 of the Education Act 1996 (c.56), or
   (b) a college (including any institution in the nature of a college), school, hall or other institution of a university, in circumstances where the university receives financial support under section 65 of the Further and Higher Education Act 1992 (c.13);
   “health service body” means—
   (a) an NHS trust established by virtue of section 5 of the National Health Service and Community Care Act 1990 (c.19),
   (b) a Primary Care Trust established by virtue of section 16A of the National Health Service Act 1977 (c.49), or
   (c) a Local Health Board established by virtue of section 16BA of that Act;
   “independent hospital” has the same meaning as in section 2 (2) of the Care Standards Act 2000 (c.14);
   “proprietor”—
   (a) in relation to a school within the meaning of section 4 of the Education Act 1996, has the same meaning as in section 579(1) of that Act, and
   (b) in relation to an educational institution other than such a school, means the governing body of that institution within the meaning of section 90(1) of the Further and Higher Education Act 1992; and
   “statutory function” means a function conferred by or under any enactment.

17 Application for premises licence
(1) An application for a premises licence must be made to the relevant licensing authority.
(2) Subsection (1) is subject to regulations under—
   (a) section 54 (form etc. of applications etc.);
   (b) section 55 (fees to accompany applications etc.).
(3) An application under this section must also be accompanied—
by an operating schedule,
(b) by a plan of the premises to which the application relates, in the prescribed form, and
(c) if the licensable activities to which the application relates ("the relevant licensable activities") include the supply of alcohol, by a form of consent in the prescribed form given by the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor.

(4) An "operating schedule" is a document which is in the prescribed form and includes a statement of the following matters-
(a) the relevant licensable activities,
(b) the times during which it is proposed that the relevant licensable activities are to take place,
(c) any other times during which it is proposed that the premises are to be open to the public,
(d) where the applicant wishes the licence to have effect for a limited period, that period,
(e) where the relevant licensable activities include the supply of alcohol, prescribed information in respect of the individual whom the applicant wishes to have specified in the premises licence as the premises supervisor,
(f) where the relevant 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,
(g) the steps which it is proposed to take to promote the licensing objectives,
(h) such other matters as may be prescribed.

(5) The Secretary of State must by regulations-
(a) require an applicant to advertise his application within the prescribed period-
   (i) in the prescribed form, and
   (ii) in a manner which is prescribed and is likely to bring the application to the attention of the interested parties likely to be affected by it;
(b) require an applicant to give notice of his application to each responsible authority, and such other persons as may be prescribed, within the prescribed period;
(c) prescribe the period during which interested parties and responsible authorities may make representations to the relevant licensing authority about the application.

18 Determination of application for premises licence

(1) This section applies where the relevant licensing authority-
(a) receives an application for a premises licence made in accordance with section 17, and
(b) is satisfied that the applicant has complied with any requirement imposed on him under subsection (5) of that section.

(2) Subject to subsection (3), the authority must grant the licence in accordance with the application subject only to-
(a) such conditions as are consistent with the operating schedule accompanying the application, and
(b) any conditions which must under section 19, 20 or 21 be included in the licence.

(3) Where relevant representations are made, the authority must-
(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.
(4) The steps are-
(a) to grant the licence subject to-
   (i) the conditions mentioned in subsection (2)(a) modified to such extent as the
       authority considers necessary for the promotion of the licensing objectives, and
   (ii) any condition which must under section 19, 20 or 21 be included in the licence;
(b) to exclude from the scope of the licence any of the licensable activities to which the
    application relates;
(c) to refuse to specify a person in the licence as the premises supervisor;
(d) to reject the application.
(5) For the purposes of subsection (4)(a)(i) the conditions mentioned in subsection (2)(a) are
    modified if any of them is altered or omitted or any new condition is added.
(6) For the purposes of this section, “relevant representations” means representations which-
    (a) are about the likely effect of the grant of the premises licence on the promotion of
        the licensing objectives,
    (b) meet the requirements of subsection (7),
    (c) if they relate to the identity of the person named in the application as the proposed
        premises supervisor, meet the requirements of subsection (9), and
    (d) are not excluded representations by virtue of section 32 (restriction on making
        representations following issue of provisional statement).
(7) The requirements of this subsection are-
    (a) that the representations were made by an interested party or responsible authority
        within the period prescribed under section 17(5)(c),
    (b) that they have not been withdrawn, and
    (c) in the case of representations made by an interested party (who is not also a
        responsible authority), that they are not, in the opinion of the relevant licensing
        authority, frivolous or vexatious.
(8) Where the authority determines for the purposes of subsection (7)(c) that any
    representations are frivolous or vexatious, it must notify the person who made them of
    the reasons for its determination.
(9) The requirements of this subsection are that the representations-
    (a) were made by a chief officer of police for a police area in which the premises are
        situated, and
    (b) include a statement that, due to the exceptional circumstances of the case, he is
        satisfied that the designation of the person concerned as the premises supervisor
        under the premises licence would undermine the crime prevention objective.
(10) In discharging its duty under subsection (2) or (3)(b), a licensing authority may grant a
    licence under this section subject to different conditions in respect of-
    (a) different parts of the premises concerned;
    (b) different licensable activities.

19 **Mandatory conditions where licence authorises supply of alcohol**

(1) Where a premises licence authorises the supply of alcohol, the licence must include the
    following conditions.
(2) The first condition is that no supply of alcohol may be made under the premises
    licence-
    (a) at a time when there is no designated premises supervisor in respect of the
        premises licence, or
    (b) at a time when the designated premises supervisor does not hold a personal
        licence or his personal licence is suspended.
(3) The second condition is that every supply of alcohol under the premises licence must be
    made or authorised by a person who holds a personal licence.
Mandatory condition: exhibition of films

(1) Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

(2) Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

(3) Where-
   (a) the film classification body is not specified in the licence, or
   (b) the relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,
   admission of children must be restricted in accordance with any recommendation made by that licensing authority.

(4) In this section-
   “children” means persons aged under 18; and
   “film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

Mandatory condition: door supervision

(1) Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, the licence must include a condition that each such individual must be licensed by the Security Industry Authority.

(2) But nothing in subsection (1) requires such a condition to be imposed-
   (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c.12) (premises with premises licences authorising plays or films), or
   (b) in respect of premises in relation to-
      (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or
      (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).

(3) For the purposes of this section-
   (a) “security activity” means an activity to which paragraph 2 (1)(a) of that Schedule applies, and
   (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

Prohibited conditions: plays

(1) In relation to a premises licence which authorises the performance of plays, no condition may be attached to the licence as to the nature of the plays which may be performed, or the manner of performing plays, under the licence.

(2) But subsection (1) does not prevent a licensing authority imposing, in accordance with section 18(2)(a) or (3)(b), 35(3)(b) or 52(3), any condition which it considers necessary on the grounds of public safety.

Grant or rejection of application

(1) Where an application is granted under section 18, the relevant licensing authority must forthwith-
   (a) give a notice to that effect to-
      (i) the applicant, and
      (ii) any person who made relevant representations in respect of the application,
(iii) the chief officer of police for the police area (or each police area) in which the premises are situated, and
(b) issue the applicant with the licence and a summary of it.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1)(a) must state the authority’s reasons for its decision as to the steps (if any) to take under section 18(3)(b).

(3) Where an application is rejected under section 18, the relevant licensing authority must forthwith give a notice to that effect, stating its reasons for the decision, to-
(a) the applicant,
(b) any person who made relevant representations in respect of the application, and
(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(4) In this section “relevant representations” has the meaning given in section 18(6).

24 Form of licence and summary

(1) A premises licence and the summary of a premises licence must be in the prescribed form.

(2) Regulations under subsection (1) must, in particular, provide for the licence to-
(a) specify the name and address of the holder;
(b) include a plan of the premises to which the licence relates;
(c) if the licence has effect for a limited period, specify that period;
(d) specify the licensable activities for which the premises may be used;
(e) if the licensable activities include the supply of alcohol, specify the name and address of the individual (if any) who is the premises supervisor in respect of the licence;
(f) specify the conditions subject to which the licence has effect.

25 Theft, loss, etc. of premises licence or summary

(1) Where a premises licence or summary is lost, stolen, damaged or destroyed, the holder of the licence may apply to the relevant licensing authority for a copy of the licence or summary.

(2) Subsection (1) is subject to regulations under section 55(1) (fee to accompany applications).

(3) Where an application is made in accordance with this section, the relevant licensing authority must issue the holder of the licence with a copy of the licence or summary (certified by the authority to be a true copy) if it is satisfied that-
(a) the licence or summary has been lost, stolen, damaged or destroyed, and
(b) where it has been lost or stolen, the holder has reported that loss or theft to the police.

(4) The copy issued under this section must be a copy of the premises licence or summary in the form in which it existed immediately before it was lost, stolen, damaged or destroyed.

(5) This Act applies in relation to a copy issued under this section as it applies in relation to an original licence or summary.

Duration of licence

26 Period of validity of premises licence

(1) Subject to sections 27 and 28, a premises licence has effect until such time as-
(a) it is revoked under section 52, or
(b) if it specifies that it has effect for a limited period, that period expires.

(2) But a premises licence does not have effect during any period when it is suspended under section 52.

27 Death, incapacity, insolvency etc. of licence holder

(1) A premises licence lapses if the holder of the licence-
(a) dies,
(b) becomes mentally incapable (within the meaning of section 13(1) of the Enduring Powers of Attorney Act 1985 (c.29)),
(c) becomes insolvent,
(d) is dissolved, or
(e) if it is a club, ceases to be a recognised club.

(2) This section is subject to sections 47 and 50 (which make provision for the reinstatement of the licence in certain circumstances).

(3) For the purposes of this section, an individual becomes insolvent on-
(a) the approval of a voluntary arrangement proposed by him,
(b) being adjudged bankrupt or having his estate sequestrated, or
(c) entering into a deed of arrangement made for the benefit of his creditors or a trust deed for his creditors.

(4) For the purposes of this section, a company becomes insolvent on-
(a) the approval of a voluntary arrangement proposed by its directors,
(b) the appointment of an administrator in respect of the company,
(c) the appointment of an administrative receiver in respect of the company, or
(d) going into liquidation.

(5) An expression used in this section and in the Insolvency Act 1986 (c.45) has the same meaning in this section as in that Act.

28 Surrender of premises licence

(1) Where the holder of a premises licence wishes to surrender his licence he may give the relevant licensing authority a notice to that effect.

(2) The notice must be accompanied by the premises licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence.

(3) Where a notice of surrender is given in accordance with this section, the premises licence lapses on receipt of the notice by the authority.

(4) This section is subject to section 50 (which makes provision for the reinstatement in certain circumstances of a licence surrendered under this section).

Provisional statement

29 Application for a provisional statement where premises being built, etc.

(1) This section applies to premises which-
(a) are being or are about to be constructed for the purpose of being used for one or more licensable activities, or
(b) are being or are about to be extended or otherwise altered for that purpose (whether or not they are already being used for that purpose).

(2) A person may apply to the relevant licensing authority for a provisional statement if-
(a) he is interested in the premises, and
(b) where he is an individual, he is aged 18 or over.

(3) In this Act “provisional statement” means a statement issued under section 31(2) or (3)(c).

(4) Subsection (2) is subject to regulations under-
(a) section 54 (form etc. of applications etc.);
(b) section 55 (fees to accompany applications etc.).

(5) An application under this section must also be accompanied by a schedule of works.

(6) A schedule of works is a document in the prescribed form which includes-
(a) a statement made by or on behalf of the applicant including particulars of the premises to which the application relates and of the licensable activities for which the premises are to be used,
(b) plans of the work being or about to be done at the premises, and
(c) such other information as may be prescribed.
(7) For the purposes of this Part, in relation to any premises in respect of which an application for a provisional statement has been made, references to the work being satisfactorily completed are to work at the premises being completed in a manner which substantially complies with the schedule of works accompanying the application.

30 Advertisement of application for provisional statement

(1) This section applies where an application is made under section 29.

(2) The duty to make regulations imposed on the Secretary of State by section 17(5) (advertisement etc. of application) applies in relation to an application under section 29 as it applies in relation to an application under section 17.

(3) Regulations made under section 17(5)(a) by virtue of subsection (2) may, in particular, require advertisements to contain a statement in the prescribed form describing the effect of section 32 (restriction on representations following issue of a provisional statement).

31 Determination of application for provisional statement

(1) This section applies where the relevant licensing authority-

(a) receives a provisional statement application, and

(b) is satisfied that the applicant has complied with any requirement imposed on him by virtue of section 30.

(2) Where no relevant representations are made, the authority must issue the applicant with a statement to that effect.

(3) Where relevant representations are made, the authority must-

(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary,

(b) determine whether, on the basis of those representations and the provisional statement application, it would consider it necessary to take any steps under section 18(3)(b) if, on the work being satisfactorily completed, it had to decide whether to grant a premises licence in the form described in the provisional statement application, and

(c) issue the applicant with a statement which-

(i) gives details of that determination, and

(ii) states the authority’s reasons for its decision as to the steps (if any) that it would be necessary to take under section 18(3)(b).

(4) The licensing authority must give a copy of the provisional statement to-

(a) each person who made relevant representations, and

(b) the chief officer of police for each police area in which the premises are situated.

(5) In this section “relevant representations” means representations-

(a) which are about the likely effect on the licensing objectives of the grant of a premises licence in the form described in the provisional statement application, if the work at the premises was satisfactorily completed, and

(b) which meet the requirements of subsection (6).

(6) The requirements are-

(a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5)(c) by virtue of section 30,

(b) that the representations have not been withdrawn, and

(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(7) Where the authority determines for the purposes of subsection (6)(c) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for its determination.

(8) In this section “provisional statement application” means an application made in accordance with section 29.
32  **Restriction on representations following provisional statement**

(1) This section applies where a provisional statement has been issued in respect of any premises (“the relevant premises”) and a person subsequently applies for a premises licence in respect of-

(a) the relevant premises or a part of them, or
(b) premises that are substantially the same as the relevant premises or a part of them.

(2) Where-

(a) the application for the premises licence is an application for a licence in the same form as the licence described in the application for the provisional statement, and
(b) the work described in the schedule of works accompanying the application for that statement has been satisfactorily completed,

representations made by a person (“the relevant person”) in respect of the application for the premises licence are excluded representations for the purposes of section 18(6)(d) if subsection (3) applies.

(3) This subsection applies if-

(a) given the information provided in the application for the provisional statement, the relevant person could have made the same, or substantially the same, representations about that application but failed to do so, without reasonable excuse, and
(b) there has been no material change in circumstances relating either to the relevant premises or to the area in the vicinity of those premises since the provisional statement was made.

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33  **Notification of change of name or address**

(1) The holder of a premises licence must, as soon as is reasonably practicable, notify the relevant licensing authority of any change in-

(a) his name or address,  
(b) unless the designated premises supervisor has already notified the authority under subsection (4), the name or address of that supervisor.

(2) Subsection (1) is subject to regulations under section 55(1) (fee to accompany application).

(3) A notice under subsection (1) must also be accompanied by the premises licence (or the appropriate part of the licence) or, if that is not practicable, by a statement of the reasons for the failure to produce the licence (or part).

(4) Where the designated premises supervisor under a premises licence is not the holder of the licence, he may notify the relevant licensing authority under this subsection of any change in his name or address.

(5) Where the designated premises supervisor gives a notice under subsection (4), he must, as soon as is reasonably practicable, give the holder of the premises licence a copy of that notice.

(6) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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34  **Application to vary premises licence**

(1) The holder of a premises licence may apply to the relevant licensing authority for variation of the licence.

(2) Subsection (1) is subject to regulations under-

(a) section 54 (form etc. of applications etc.); 
(b) section 55 (fees to accompany applications etc.).
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(3) An application under this section must also be accompanied by the premises licence (or the appropriate part of that licence) or, if that is not practicable, by a statement of the reasons for the failure to provide the licence (or part).

(4) This section does not apply to an application within section 37(1) (application to vary licence to specify individual as premises supervisor).

(5) The duty to make regulations imposed on the Secretary of State by subsection (5) of section 17 (advertisement etc. of application) applies in relation to applications under this section as it applies in relation to applications under that section.

35 Determination of application under section 34

(1) This section applies where the relevant licensing authority-
(a) receives an application, made in accordance with section 34, to vary a premises licence, and
(b) is satisfied that the applicant has complied with any requirement imposed on him by virtue of subsection (5) of that section.

(2) Subject to subsection (3) and section 36(6), the authority must grant the application.

(3) Where relevant representations are made, the authority must-
(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are-
(a) to modify the conditions of the licence;
(b) to reject the whole or part of the application; and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

(5) In this section “relevant representations” means representations which-
(a) are about the likely effect of the grant of the application on the promotion of the licensing objectives, and
(b) meet the requirements of subsection (6).

(6) The requirements are-
(a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5)(c) by virtue of section 34(5),
(b) that they have not been withdrawn, and
(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(7) Subsections (2) and (3) are subject to sections 19, 20 and 21 (which require certain conditions to be included in premises licences).

36 Supplementary provision about determinations under section 35

(1) Where an application (or any part of an application) is granted under section 35, the relevant licensing authority must forthwith give a notice to that effect to-
(a) the applicant,
(b) any person who made relevant representations in respect of the application, and
(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(2) Where relevant representations were made in respect of the application, the notice under subsection (1) must state the authority’s reasons for its decision as to the steps (if any) to take under section 35(3)(b).

(3) The notice under subsection (1) must specify the time when the variation in question takes effect.
That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

(4) Where an application (or any part of an application) is rejected under section 35, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to-
(a) the applicant,
(b) any person who made relevant representations in respect of the application, and
(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(5) Where the relevant licensing authority determines for the purposes of section 35(6)(c) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(6) A licence may not be varied under section 35 so as-
(a) to extend the period for which the licence has effect, or
(b) to vary substantially the premises to which it relates.

(7) In discharging its duty under subsection (2) or (3)(b) of that section, a licensing authority may vary a premises licence so that it has effect subject to different conditions in respect of-
(a) different parts of the premises concerned;
(b) different licensable activities.

(8) In this section “relevant representations” has the meaning given in section 35(5).

37 Application to vary licence to specify individual as premises supervisor

(1) The holder of a premises licence may-
(a) if the licence authorises the supply of alcohol, or
(b) if he has applied under section 34 to vary the licence so that it authorises such supplies, apply to vary the licence so as to specify the individual named in the application (“the proposed individual”) as the premises supervisor.

(2) Subsection (1) is subject to regulations under-
(a) section 54 (form etc. of applications etc.); and
(b) section 55 (fees to accompany applications etc.).

(3) An application under this section must also be accompanied by-
(a) a form of consent in the prescribed form given by the proposed individual, and
(b) the premises licence (or the appropriate part of that licence) or, if that is not practicable, a statement of the reasons for the failure to provide the licence (or part).

(4) The holder of the premises licence must give notice of his application-
(a) to the chief officer of police for the police area (or each police area) in which the premises are situated, and
(b) to the designated premises supervisor (if there is one), and that notice must state whether the application is one to which section 38 applies.

(5) Where a chief officer of police notified under subsection (4) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.

(6) The chief officer of police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under subsection (4).

38 Circumstances in which section 37 application given interim effect

(1) This section applies where an application made in accordance with section 37, in respect of a premises licence which authorises the supply of alcohol, includes a request that the variation applied for should have immediate effect.

(2) By virtue of this section, the premises licence has effect during the application period as if it were varied in the manner set out in the application.
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(3) For this purpose “the application period” means the period which-
(a) begins when the application is received by the relevant licensing authority, and
(b) ends-
(i) if the application is granted, when the variation takes effect,
(ii) if the application is rejected, at the time the rejection is notified to the applicant, or
(iii) if the application is withdrawn before it is determined, at the time of the withdrawal.

39 Determination of section 37 application

(1) This section applies where an application is made, in accordance with section 37, to vary a premises licence so as to specify a new premises supervisor (“the proposed individual”).

(2) Subject to subsection (3), the relevant licensing authority must grant the application.

(3) Where a notice is given under section 37(5) (and not withdrawn), the authority must-
(a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and
(b) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.

(4) Where an application under section 37 is granted or rejected, the relevant licensing authority must give a notice to that effect to-
(a) the applicant,
(b) the proposed individual, and
(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(5) Where a chief officer of police gave a notice under subsection (5) of that section (and it was not withdrawn), the notice under subsection (4) of this section must state the authority’s reasons for granting or rejecting the application.

(6) Where the application is granted, the notice under subsection (4) must specify the time when the variation takes effect.
That time is the time specified in the application or, if that time is before the applicant is given that notice, such later time as the relevant licensing authority specifies in the notice.

40 Duty of applicant following determination under section 39

(1) Where the holder of a premises licence is notified under section 39(4), he must forthwith-
(a) if his application has been granted, notify the person (if any) who has been replaced as the designated premises supervisor of the variation, and
(b) if his application has been rejected, give the designated premises supervisor (if any) notice to that effect.

(2) A person commits an offence if he fails, without reasonable excuse, to comply with subsection (1).

(3) A person guilty of an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

41 Request to be removed as designated premises supervisor

(1) Where an individual wishes to cease being the designated premises supervisor in respect of a premises licence, he may give the relevant licensing authority a notice to that effect.

(2) Subsection (1) is subject to regulations under section 54 (form etc. of notices etc.).

(3) Where the individual is the holder of the premises licence, the notice under subsection (1) must also be accompanied by the premises licence (or the appropriate part of the licence) or, if that is not practicable, by a statement of the reasons for the failure to provide the licence (or part).
(4) In any other case, the individual must no later than 48 hours after giving the notice under subsection (1) give the holder of the premises licence-
(a) a copy of that notice, and
(b) a notice directing the holder to send to the relevant licensing authority within 14 days of receiving the notice-
   (i) the premises licence (or the appropriate part of the licence), or
   (ii) if that is not practicable, a statement of the reasons for the failure to provide the licence (or part).

(5) A person commits an offence if he fails, without reasonable excuse, to comply with a direction given to him under subsection (4)(b).

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Where an individual-
   (a) gives the relevant licensing authority a notice in accordance with this section, and
   (b) satisfies the requirements of subsection (3) or (4),
he is to be treated for the purposes of this Act as if, from the relevant time, he were not the designated premises supervisor.

(8) For this purpose “the relevant time” means-
   (a) the time the notice under subsection (1) is received by the relevant licensing authority, or
   (b) if later, the time specified in the notice.

**Transfer of premises licence**

42 Application for transfer of premises licence

(1) Subject to this section, any person mentioned in section 16(1) (applicant for premises licence) may apply to the relevant licensing authority for the transfer of a premises licence to him.

(2) Where the applicant is an individual he must be aged 18 or over.

(3) Subsection (1) is subject to regulations under-
   (a) section 54 (form etc. of applications etc.);
   (b) section 55 (fees to accompany applications etc.).

(4) An application under this section must also be accompanied by the premises licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence.

(5) The applicant must give notice of his application to the chief officer of police for he police area (or each police area) in which the premises are situated.

(6) Where a chief officer of police notified under subsection (5) is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective, he must give the relevant licensing authority a notice stating the reasons why he is so satisfied.

(7) The chief officer of police must give that notice within the period of 14 days beginning with the day on which he is notified of the application under subsection (5).

43 Circumstances in which transfer application given interim effect

(1) Where-
   (a) an application made in accordance with section 42 includes a request that the transfer have immediate effect, and
   (b) the requirements of this section are met, then, by virtue of this section, the premises licence has effect during the application period as if the applicant were the holder of the licence.

(2) For this purpose “the application period” means the period which-
   (a) begins when the application is received by the relevant licensing authority, and
   (b) ends-
      (i) when the licence is transferred following the grant of the application, or
(ii) if the application is rejected, when the applicant is notified of the rejection, or

(iii) when the application is withdrawn.

(3) Subject to subsections (4) and (5), an application within subsection (1)(a) may be made only with the consent of the holder of the premises licence.

(4) Where a person is the holder of the premises licence by virtue of an interim authority notice under section 47, such an application may also be made by that person.

(5) The relevant licensing authority must exempt the applicant from the requirement to obtain the holder’s consent if the applicant shows to the authority’s satisfaction-

(a) that he has taken all reasonable steps to obtain that consent, and

(b) that, if the application were one to which subsection (1) applied, he would be in a position to use the premises during the application period for the licensable activity or activities authorised by the premises licence.

(6) Where the relevant licensing authority refuses to exempt an applicant under subsection (5), it must notify the applicant of its reasons for that decision.

44 Determination of transfer application

(1) This section applies where an application for the transfer of a licence is made in accordance with section 42.

(2) Subject to subsections (3) and (5), the authority must transfer the licence in accordance with the application.

(3) The authority must reject the application if none of the conditions in subsection (4) applies.

(4) The conditions are-

(a) that section 43(1) (applications given interim effect) applies to the application,

(b) that the holder of the premises licence consents to the transfer,

(c) that the applicant is exempted under subsection (6) from the requirement to obtain the holder’s consent to the transfer.

(5) Where a notice is given under section 42(6) (and not withdrawn), and subsection (3) above does not apply, the authority must-

(a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and

(b) having regard to the notice, reject the application if it considers it necessary for the promotion of the crime prevention objective to do so.

(6) The relevant licensing authority must exempt the applicant from the requirement to obtain the holder’s consent if the applicant shows to the authority’s satisfaction-

(a) that he has taken all reasonable steps to obtain that consent, and

(b) that, if the application were granted, he would be in a position to use the premises for the licensable activity or activities authorised by the premises licence.

(7) Where the relevant licensing authority refuses to exempt an applicant under subsection (6), it must notify the applicant of its reasons for that decision.

45 Notification of determination under section 44

(1) Where an application under section 42 is granted or rejected, the relevant licensing authority must give a notice to that effect to-

(a) the applicant, and

(b) the chief officer of police for the police area (or each police area) in which the premises are situated.

(2) Where a chief officer of police gave a notice under subsection (6) of that section (and it was not withdrawn), the notice under subsection (1) of this section must state the licensing authority’s reasons for granting or rejecting the application.

(3) Where the application is granted, the notice under subsection (1) must specify the time when the transfer takes effect.
That time is the time specified in the application or, if that time is before the applicant is
given that notice, such later time as the relevant licensing authority specifies in the
notice.

(4) The relevant licensing authority must also give a copy of the notice given under
subsection (1)-
(a) where the application is granted-
   (i) to the holder of the licence immediately before the application was granted,
   or
   (ii) if the application was one to which section 43(1) applied, to the holder of the
   licence immediately before the application was made (if any),
(b) where the application is rejected, to the holder of the premises licence (if any).

46 Duty to notify designated premises supervisor of transfer

(1) This section applies where-
(a) an application is made in accordance with section 42 to transfer a premises licence
   in respect of which there is a designated premises supervisor, and
(b) the applicant and that supervisor are not the same person.

(2) Where section 43(1) applies in relation to the application, the applicant must forthwith
notify the designated premises supervisor of the application.

(3) If the application is granted, the applicant must forthwith notify the designated
premises supervisor of the transfer.

(4) A person commits an offence if he fails, without reasonable excuse, to comply with this
section.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a
fine not exceeding level 3 on the standard scale.

47 Interim authority notice following death etc. of licence holder

(1) This section applies where-
(a) a premises licence lapses under section 27 in a case within subsection (1)(a), (b) or
   (c) of that section (death, incapacity or insolvency of the holder), but
(b) no application for transfer of the licence has been made by virtue of section 50
   (reinstatement of licence on transfer following death etc.).

(2) A person who-
(a) has a prescribed interest in the premises concerned, or
(b) is connected to the person who held the premises licence immediately before it
   lapsed ("the former holder"),
may, during the initial seven day period, give to the relevant licensing authority a notice
(an "interim authority notice") in respect of the licence.

(3) Subsection (2) is subject to regulations under-
(a) section 54 (form etc. of notices etc.);
(b) section 55 (fees to accompany applications etc.).

(4) Only one interim authority notice may be given under subsection (2).

(5) For the purposes of subsection (2) a person is connected to the former holder of the
premises licence if, and only if-
(a) the former holder has died and that person is his personal representative,
(b) the former holder has become mentally incapable and that person acts for him
   under a power of attorney created by an instrument registered under section 6 of
   the Enduring Powers of Attorney Act 1985 (c.29), or
(c) the former holder has become insolvent and that person is his insolvency
   practitioner.

(6) Where an interim authority notice is given in accordance with this section-
(a) the premises licence is reinstated from the time the notice is received by the
relevant licensing authority, and
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(7) But the premises licence lapses again-
(a) at the end of the initial seven day period unless before that time the person who gave the interim authority notice has given a copy of the notice to the chief officer of police for the police area (or each police area) in which the premises are situated;
(b) at the end of the interim authority period, unless before that time a relevant transfer application is made to the relevant licensing authority.

(8) Nothing in this section prevents the person who gave the interim authority notice from making a relevant transfer application.

(9) If-
(a) a relevant transfer application is made during the interim authority period, and
(b) that application is rejected or withdrawn,
the licence lapses again at the time of the rejection or withdrawal.

(10) In this section-
“becomes insolvent” is to be construed in accordance with section 27;
“initial seven day period” in relation to a licence which lapses as mentioned in subsection (1), means the period of seven days beginning with the day after the day the licence lapses;
“insolvency practitioner”, in relation to a person, means a person acting as an insolvency practitioner in relation to him (within the meaning of section 388 of the Insolvency Act 1986 (c.45));
“interim authority period” means the period beginning with the day on which the interim authority notice is received by the relevant licensing authority and ending-
(a) two months after that day, or
(b) if earlier, when it is terminated by the person who gave the interim authority notice notifying the relevant licensing authority to that effect;
“mentally incapable” has the same meaning as in section 27(1) (b); and
“relevant transfer application” in relation to the premises licence, is an application under section 42 which is given interim effect by virtue of section 43.

48 Cancellation of interim authority notice following police objections

(1) This section applies where-
(a) an interim authority notice by a person (“the relevant person”) is given in accordance with section 47,
(b) the chief officer of police for the police area (or each police area) in which the premises are situated has given a copy of the interim authority notice before the end of the initial seven day period (within the meaning of that section), and
(c) that chief officer (or any of those chief officers) is satisfied that the exceptional circumstances of the case are such that a failure to cancel the interim authority notice would undermine the crime prevention objective.

(2) The chief officer of police must no later than 48 hours after he receives the copy of the interim authority notice give the relevant licensing authority a notice stating why he is so satisfied.

(3) Where a notice is given by the chief officer of police (and not withdrawn), the authority must-
(a) hold a hearing to consider it, unless the authority, the relevant person and the chief officer of police agree that a hearing is unnecessary, and
(b) having regard to the notice given by the chief officer of police, cancel the interim authority notice if it considers it necessary for the promotion of the crime prevention objective to do so.

(4) An interim authority notice is cancelled under subsection (3)(b) by the licensing authority giving the relevant person a notice stating that it is cancelled and the authority’s reasons for its decision.
The licensing authority must give a copy of a notice under subsection (4) to the chief officer of police for the police area (or each police area) in which the premises are situated.

The premises licence lapses if, and when, a notice is given under subsection (4). This is subject to paragraph 7(5) of Schedule 5 (reinstatement of premises licence where appeal made against cancellation of interim authority notice).

The relevant licensing authority must not cancel an interim authority notice after a relevant transfer application (within the meaning of section 47) is made in respect of the premises licence.

### Supplementary provision about interim authority notices

1. On receipt of an interim authority notice, the relevant licensing authority must issue to the person who gave the notice a copy of the licence and a copy of the summary (in each case certified by the authority to be a true copy).

2. The copies issued under this section must be copies of the premises licence and summary in the form in which they existed immediately before the licence lapsed under section 27, except that they must specify the person who gave the interim authority notice as the person who is the holder.

3. This Act applies in relation to a copy issued under this section as it applies in relation to an original licence or summary.

4. Where a person becomes the holder of a premises licence by virtue of section 47, he must (unless he is the designated premises supervisor under the licence) forthwith notify the supervisor (if any) of the interim authority notice.

5. A person commits an offence if he fails, without reasonable excuse, to comply with subsection (4).

6. A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### Transfer following death etc of licence holder

1. This section applies where-
   - a premises licence lapses by virtue of section 27 (death, incapacity or insolvency etc. of the holder), but no interim authority notice has effect, or
   - a premises licence lapses by virtue of section 28 (surrender).

2. For the purposes of subsection (1)(a) an interim authority notice ceases to have effect when it is cancelled under section 48 or withdrawn.

3. Notwithstanding the lapsing of the licence, a person mentioned in section 16(1) (who, in the case of an individual, is aged 18 or over) may apply under section 42 for the transfer of the licence to him provided that the application-
   - is made no later than seven days after the day the licence lapsed, and
   - is one to which section 43(1)(a) applies.

4. Where an application is made in accordance with subsection (3), section 43(1)(b) must be disregarded.

5. Where such an application is made, the premises licence is reinstated from the time the application is received by the relevant licensing authority.

6. But the licence lapses again if, and when-
   - the applicant is notified of the rejection of the application, or
   - the application is withdrawn.

7. Only one application for transfer of the premises licence may be made in reliance on this section.

### Review of licences

1. Where a premises licence has effect, an interested party or a responsible authority may apply to the relevant licensing authority for a review of the licence.
Subsection (1) is subject to regulations under section 54 (form etc. of applications etc.).

The Secretary of State must by regulations under this section—
(a) require the applicant to give a notice containing details of the application to the holder of the premises licence and each responsible authority within such period as may be prescribed;
(b) require the authority to advertise the application and invite representations about it to be made to the authority by interested parties and responsible authorities;
(c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party;
(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied—
(a) that the ground is not relevant to one or more of the licensing objectives, or
(b) in the case of an application made by a person other than a responsible authority, that—
(i) the ground is frivolous or vexatious, or
(ii) the ground is a repetition.

For this purpose a ground for review is a repetition if—
(a) it is identical or substantially similar to—
(i) a ground for review specified in an earlier application for review made in respect of the same premises licence and determined under section 52, or
(ii) representations considered by the relevant licensing authority in accordance with section 18, before it determined the application for the premises licence under that section, or
(iii) representations which would have been so considered but for the fact that they were excluded representations by virtue of section 32, and
(b) a reasonable interval has not elapsed since that earlier application for review or the grant of the licence (as the case may be).

Where the authority rejects a ground for review under subsection (4)(b), it must notify the applicant of its decision and, if the ground was rejected because it was frivolous or vexatious, the authority must notify him of its reasons for making that decision.

The application is to be treated as rejected to the extent that any of the grounds for review are rejected under subsection (4).

Accordingly the requirements imposed under subsection (3)(a) and (b) and by section 52 (so far as not already met) apply only to so much (if any) of the application as has not been rejected.

This section applies where—
(a) the relevant licensing authority receives an application made in accordance with section 51,
(b) the applicant has complied with any requirement imposed on him under subsection (3)(a) or (d) of that section, and
(c) the authority has complied with any requirement imposed on it under subsection (3)(b) or (d) of that section.

Before determining the application, the authority must hold a hearing to consider it and any relevant representations.

The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

The steps are—
(a) to modify the conditions of the licence;
(b) to exclude a licensable activity from the scope of the licence;
(c) to remove the designated premises supervisor;
(d) to suspend the licence for a period not exceeding three months;
(e) to revoke the licence;
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

(5) Subsection (3) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

(6) Where the authority takes a step mentioned in subsection (4)(a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

(7) In this section “relevant representations” means representations which-
(a) are relevant to one or more of the licensing objectives, and
(b) meet the requirements of subsection (8).

(8) The requirements are-
(a) that the representations are made-
   (i) by the holder of the premises licence, a responsible authority or an interested party, and
   (ii) within the period prescribed under section 51(3)(c),
(b) that they have not been withdrawn, and
(c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(9) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(10) Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to-
(a) the holder of the licence,
(b) the applicant,
(c) any person who made relevant representations, and
(d) the chief officer of police for the police area (or each police area) in which the premises are situated.

(11) A determination under this section does not have effect-
(a) until the end of the period given for appealing against the decision, or
(b) if the decision is appealed against, until the appeal is disposed of.

53 Supplementary provision about review

(1) This section applies where a local authority is both-
(a) the relevant licensing authority, and
(b) a responsible authority,
in respect of any premises.

(2) The authority may, in its capacity as a responsible authority, apply under section 51 for a review of any premises licence in respect of the premises.

(3) The authority may, in its capacity as licensing authority, determine that application.

General provision

54 Form etc. of applications and notices under Part 3
In relation to any application or notice under this Part, regulations may prescribe-
(a) its form;
(b) the manner in which it is to be made or given;
(c) information and documents that must accompany it.
55 Fees
(1) Regulations may-
   (a) require applications under any provision of this Part (other than section 51) or
       notices under section 47 to be accompanied by a fee, and
   (b) prescribe the amount of the fee.
(2) Regulations may also require the holder of a premises licence to pay the relevant
    licensing authority an annual fee.
(3) Regulations under subsection (2) may include provision prescribing-
   (a) the amount of the fee, and
   (b) the time at which any such fee is due.
(4) Any fee which is owed to a licensing authority under subsection (2) may be recovered
    as a debt due to the authority.

Production of licence, rights of entry, etc

56 Licensing authority's duty to update licence document
(1) Where-
   (a) the relevant licensing authority, in relation to a premises licence, makes a
ten determination or receives a notice under this Part,
   (b) a premises licence lapses under this Part, or
   (c) an appeal against a decision under this Part is disposed of,
the relevant licensing authority must make the appropriate amendments (if any) to the
licence and, if necessary, issue a new summary of the licence.
(2) Where a licensing authority is not in possession of the licence (or the appropriate part
of the licence) it may, for the purposes of discharging its obligations under subsection (1),
require the holder of a premises licence to produce the licence (or the appropriate part)
to the authority within 14 days from the date on which he is notified of the requirement.
(3) A person commits an offence if he fails, without reasonable excuse, to comply with a
requirement under subsection (2).
(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a
fine not exceeding level 2 on the standard scale.

57 Duty to keep and produce licence
(1) This section applies whenever premises in respect of which a premises licence has effect
are being used for one or more licensable activities authorised by the licence.
(2) The holder of the premises licence must secure that the licence or a certified copy of it is
kept at the premises in the custody or under the control of-
   (a) the holder of the licence, or
   (b) a person who works at the premises and whom the holder of the licence has
      nominated in writing for the purposes of this subsection.
(3) The holder of the premises licence must secure that-
   (a) the summary of the licence or a certified copy of that summary, and
   (b) a notice specifying the position held at the premises by any person nominated for
      the purposes of subsection (2),
are prominently displayed at the premises.
(4) The holder of a premises licence commits an offence if he fails, without reasonable
excuse, to comply with subsection (2) or (3).
(5) A constable or an authorised person may require the person who, by virtue of
arrangements made for the purposes of subsection (2), is required to have the premises
licence (or a certified copy of it) in his custody or under his control to produce the
licence (or such a copy) for examination.
(6) An authorised person exercising the power conferred by subsection (5) must, if so
requested, produce evidence of his authority to exercise the power.
(7) A person commits an offence if he fails, without reasonable excuse, to produce a
premises licence or certified copy of a premises licence in accordance with a
requirement under subsection (5).
A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

In subsection (3) the reference to the summary of the licence is a reference to the summary issued under section 23 or, where one or more summaries have subsequently been issued under section 56, the most recent summary to have been so issued.

Section 58 makes provision about certified copies of documents for the purposes of this section.

**Provision supplementary to section 57**

(1) Any reference in section 57 to a certified copy of any document is a reference to a copy of that document which is certified to be a true copy by-(a) the relevant licensing authority, (b) a solicitor or notary, or a person of a prescribed description.

(2) Any certified copy produced in accordance with a requirement under section 57(5) must be a copy of the document in the form in which it exists at the time.

(3) A document which purports to be a certified copy of a document is to be taken to be such a copy, and to comply with the requirements of subsection (2), unless the contrary is shown.

**Inspection of premises before grant of licence etc.**

(1) In this section “relevant application” means an application under-(a) section 17 (grant of licence), (b) section 29 (provisional statement), (c) section 34 (variation of licence), or (d) section 51 (review of licence).

(2) A constable or an authorised person may, at any reasonable time before the determination of a relevant application, enter the premises to which the application relates to assess-(a) in a case within subsection (1)(a), (b) or (c), the likely effect of the grant of the application on the promotion of the licensing objectives, and (b) in a case within subsection (1)(d), the effect of the activities authorised by the premises licence on the promotion of those objectives.

(3) An authorised person exercising the power conferred by this section must, if so requested, produce evidence of his authority to exercise the power.

(4) A constable or an authorised person exercising the power conferred by this section in relation to an application within subsection (1)(d) may, if necessary, use reasonable force.

(5) A person commits an offence if he intentionally obstructs an authorised person exercising a power conferred by this section.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**Part 4**

**Clubs**

**Introductory**

**Club premises certificate**

(1) In this Act “club premises certificate” means a certificate granted under this Part-(a) in respect of premises occupied by, and habitually used for the purposes of, a club, (b) by the relevant licensing authority, and (c) certifying the matters specified in subsection (2).

(2) Those matters are-(a) that the premises may be used by the club for one or more qualifying club activities specified in the certificate, and
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Qualifying clubs

61 Qualifying clubs
(1) This section applies for determining for the purposes of this Part whether a club is a qualifying club in relation to a qualifying club activity.
(2) A club is a qualifying club in relation to the supply of alcohol to members or guests if it satisfies both-
   (a) the general conditions in section 62, and
   (b) the additional conditions in section 64.
(3) A club is a qualifying club in relation to the provision of regulated entertainment if it satisfies the general conditions in section 62.

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
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(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.

Interpretation

67 Associate members and their guests

(1) Any reference in this Act (other than this section) to a guest of a member of a club includes a reference to-
(a) an associate member of the club, and
(b) a guest of an associate member of the club.

(2) For the purposes of this Act a person is an “associate member” of a club if-
(a) in accordance with the rules of the club, he is admitted to its premises as being a member of another club, and
(b) that other club is a recognised club (see section 193).

68 The relevant licensing authority

(1) For the purposes of this Part the “relevant licensing authority” in relation to any premises is determined in accordance with this section.
(2) Subject to subsection (3), the relevant licensing authority is the authority in whose area the premises are situated.

(3) Where the premises are situated in the areas of two or more licensing authorities, the relevant licensing authority is-
   (a) the licensing authority in whose area the greater or greatest part of the premises is situated, or
   (b) if there is no authority to which paragraph (a) applies, such one of those authorities as is nominated in accordance with subsection (4).

(4) In a case within subsection (3)(b), an applicant for a club premises certificate must nominate one of the licensing authorities as the relevant licensing authority in relation to the application and any certificate granted as a result of it.

69 Authorised persons, interested parties and responsible authorities

(1) In this Part in relation to any premises each of the following expressions has the meaning given to it by this section—
   “authorised person”,
   “interested party”,
   “responsible authority”.

(2) “Authorised person” means any of the following—
   (a) an officer of a licensing authority in whose area the premises are situated who is authorised by that authority for the purposes of this Act,
   (b) an inspector appointed under section 18 of the Fire Precautions Act 1971 (c.40),
   (c) an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974 (c.37),
   (d) an officer of a local authority, in whose area the premises are situated, who is authorised by that authority for the purposes of exercising one or more of its statutory functions in relation to minimising or preventing the risk of pollution of the environment or of harm to human health,
   (e) in relation to a vessel, an inspector, or a surveyor of ships, appointed under section 256 of the Merchant Shipping Act 1995 (c.21),
   (f) a person prescribed for the purposes of this subsection.

(3) “Interested party” means any of the following—
   (a) a person living in the vicinity of the premises,
   (b) a body representing persons who live in that vicinity,
   (c) a person involved in a business in that vicinity,
   (d) a body representing persons involved in such businesses.

(4) “Responsible authority” means any of the following—
   (a) the chief officer of police for any police area in which the premises are situated,
   (b) the fire authority for any area in which the premises are situated,
   (c) the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 (c.37) for any area in which the premises are situated,
   (d) the local planning authority within the meaning given by the Town and Country Planning Act 1990 (c.8) for any area in which the premises are situated,
   (e) the local authority by which statutory functions are exercisable in any area in which the premises are situated in relation to minimising or preventing the risk of pollution of the environment or of harm to human health,
   (f) a body which—
      (i) represents those who, in relation to any such area, are responsible for, or interested in, matters relating to the protection of children from harm, and
      (ii) is recognised by the licensing authority for that area for the purposes of this section as being competent to advise it on such matters,
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70 Other definitions relating to clubs

In this Part-

“secretary”, in relation to a club, includes any person (whether or not an officer of the club) performing the duties of a secretary;

“supply of alcohol to members or guests” means, in the case of any club,-

(a) the supply of alcohol by or on behalf of the club to, or to the order of, a member of the club, or

(b) the sale by retail of alcohol by or on behalf of the club to a guest of a member of the club for consumption on the premises where the sale takes place,

and related expressions are to be construed accordingly.

Grant of club premises certificate

71 Application for club premises certificate

(1) A club may apply for a club premises certificate in respect of any premises which are occupied by, and habitually used for the purposes of, the club.

(2) Any application for a club premises certificate must be made to the relevant licensing authority.

(3) Subsection (2) is subject to regulations under-

(a) section 91 (form etc. of applications and notices under this Part);

(b) section 92 (fees to accompany applications and notices).

(4) An application under this section must also be accompanied by-

(a) a club operating schedule,

(b) a plan of the premises to which the application relates, in the prescribed form, and

(c) a copy of the rules of the club.

(5) A “club operating schedule” is a document which is in the prescribed form, and includes a statement of the following matters-

(a) the qualifying club activities to which the application relates (“the relevant qualifying club activities”),

(b) the times during which it is proposed that the relevant qualifying club activities are to take place,

(c) any other times during which it is proposed that the premises are to be open to members and their guests,

(d) where the relevant qualifying club activities include the supply of alcohol, whether the supplies are proposed to be for consumption on the premises or both on and off the premises,

(e) the steps which it is proposed to take to promote the licensing objectives, and

(f) such other matters as may be prescribed.

(6) The Secretary of State must by regulations-
(a) require an applicant to advertise the application within the prescribed period-
   (i) in the prescribed form, and
   (ii) in a manner which is prescribed and is likely to bring the application to the
        attention of the interested parties likely to be affected by it;
(b) require an applicant to give notice of the application to each responsible authority,
    and such other persons as may be prescribed within the prescribed period;
(c) prescribe the period during which interested parties and responsible authorities
    may make representations to the relevant licensing authority about the
    application.

72 Determination of application for club premises certificate
(1) This section applies where the relevant licensing authority-
   (a) receives an application for a club premises certificate made in accordance with
       section 71, and
   (b) is satisfied that the applicant has complied with any requirement imposed on the
       applicant under subsection (6) of that section.
(2) Subject to subsection (3), the authority must grant the certificate in accordance with the
    application subject only to-
    (a) such conditions as are consistent with the club operating schedule accompanying
        the application, and
    (b) any conditions which must under section 73(2) to (5) or 74 be included in the
        certificate.
(3) Where relevant representations are made, the authority must-
   (a) hold a hearing to consider them, unless the authority, the applicant and each
       person who has made such representations agree that a hearing is unnecessary,
       and
   (b) having regard to the representations, take such of the steps mentioned in
       subsection (4) (if any) as it considers necessary for the promotion of the licensing
       objectives.
(4) The steps are-
   (a) to grant the certificate subject to-
       (i) the conditions mentioned in subsection (2)(a) modified to such extent as the
           authority considers necessary for the promotion of the licensing objectives, and
       (ii) any conditions which must under section 73(2) to (5) or 74 be included in the
           certificate;
   (b) to exclude from the scope of the certificate any of the qualifying club activities to
       which the application relates;
   (c) to reject the application.
(5) Subsections (2) and (3)(b) are subject to section 73(1) (certificate may authorise off-
    supplies only if it authorises on supplies).
(6) For the purposes of subsection (4)(a)(4)(a) the conditions mentioned in subsection (2)(a)
    are modified if any of them is altered or omitted or any new condition is added.
(7) For the purposes of this section, “relevant representations” means representations
    which-
    (a) are about the likely effect of the grant of the certificate on the promotion of the
        licensing objectives, and
    (b) meet the requirements of subsection (8).
(8) The requirements are-
    (a) that the representations were made by an interested party or responsible authority
        within the period prescribed under section 71(6)(c),
    (b) that they have not been withdrawn, and
in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(9) Where the authority determines for the purposes of subsection (8)(c) that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for its determination.

(10) In discharging its duty under subsection (2) or (3)(b) a licensing authority may grant a club premises certificate subject to different conditions in respect of-

(a) different parts of the premises concerned;

(b) different qualifying club activities.

73 Certificate authorising supply of alcohol for consumption off the premises

(1) A club premises certificate may not authorise the supply of alcohol for consumption off the premises unless it also authorises the supply of alcohol to a member of the club for consumption on those premises.

(2) A club premises certificate which authorises the supply of alcohol for consumption off the premises must include the following conditions.

(3) The first condition is that the supply must be made at a time when the premises are open for the purposes of supplying alcohol, in accordance with the club premises certificate, to members of the club for consumption on the premises.

(4) The second condition is that any alcohol supplied for consumption off the premises must be in a sealed container.

(5) The third condition is that any supply of alcohol for consumption off the premises must be made to a member of the club in person.

74 Mandatory condition: exhibition of films

(1) Where a club premises certificate authorises the exhibition of films, the certificate must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

(2) Where the film classification body is specified in the certificate, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation made by that body.

(3) Where-

(a) the film classification body is not specified in the certificate, or

(b) the relevant licensing authority has notified the club which holds the certificate that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

(4) In this section-

“children” means persons aged under 18; and

“film classification body” means the person or persons designated as the authority under section 4 of the Video Recordings Act 1984 (c.39) (authority to determine suitability of video works for classification).

75 Prohibited conditions: associate members and their guests

(1) Where the rules of a club provide for the sale by retail of alcohol on any premises by or on behalf of the club to, or to a guest of, an associate member of the club, no condition may be attached to a club premises certificate in respect of the sale by retail of alcohol on those premises by or on behalf of the club so as to prevent the sale by retail of alcohol to any such associate member or guest.

(2) Where the rules of a club provide for the provision of any regulated entertainment on any premises by or on behalf of the club to, or to a guest of, an associate member of the club, no condition may be attached to a club premises certificate in respect of the provision of any such regulated entertainment on those premises by or on behalf of the club so as to prevent its provision to any such associate member or guest.

76 Prohibited conditions: plays

(1) In relation to a club premises certificate which authorises the performance of plays, no
condition may be attached to the certificate as to the nature of the plays which may be
performed, or the manner of performing plays, under the certificate.

(2) But subsection (1) does not prevent a licensing authority imposing, in accordance with
section 72(2) or (3)(b), 85(3)(b) or 88, any condition which it considers necessary on the
grounds of public safety.

77 Grant or rejection of application for club premises certificate
(1) Where an application is granted under section 72, the relevant licensing authority must
forthwith-
(a) give a notice to that effect to-
(i) the applicant,
(ii) any person who made relevant representations in respect of the application, and
(iii) the chief officer of police for the police area (or each police area) in which the
premises are situated, and
(b) issue the club with the club premises certificate and a summary of it.

(2) Where relevant representations were made in respect of the application, the notice
under subsection (1)(a) must specify the authority’s reasons for its decision as to the
steps (if any) to take under section 72(3)(b).

(3) Where an application is rejected under section 72, the relevant licensing authority must
forthwith give a notice to that effect, stating its reasons for that decision, to-
(a) the applicant,
(b) any person who made relevant representations in respect of the application, and
(c) the chief officer of police for the police area (or each police area) in which the
premises are situated.

(4) In this section “relevant representations” has the meaning given in section 72(6).

78 Form of certificate and summary
(1) A club premises certificate and the summary of such a certificate must be in the
prescribed form.

(2) Regulations under subsection (1) must, in particular, provide for the certificate to-
(a) specify the name of the club and the address which is to be its relevant registered
address, as defined in section 184(7);
(b) specify the address of the premises to which the certificate relates;
(c) include a plan of those premises;
(d) specify the qualifying club activities for which the premises may be used;
(e) specify the conditions subject to which the certificate has effect.

79 Theft, loss, etc. of certificate or summary
(1) Where a club premises certificate or summary is lost, stolen, damaged or destroyed, the
club may apply to the relevant licensing authority for a copy of the certificate or
summary.

(2) Subsection (1) is subject to regulations under section 92(1) (power to prescribe fee to
accompany application).

(3) Where an application is made in accordance with this section, the relevant licensing
authority must issue the club with a copy of the certificate or summary (certified by the
authority to be a true copy) if it is satisfied that-
(a) the certificate or summary has been lost, stolen, damaged or destroyed, and
(b) where it has been lost or stolen, the club has reported the loss or theft to the police.

(4) The copy issued under this section must be a copy of the club premises certificate or
summary in the form in which it existed immediately before it was lost, stolen,
damaged or destroyed.

(5) This Act applies in relation to a copy issued under this section as it applies in relation to
an original club premises certificate or summary.
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**Duration of certificate**

**80 Period of validity of club premises certificate**

(1) A club premises certificate has effect until such time as-

(a) it is withdrawn under section 88 or 90, or

(b) it lapses by virtue of section 81(3) (surrender).

(2) But a club premises certificate does not have effect during any period when it is suspended under section 88.

**81 Surrender of club premises certificate**

(1) Where a club which holds a club premises certificate decides to surrender it, the club may give the relevant licensing authority a notice to that effect.

(2) The notice must be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate.

(3) Where a notice is given in accordance with this section, the certificate lapses on receipt of the notice by the authority.

**Duty to notify certain changes**

**82 Notification of change of name or alteration of rules of club**

(1) Where a club-

(a) holds a club premises certificate, or

(b) has made an application for a club premises certificate which has not been determined by the relevant licensing authority,

the secretary of the club must give the relevant licensing authority notice of any change in the name, or alteration made to the rules, of the club.

(2) Subsection (1) is subject to regulations under section 92(1) (power to prescribe fee to accompany application).

(3) A notice under subsection (1) by a club which holds a club premises certificate must be accompanied by the certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate.

(4) An authority notified under this section of a change in the name, or alteration to the rules, of a club must amend the club premises certificate accordingly.

(5) But nothing in subsection (4) requires or authorises the making of any amendment to a club premises certificate so as to change the premises to which the certificate relates (and no amendment made under that subsection to a club premises certificate has effect so as to change those premises).

(6) If a notice required by this section is not given within the 28 days following the day on which the change of name or alteration to the rules is made, the secretary of the club commits an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**83 Change of relevant registered address of club**

(1) A club which holds a club premises certificate may give the relevant licensing authority notice of any change desired to be made in the address which is to be the club’s relevant registered address.

(2) If a club which holds a club premises certificate ceases to have any authority to make use of the address which is its relevant registered address, it must as soon as reasonably practicable give to the relevant licensing authority notice of the change to be made in the address which is to be the club’s relevant registered address.

(3) Subsections (1) and (2) are subject to regulations under section 92(1) (power to prescribe fee to accompany application).

(4) A notice under subsection (1) or (2) must also be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to produce the certificate.

(5) An authority notified under subsection (1) or (2) of a change to be made in the relevant registered address of a club must amend the club premises certificate accordingly.
(6) If a club fails, without reasonable excuse, to comply with subsection (2) the secretary commits an offence.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(8) In this section “relevant registered address” has the meaning given in section 184(7).

Variation of certificates

84 Application to vary club premises certificate

(1) A club which holds a club premises certificate may apply to the relevant licensing authority for variation of the certificate.

(2) Subsection (1) is subject to regulations under-
(a) section 91 (form etc. of applications);
(b) section 92 (fees to accompany applications).

(3) An application under this section must also be accompanied by the club premises certificate or, if that is not practicable, by a statement of the reasons for the failure to provide the certificate.

(4) The duty to make regulations imposed on the Secretary of State by subsection (6) of section 71 (advertisement etc. of application) applies in relation to applications under this section as it applies in relation to applications under that section.

85 Determination of application under section 84

(1) This section applies where the relevant licensing authority-
(a) receives an application, made in accordance with section 84, to vary a club premises certificate, and
(b) is satisfied that the applicant has complied with any requirement imposed by virtue of subsection (4) of that section.

(2) Subject to subsection (3) and section 86(6), the authority must grant the application.

(3) Where relevant representations are made, the authority must-
(a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
(b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are-
(a) to modify the conditions of the certificate;
(b) to reject the whole or part of the application;
and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.

(5) In this section “relevant representations” means representations which-
(a) are about the likely effect of the grant of the application on the promotion of the licensing objectives, and
(b) meet the requirements of subsection (6).

(6) The requirements are-
(a) that the representations are made by an interested party or responsible authority within the period prescribed under section 71(6)(c) by virtue of section 84(4),
(b) that they have not been withdrawn, and
(c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(7) Subsections (2) and (3) are subject to sections 73 and 74 (mandatory conditions relating to supply of alcohol for consumption off the premises and to exhibition of films).

86 Supplementary provision about applications under section 84

(1) Where an application (or any part of an application) is granted under section 85, the relevant licensing authority must forthwith give a notice to that effect to-
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(1) Where relevant representations were made in respect of the application, the notice under subsection (1) must specify the authority’s reasons for its decision as to the steps (if any) to take under section 85(3)(b).

(2) The notice under subsection (1) must specify the time when the variation in question takes effect. That time is the time specified in the application or, if that time is before the applicant is given the notice, such later time as the relevant licensing authority specifies in the notice.

(3) Where an application (or any part of an application) is rejected under section 85, the relevant licensing authority must forthwith give a notice to that effect stating its reasons for rejecting the application to-

(a) the applicant,
(b) any person who made relevant representations, and
(c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(4) The notice under subsection (1) must specify the time when the variation in question takes effect. That time is the time specified in the application or, if that time is before the applicant is given the notice, such later time as the relevant licensing authority specifies in the notice.

(5) Where the relevant licensing authority determines for the purposes of section 85(6)(c) that any representations are frivolous or vexatious, it must give the person who made them its reasons for that determination.

(6) A club premises certificate may not be varied under section 85 so as to vary substantially the premises to which it relates.

(7) In discharging its duty under subsection (2) or (3)(b) of that section, a licensing authority may vary a club premises certificate so that it has effect subject to different conditions in respect of-

(a) different parts of the premises concerned;
(b) different qualifying club activities.

(8) In this section “relevant representations” has the meaning given in section 85(5).

Review of certificates

87 Application for review of club premises certificate

(1) Where a club holds a club premises certificate-

(a) an interested party,
(b) a responsible authority, or
(c) a member of the club,

may apply to the relevant licensing authority for a review of the certificate.

(2) Subsection (1) is subject to regulations under section 91 (form etc. of applications).

(3) The Secretary of State must by regulations under this section-

(a) require the applicant to give a notice containing details of the application to the club and each responsible authority within such period as may be prescribed;
(b) require the authority to advertise the application and invite representations relating to it to be made to the authority;
(c) prescribe the period during which representations may be made by the club, any responsible authority and any interested party;
(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

(4) The relevant licensing authority may, at any time, reject any ground for review specified in an application under this section if it is satisfied-

(a) that the ground is not relevant to one or more of the licensing objectives, or
(b) in the case of an application made by a person other than a responsible authority, that-
(i) the ground is frivolous or vexatious, or
(ii) the ground is a repetition.

(5) For this purpose a ground for review is a repetition if-
(a) it is identical or substantially similar to-
   (i) a ground for review specified in an earlier application for review made in
       respect of the same club premises certificate and determined under section 88, or
   (ii) representations considered by the relevant licensing authority in accordance
        with section 72, before it determined the application for the club premises
        certificate under that section, and
(b) a reasonable interval has not elapsed since that earlier application or that grant.

(6) Where the authority rejects a ground for review under subsection (4)(b), it must notify
the applicant of its decision and, if the ground was rejected because it was frivolous or
vexatious, the authority must notify him of its reasons for making that decision.

(7) The application is to be treated as rejected to the extent that any of the grounds for
review are rejected under subsection (4). Accordingly, the requirements imposed under subsection (3)(a) and (b) and by section 88 (so far as not already met) apply only to so much (if any) of the application as has not been rejected.

88 Determination of application for review

(1) This section applies where-
(a) the relevant licensing authority receives an application made in accordance with
section 87,
(b) the applicant has complied with any requirement imposed by virtue of subsection
(3)(a) or (d) of that section, and
(c) the authority has complied with any requirement imposed on it under subsection
(3)(b) or (d) of that section.

(2) Before determining the application, the authority must hold a hearing to consider it and
any relevant representations.

(3) The authority must, having regard to the application and any relevant representations,
take such of the steps mentioned in subsection (4) (if any) as it considers necessary for
the promotion of the licensing objectives.

(4) The steps are-
(a) to modify the conditions of the certificate;
(b) to exclude a qualifying club activity from the scope of the certificate;
(c) to suspend the certificate for a period not exceeding three months;
(d) to withdraw the certificate;
and for this purpose the conditions of the certificate are modified if any of them is
altered or omitted or any new condition is added.

(5) Subsection (3) is subject to sections 73 and 74 (mandatory conditions relating to supply
of alcohol for consumption off the premises and to exhibition of films).

(6) Where the authority takes a step within subsection (4)(a) or (b), it may provide that the
modification or exclusion is to have effect for only such period (not exceeding three
months) as it may specify.

(7) In this section “relevant representations” means representations which-
(a) are relevant to one or more of the licensing objectives, and
(b) meet the requirements of subsection (8).

(8) The requirements are-
(a) that the representations are made by the club, a responsible authority or an
interested party within the period prescribed under section 87(3)(c),
(b) that they have not been withdrawn, and
(c) if they are made by an interested party (who is not also a responsible authority),
that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
(9) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must give the person who made them its reasons for that determination.

(10) Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to-
(a) the club,
(b) the applicant,
(c) any person who made relevant representations, and
(d) the chief officer of police for the police area (or each police area) in which the premises are situated.

(11) A determination under this section does not have effect-
(a) until the end of the period given for appealing against the decision, or
(b) if the decision is appealed against, until the appeal is disposed of.

89 Supplementary provision about review

(1) This section applies where a local authority is both-
(a) the relevant licensing authority, and
(b) a responsible authority,
in respect of any premises.

(2) The authority may, in its capacity as responsible authority, apply under section 87 for a review of any club premises certificate in respect of the premises.

(3) The authority may in its capacity as licensing authority determine that application.

90 Club ceasing to be a qualifying club

(1) Where-
(a) a club holds a club premises certificate, and
(b) it appears to the relevant licensing authority that the club does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates (see section 61),

the authority must give a notice to the club withdrawing the certificate, so far as relating to that activity.

(2) Where the only reason that the club does not satisfy the conditions for being a qualifying club in relation to the activity in question is that the club has fewer than the required number of members, the notice withdrawing the certificate must state that the withdrawal-
(a) does not take effect until immediately after the end of the period of three months following the date of the notice, and
(b) will not take effect if, at the end of that period, the club again has at least the required number of members.

(3) The references in subsection (2) to the required number of members are references to the minimum number of members required by condition 4 in section 62(5) (25 at the passing of this Act).

(4) Nothing in subsection (2) prevents the giving of a further notice of withdrawal under this section at any time.

(5) Where a justice of the peace is satisfied, on information on oath, that there are reasonable grounds for believing-
(a) that a club which holds a club premises certificate does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates, and
(b) that evidence of that fact is to be obtained at the premises to which the certificate relates,

he may issue a warrant authorising a constable to enter the premises, if necessary by force, at any time within one month from the time of the issue of the warrant, and search them.
(6) A person who enters premises under the authority of a warrant under subsection (5) may seize and remove any documents relating to the business of the club in question.

General provision

91 Form etc. of applications and notices under Part 4
In relation to any application or notice under this Part, regulations may prescribe-
(a) its form;
(b) the manner in which it is to be made or given;
(c) information and documents that must accompany it.

92 Fees
(1) Regulations may-
(a) require applications under any provision of this Part (other than section 87) to be accompanied by a fee, and
(b) prescribe the amount of the fee.
(2) Regulations may also require the payment of an annual fee to the relevant licensing authority by or on behalf of a club which holds a club premises certificate.
(3) Regulations under subsection (2) may include provision-
(a) imposing liability for the making of the payment on the secretary or such other officers or members of the club as may be prescribed,
(b) prescribing the amount of any such fee, and
(c) prescribing the time at which any such fee is due.
(4) Any fee which is owed to a licensing authority under subsection (2) may be recovered as a debt due to the authority from any person liable to make the payment by virtue of subsection (3)(a).

Production of certificate, rights of entry, etc

93 Licensing authority’s duty to update club premises certificate
(1) Where-
(a) the relevant licensing authority, in relation to a club premises certificate, makes a determination or receives a notice under this Part, or
(b) an appeal against a decision under this Part is disposed of,
the relevant licensing authority must make the appropriate amendments (if any) to the certificate and, if necessary, issue a new summary of the certificate.
(2) Where a licensing authority is not in possession of the club premises certificate, it may, for the purpose of discharging its obligations under subsection (1), require the secretary of the club to produce the certificate to the authority within 14 days from the date on which the club is notified of the requirement.
(3) A person commits an offence if he fails, without reasonable excuse, to comply with a requirement under subsection (2).
(4) A person guilty of an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

94 Duty to keep and produce certificate
(1) This section applies whenever premises in respect of which a club premises certificate has effect are being used for one or more qualifying club activities authorised by the certificate.
(2) The secretary of the club must secure that the certificate, or a certified copy of it, is kept at the premises in the custody or under the control of a person (the “nominated person”) who-
(a) falls within subsection (3),
(b) has been nominated for the purpose by the secretary in writing, and
(c) has been identified to the relevant licensing authority in a notice given by the secretary.
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(3) The persons who fall within this subsection are-
   (a) the secretary of the club,
   (b) any member of the club,
   (c) any person who works at the premises for the purposes of the club.

(4) The nominated person must secure that-
   (a) the summary of the certificate or a certified copy of that summary, and
   (b) a notice specifying the position which he holds at the premises,
   are prominently displayed at the premises.

(5) The secretary commits an offence if he fails, without reasonable excuse, to comply with subsection (2).

(6) The nominated person commits an offence if he fails, without reasonable excuse, to comply with subsection (4).

(7) A constable or an authorised person may require the nominated person to produce the club premises certificate (or certified copy) for examination.

(8) An authorised person exercising the power conferred by subsection (7) must, if so requested, produce evidence of his authority to exercise the power.

(9) A person commits an offence if he fails, without reasonable excuse, to produce a club premises certificate or certified copy of a club premises certificate in accordance with a requirement under subsection (7).

(10) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(11) In subsection (4) the reference to the summary of the certificate is a reference to the summary issued under section 77 or, where one or more summaries have subsequently been issued under section 93, the most recent summary to be so issued.

(12) Section 95 makes provision about certified copies of club premises certificates and of summaries of club premises certificates for the purposes of this section.

95 Provision supplementary to section 94

(1) Any reference in section 94 to a certified copy of a document is a reference to a copy of the document which is certified to be a true copy by-
   (a) the relevant licensing authority,
   (b) a solicitor or notary, or
   (c) a person of a prescribed description.

(2) Any certified copy produced in accordance with a requirement under subsection 94(7) must be a copy of the document in the form in which it exists at the time.

(3) A document which purports to be a certified copy of a document is to be taken to be such a copy, and to comply with the requirements of subsection (2), unless the contrary is shown.

96 Inspection of premises before grant of certificate etc.

(1) Subsection (2) applies where-
   (a) a club applies for a club premises certificate in respect of any premises,
   (b) a club applies under section 84 for the variation of a club premises certificate held by it, or
   (c) an application is made under section 87 for review of a club premises certificate.

(2) On production of his authority-
   (a) an authorised person, or
   (b) a constable authorised by the chief officer of police, may enter and inspect the premises.

(3) Any entry and inspection under this section must take place at a reasonable time on a day-
   (a) which is not more than 14 days after the making of the application in question, and
   (b) which is specified in the notice required by subsection (4).
Before an authorised person or constable enters and inspects any premises under this section, at least 48 hours’ notice must be given to the club.

Any person obstructing an authorised person in the exercise of the power conferred by this section commits an offence.

A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

The relevant licensing authority may, on the application of a responsible authority, extend by not more than 7 days the time allowed for carrying out an entry and inspection under this section.

The relevant licensing authority may allow such an extension of time only if it appears to the authority that-

(a) reasonable steps had been taken for an authorised person or constable authorised by the applicant to inspect the premises in good time, but

(b) it was not possible for the inspection to take place within the time allowed.

Where a club premises certificate has effect in respect of any premises, a constable may enter and search the premises if he has reasonable cause to believe-

(a) that an offence under section 4(3)(a), (b) or (c) of the Misuse of Drugs Act 1971 (c.38) (supplying or offering to supply, or being concerned in supplying or making an offer to supply, a controlled drug) has been, is being, or is about to be, committed there, or

(b) that there is likely to be a breach of the peace there.

A constable exercising any power conferred by this section may, if necessary, use reasonable force.

PART 5
PERMITTED TEMPORARY ACTIVITIES

Introductory

A licensable activity is a permitted temporary activity by virtue of this Part if-

(a) it is carried on in accordance with a notice given in accordance with section 100, and

(b) the following conditions are satisfied.

The first condition is that the requirements of sections 102 (acknowledgement of notice) and 104(1) (notification of police) are met in relation to the notice.

The second condition is that the notice has not been withdrawn under this Part.

The third condition is that no counter notice has been given under this Part in respect of the notice.

In this Part references to the “relevant licensing authority”, in relation to any premises, are references to-

(a) the licensing authority in whose area the premises are situated, or

(b) where the premises are situated in the areas of two or more licensing authorities, each of those authorities.

Temporary event notices

Where it is proposed to use premises for one or more licensable activities during a period not exceeding 96 hours, an individual may give to the relevant licensing authority notice of that proposal (a “temporary event notice”).

In this Act, the “premises user”, in relation to a temporary event notice, is the individual who gave the notice.

An individual may not give a temporary event notice unless he is aged 18 or over.
A temporary event notice must be in the prescribed form and contain-
(a) a statement of the matters mentioned in subsection (5),
(b) where subsection (6) applies, a statement of the condition mentioned in that
subsection, and
(c) such other information as may be prescribed.

Those matters are-
(a) the licensable activities to which the proposal mentioned in subsection (1) relates
(“the relevant licensable activities”),
(b) the period (not exceeding 96 hours) during which it is proposed to use the
premises for those activities (“the event period”),
(c) the times during the event period when the premises user proposes that hose
licensable activities shall take place,
(d) the maximum number of persons (being a number less than 500) which the
premises user proposes should, during those times, be allowed on the premises at
the same time,
(e) where the relevant licensable activities include the supply of alcohol, whether
supplies are proposed to be for consumption on the premises or off the premises,
or both, and
(f) such other matters as may be prescribed.

Where the relevant licensable activities include the supply of alcohol, the notice must
make it a condition of using the premises for such supplies that all such supplies are
made by or under the authority of the premises user.

The temporary event notice-
(a) must be given to the relevant licensing authority (in duplicate) no later than ten
working days before the day on which the event period begins, and
(b) must be accompanied by the prescribed fee.

The Secretary of State may, by order-
(a) amend subsections (1) and (5)(b) so as to substitute any period for the period for
the time being specified there;
(b) amend subsection (5)(d) so as to substitute any number for the number for the time
being specified there.

In this section “supply of alcohol” means-
(a) the sale by retail of alcohol, or
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of
the club.

Minimum of 24 hours between event periods

A temporary event notice (“notice A”) given by an individual (“the relevant premises
user”) is void if the event period specified in it does not-
(a) end at least 24 hours before the event period specified in any other temporary
event notice given by the relevant premises user in respect of the same premises
before or at the same time as notice A, or
(b) begin at least 24 hours after the event period specified in any other such notice.

For the purposes of subsection (1)-
(a) any temporary event notice in respect of which a counter notice has been given
under this Part or which has been withdrawn under section 103 is to be
disregarded;
(b) a temporary event notice given by an individual who is an associate of the
relevant premises user is to be treated as a notice given by the relevant premises
user;
(c) a temporary event notice (“notice B”) given by an individual who is in business
with the relevant premises user is to be treated as a notice given by the relevant
premises user if-
(i) that business relates to one or more licensable activities, and
(ii) notice A and notice B relate to one or more licensable activities to which the business relates (although not necessarily the same activity or activities);

(d) two temporary event notices are in respect of the same premises if the whole or any part of the premises in respect of which one of the notices is given includes or forms part of the premises in respect of which the other notice is given.

(3) For the purposes of this section an individual is an associate of another person if that individual is-

(a) the spouse of that person,
(b) a child, parent, grandchild, grandparent, brother or sister of that person,
(c) an agent or employee of that person, or
(d) the spouse of a person within paragraph (b) or (c).

(4) For the purposes of subsection (3) a person living with another as that person’s husband or wife is to be treated as that person’s spouse.

102 Acknowledgement of notice

(1) Where a licensing authority receives a temporary event notice (in duplicate) in accordance with this Part, it must acknowledge receipt of the notice by sending or delivering one notice to the premises user-

(a) before the end of the first working day following the day on which it was received, or
(b) if the day on which it was received was not a working day, before the end of the second working day following that day.

(2) The authority must mark on the notice to be returned under subsection (1) an acknowledgement of the receipt in the prescribed form.

(3) Subsection (1) does not apply where, before the time by which the notice must be returned in accordance with that subsection, a counter notice has been sent or delivered to the premises user under section 107 in relation to the temporary event notice.

103 Withdrawal of notice

(1) A temporary event notice may be withdrawn by the premises user giving the relevant licensing authority a notice to that effect no later than 24 hours before the beginning of the event period specified in the temporary event notice.

(2) Nothing in section 102 or sections 104 to 107 applies in relation to a notice withdrawn in accordance with this section.

Police objections

104 Objection to notice by the police

(1) The premises user must give a copy of any temporary event notice to the relevant chief officer of police no later than ten working days before the day on which the event period specified in the notice begins.

(2) Where a chief officer of police who receives a copy notice under subsection (1) is satisfied that allowing the premises to be used in accordance with the notice would undermine the crime prevention objective, he must give a notice stating the reasons why he is so satisfied (an “objection notice”)-

(a) to the relevant licensing authority, and
(b) to the premises user.

(3) The objection notice must be given no later than 48 hours after the chief officer of police is given a copy of the temporary event notice under subsection (1).

(4) Subsection (2) does not apply at any time after the relevant chief officer of police has received a copy of a counter notice under section 107 in respect of the temporary event notice.

(5) In this section “relevant chief officer of police” means-

(a) where the premises are situated in one police area, the chief officer of police for that area, and
(b) where the premises are situated in two or more police areas, the chief officer of police for each of those areas.

105 Counter notice following police objection

(1) This section applies where an objection notice is given in respect of a temporary event notice.

(2) The relevant licensing authority must-
   (a) hold a hearing to consider the objection notice, unless the premises user, the chief officer of police who gave the objection notice and the authority agree that a hearing is unnecessary, and
   (b) having regard to the objection notice, give the premises user a counter notice under this section if it considers it necessary for the promotion of the crime prevention objective to do so.

(3) The relevant licensing authority must-
   (a) in a case where it decides not to give a counter notice under this section, give the premises user and the relevant chief officer of police notice of the decision, and
   (b) in any other case-
      (i) give the premises user the counter notice and a notice stating the reasons for its decision, and
      (ii) give the relevant chief officer of police a copy of both of those notices.

(4) A decision must be made under subsection (2)(b), and the requirements of subsection (3) must be met, at least 24 hours before the beginning of the event period specified in the temporary event notice.

(5) Where the premises are situated in the area of more than one licensing authority, the functions conferred on the relevant licensing authority by this section must be exercised by those authorities jointly.

(6) This section does not apply-
   (a) if the objection notice has been withdrawn (whether by virtue of section 106 or otherwise), or
   (b) if the premises user has been given a counter notice under section 107.

(7) In this section “objection notice” and “relevant chief officer of police” have the same meaning as in section 104.

106 Modification of notice following police objection

(1) This section applies where a chief officer of police has given an objection notice in respect of a temporary event notice (and the objection notice has not been withdrawn).

(2) At any time before a hearing is held or dispensed with under section 105(2), the chief officer of police may, with the agreement of the premises user, modify the temporary event notice by making changes to the notice returned to the premises user under section 102.

(3) Where a temporary event notice is modified under subsection (2)-
   (a) the objection notice is to be treated for the purposes of this Act as having been withdrawn from the time the temporary event notice is modified, and
   (b) from that time-
      (i) this Act has effect as if the temporary event notice given under section 100 had been the notice as modified under that subsection, and
      (ii) to the extent that the conditions of section 98 are satisfied in relation to the unmodified notice they are to be treated as satisfied in relation to the notice as modified under that subsection.

(4) A copy of the temporary event notice as modified under subsection (2) must be sent or delivered by the chief officer of police to the relevant licensing authority before a hearing is held or dispensed with under section 105(2).

(5) Where the premises are situated in more than one police area, the chief officer of police may modify the temporary event notice under this section only with the consent of the chief officer of police for the other police area or each of the other police areas in which the premises are situated.
(6) This section does not apply if a counter notice has been given under section 107.

(7) In this section “objection notice” has the same meaning as in section 104(2).

Limits on temporary event notices

107 Counter notice where permitted limits exceeded

(1) Where a licensing authority-

(a) receives a temporary event notice (“notice A”) in respect of any premises (“the relevant premises”), and

(b) is satisfied that subsection (2), (3), (4) or (5) applies,

the authority must give the premises user (“the relevant premises user”) a counter notice under this section.

(2) This subsection applies if the relevant premises user-

(a) holds a personal licence, and

(b) has already given at least 50 temporary event notices in respect of event periods wholly or partly within the same year as the event period specified in notice A.

(3) This subsection applies if the relevant premises user-

(a) does not hold a personal licence, and

(b) has already given at least five temporary event notices in respect of such event periods.

(4) This subsection applies if at least 12 temporary event notices have already been given which-

(a) are in respect of the same premises as notice A, and

(b) specify as the event period a period wholly or partly within the same year as the event period specified in notice A.

(5) This subsection applies if, in any year in which the event period specified in notice A (or any part of it) falls, more than 15 days are days on which one or more of the following fall-

(a) that event period or any part of it,

(b) an event period specified in a temporary event notice already given in respect of the same premises as notice A or any part of such a period.

(6) If the event period in notice A straddles two years, subsections (2), (3) and (4) apply separately in relation to each of those years.

(7) A counter notice under this section must be in the prescribed form and given to the premises user in the prescribed manner.

(8) No such counter notice may be given later than 24 hours before the beginning of the event period specified in notice A.

(9) In determining whether subsection (2), (3), (4) or (5) applies, any temporary event notice in respect of which a counter notice has been given under this section or section 105 is to be disregarded.

(10) In determining for the purposes of subsection (2) or (3) the number of temporary event notices given by the relevant premises user-

(a) a temporary event notice given by an individual who is an associate of the relevant premises user is to be treated as a notice given by the relevant premises user;

(b) a temporary event notice (“notice B”) given by an individual who is in business with the relevant premises user is to be treated as a notice given by the relevant premises user if-

(i) that business relates to one or more licensable activities, and

(ii) notice A and notice B relate to one or more licensable activities to which the business relates (but not necessarily the same activity or activities).

(11) Where a licensing authority gives a counter notice under this section it must, forthwith, send a copy of that notice to the chief officer of police for the police area (or each of the police areas) in which the relevant premises are situated.
(12) The Secretary of State may, by order, amend subsection (2)(b), (3)(b), (4) or (5) so as to substitute any number for the number for the time being specified there.

(13) For the purposes of this section-
   (a) a temporary event notice is in respect of the same premises as notice A if it is in respect of the whole or any part of the relevant premises or premises which include the whole or any part of those premises,
   (b) “year” means calendar year,
   (c) “day” means a period of 24 hours beginning at midnight, and
   (d) subsections (3) and (4) of section 101 (meaning of “associate”) apply as they apply for the purposes of that section.

Rights of entry, production of notice, etc

108 Right of entry where temporary event notice given

(1) A constable or an authorised officer may, at any reasonable time, enter the premises to which a temporary event notice relates to assess the likely effect of the notice on the promotion of the crime prevention objective.

(2) An authorised officer exercising the power conferred by this section must, if so requested, produce evidence of his authority to exercise the power.

(3) A person commits an offence if he intentionally obstructs an authorised officer exercising a power conferred by this section.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) In this section “authorised officer” means-
   (a) an officer of the licensing authority in whose area the premises are situated, or
   (b) if the premises are situated in the area of more than one licensing authority, an officer of any of those authorities, authorised for the purposes of this Act.

109 Duty to keep and produce temporary event notice

(1) This section applies whenever premises are being used for one or more licensable activities which are or are purported to be permitted temporary activities by virtue of this Part.

(2) The premises user must either-
   (a) secure that a copy of the temporary event notice is prominently displayed at the premises, or
   (b) meet the requirements of subsection (3).

(3) The requirements of this subsection are that the premises user must-
   (a) secure that the temporary event notice is kept at the premises in-
      (i) his custody, or
      (ii) in the custody of a person who is present and working at the premises and whom he has nominated for the purposes of this section, and
   (b) where the temporary event notice is in the custody of a person so nominated, secure that a notice specifying that fact and the position held at the premises by that person is prominently displayed at the premises.

(4) The premises user commits an offence if he fails, without reasonable excuse, to comply with subsection (2).

(5) Where-
   (a) the temporary event notice is not displayed as mentioned in subsection (2)(a), and
   (b) no notice is displayed as mentioned in subsection (3)(b),
   a constable or authorised officer may require the premises user to produce the temporary event notice for examination.

(6) Where a notice is displayed as mentioned in subsection (3)(b), a constable or authorised officer may require the person specified in that notice to produce the temporary event notice for examination.
(7) An authorised officer exercising the power conferred by subsection (5) or (6) must, if so requested, produce evidence of his authority to exercise the power.

(8) A person commits an offence if he fails, without reasonable excuse, to produce a temporary event notice in accordance with a requirement under subsection (5) or (6).

(9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(10) In this section “authorised officer” has the meaning given in section 108(5).

Miscellaneous

110 Theft, loss, etc. of temporary event notice

(1) Where a temporary event notice acknowledged under section 102 is lost, stolen, damaged or destroyed, the premises user may apply to the licensing authority which acknowledged the notice (or, if there is more than one such authority, any of them) for a copy of the notice.

(2) No application may be made under this section more than one month after the end of the event period specified in the notice.

(3) The application must be accompanied by the prescribed fee.

(4) Where a licensing authority receives an application under this section, it must issue the premises user with a copy of the notice (certified by the authority to be a true copy) if it is satisfied that-

(a) the notice has been lost, stolen, damaged or destroyed, and

(b) where it has been lost or stolen, the premises user has reported that loss or theft to the police.

(5) The copy issued under this section must be a copy of the notice in the form it existed immediately before it was lost, stolen, damaged or destroyed.

(6) This Act applies in relation to a copy issued under this section as it applies in relation to an original notice.

PART 6
PERSONAL LICENCES

Introductory

111 Personal licence

(1) In this Act “personal licence” means a licence which-

(a) is granted by a licensing authority to an individual, and

(b) authorises that individual to supply alcohol, or authorise the supply of alcohol, in accordance with a premises licence.

(2) In subsection (1)(b) the reference to an individual supplying alcohol is to him-

(a) selling alcohol by retail, or

(b) supplying alcohol by or on behalf of a club to, or to the order of, a member of the club.

112 The relevant licensing authority

For the purposes of this Part the “relevant licensing authority”, in relation to a personal licence, is the licensing authority which granted the licence.

113 Meaning of “relevant offence” and “foreign offence”

(1) In this Part “relevant offence” means an offence listed in Schedule 4.

(2) The Secretary of State may by order amend that list so as to add, modify or omit any entry.

(3) In this Part “foreign offence” means an offence (other than a relevant offence) under the law of any place outside England and Wales.

114 Spent convictions

For the purposes of this Part a conviction for a relevant offence or a foreign offence must be disregarded if it is spent for the purposes of the Rehabilitation of Offenders Act 1974 (c.53).
115 Period of validity of personal licence

(1) A personal licence-
   (a) has effect for an initial period of ten years beginning with the date on which it is
       granted, and
   (b) may be renewed in accordance with this Part for further periods of ten years at a
       time.

(2) Subsection (1) is subject to subsections (3) and (4) and to-
   (a) section 116 (surrender),
   (b) section 119 (continuation of licence pending renewal), and (c) paragraph 17 of
       Schedule 5 (continuation of licence pending disposal of appeal).

(3) A personal licence ceases to have effect when it is revoked under section 124 or forfeited
    under section 129.

(4) And a personal licence does not have effect during any period when it is suspended
    under section 129.

(5) Subsections (3) and (4) are subject to any court order under sections 129(4) or 130.

116 Surrender of personal licence

(1) Where the holder of a personal licence wishes to surrender his licence he may give the
    relevant licensing authority a notice to that effect.

(2) The notice must be accompanied by the personal licence or, if that is not practicable, by
    a statement of the reasons for the failure to provide the licence.

(3) Where a notice of surrender is given in accordance with this section, the personal
    licence lapses on receipt of the notice by the authority.

117 Application for grant or renewal of personal licence

(1) An individual may apply-
   (a) for the grant of a personal licence, or
   (b) for the renewal of a personal licence held by him.

(2) An application for the grant of a personal licence-
   (a) must, if the applicant is ordinarily resident in the area of a licensing authority, be
       made to that authority, and
   (b) may, in any other case, be made to any licensing authority.

(3) An application for the renewal of a personal licence must be made to the relevant
    licensing authority.

(4) Where the application is for renewal of a personal licence, the application must be
    accompanied by the personal licence or, if that is not practicable, by a statement of the
    reasons for the failure to provide the licence.

(5) Subsection (1) is subject to regulations under section 133 (form etc. of applications and
    notices under this Part).

(6) An application for renewal may be made only during the period of two months
    beginning three months before the time the licence would expire in accordance with
    section 115(1) if no application for renewal were made.

118 Individual permitted to hold only one personal licence

(1) An individual who makes an application for the grant of a personal licence under
    section 117 (“the initial application”) may not make another such application until the
    initial application has been determined by the licensing authority to which it was made
    or has been withdrawn.

(2) A personal licence is void if, at the time it is granted, the individual to whom it is
    granted already holds a personal licence.

119 Licence continued pending renewal

(1) Where-
   (a) an application for renewal is made in accordance with section 117, and
   (b) the application has not been determined before the time the licence would, in the
       absence of this section, expire,
then, by virtue of this section, the licence continues to have effect for the period beginning with that time and ending with the determination or withdrawal of the application.

(2) Subsection (1) is subject to section 115(3) and (4) (revocation, forfeiture and suspension) and section 116 (surrender).

120 Determination of application for grant

(1) This section applies where an application for the grant of a personal licence is made to a licensing authority in accordance with section 117.

(2) The authority must grant the licence if it appears to it that-

(a) the applicant is aged 18 or over,
(b) he possesses a licensing qualification or is a person of a prescribed description,
(c) no personal licence held by him has been forfeited in the period of five years ending with the day the application was made, and
(d) he has not been convicted of any relevant offence or any foreign offence.

(3) The authority must reject the application if it appears to it that the applicant fails to meet the condition in paragraph (a), (b) or (c) of subsection (2).

(4) If it appears to the authority that the applicant meets the conditions in paragraphs (a), (b) and (c) of that subsection but fails to meet the condition in paragraph (d) of that subsection, the authority must give the chief officer of police for its area a notice to that effect.

(5) Where, having regard to-

(a) any conviction of the applicant for a relevant offence, and
(b) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence,

the chief officer of police is satisfied that granting the licence would undermine the crime prevention objective, he must, within the period of 14 days beginning with the day he received the notice under subsection (4), give the authority a notice stating the reasons why he is so satisfied (an “objection notice”).

(6) Where no objection notice is given within that period (or the notice is withdrawn), the authority must grant the application.

(7) In any other case, the authority-

(a) must hold a hearing to consider the objection notice, unless the applicant, the chief officer of police and the authority agree that it is unnecessary, and
(b) having regard to the notice, must-

(i) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and
(ii) grant the application in any other case.

(8) In this section “licensing qualification” means-

(a) a qualification-

(i) accredited at the time of its award, and
(ii) awarded by a body accredited at that time,

(b) a qualification awarded before the coming into force of this section which the Secretary of State certifies is to be treated for the purposes of this section as if it were a qualification within paragraph (a), or

(c) a qualification obtained in Scotland or Northern Ireland or in an EEA State (other than the United Kingdom) which is equivalent to a qualification within paragraph (a) or (b).

(9) For this purpose-

“accredited” means accredited by the Secretary of State; and

“EEA State” means a state which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.
121 Determination of application for renewal

(1) This section applies where an application for the renewal of a personal licence is made to the relevant licensing authority in accordance with section 117.

(2) If it appears to the authority that the applicant has been convicted of any relevant offence or foreign offence since the relevant time, the relevant licensing authority must give notice to that effect to the chief officer of police for its area.

(3) Where, having regard to-
   (a) any conviction of the applicant for a relevant offence, and
   (b) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence,
the chief officer of police is satisfied that renewing the licence would undermine the crime prevention objective, he must, within the period of 14 days beginning with the day he received the notice under subsection (2), give the authority a notice stating the reasons why he is so satisfied (an “objection notice”).

(4) For the purposes of subsection (3)(a) and (b) it is irrelevant whether the conviction occurred before or after the relevant time.

(5) Where no objection notice is given within that period (or any such notice is withdrawn), the authority must grant the application.

(6) In any other case, the authority-
   (a) must hold a hearing to consider the objection notice unless the applicant, the chief officer of police and the authority agree that it is unnecessary, and
   (b) having regard to the notice, must-
       (i) reject the application if it considers it necessary for the promotion of the crime prevention objective to do so, and
       (ii) grant the application in any other case.

(7) In this section “the relevant time” means-
   (a) if the personal licence has not been renewed since it was granted, the time it was granted, and
   (b) if it has been renewed, the last time it was renewed.

122 Notification of determinations

(1) Where a licensing authority grants an application-
   (a) it must give the applicant and the chief officer of police for its area a notice to that effect, and
   (b) if the chief officer of police gave an objection notice (which was not withdrawn), the notice under paragraph (a) must contain a statement of the licensing authority’s reasons for granting the application.

(2) A licensing authority which rejects an application must give the applicant and the chief officer of police for its area a notice to that effect containing a statement of the authority’s reasons for rejecting the application.

(3) In this section-
   “application” means an application for the grant or renewal of a personal licence; and
   “objection notice” has the meaning given in section 120 or 121, as the case may be.

123 Duty to notify licensing authority of convictions during application period

(1) Where an applicant for the grant or renewal of a personal licence is convicted of a relevant offence or a foreign offence during the application period, he must as soon as reasonably practicable notify the conviction to the authority to which the application is made.

(2) A person commits an offence if he fails, without reasonable excuse, to comply with subsection (1).

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) In this section “the application period” means the period that-
   (a) begins when the application for grant or renewal is made, and
   (b) ends when the application is determined or withdrawn.
Convictions coming to light after grant or renewal

(1) This section applies where, after a licensing authority has granted or renewed a personal licence, it becomes aware (whether by virtue of section 123(1), 131 or 132 or otherwise) that the holder of a personal licence (“the offender”) was convicted during the application period of any relevant offence or foreign offence.

(2) The licensing authority must give a notice to that effect to the chief officer of police for its area.

(3) Where, having regard to-
   (a) any conviction of the applicant for a relevant offence, and
   (b) any conviction of his for a foreign offence which the chief officer of police considers to be comparable to a relevant offence,
which occurred before the end of the application period, the chief officer of police is satisfied that continuation of the licence would undermine the crime prevention objective, he must, within the period of 14 days beginning with the day he received the notice under subsection (2), give the authority a notice stating the reasons why he is so satisfied (an “objection notice”).

(4) Where an objection notice is given within that period (and not withdrawn), the authority-
   (a) must hold a hearing to consider the objection notice, unless the holder of the licence, the chief officer of police and the authority agree it is unnecessary, and
   (b) having regard to the notice, must revoke the licence if it considers it necessary for the promotion of the crime prevention objective to do so.

(5) Where the authority revokes or decides not to revoke a licence under subsection (4) it must notify the offender and the chief officer of police of the decision and its reasons for making it.

(6) A decision under this section does not have effect-
   (a) until the end of the period given for appealing against the decision, or
   (b) if the decision is appealed against, until the appeal is disposed of.

(7) In this section “application period”, in relation to the grant or renewal of a personal licence, means the period that-
   (a) begins when the application for the grant or renewal is made, and
   (b) ends at the time of the grant or renewal.

Form of personal licence

(1) Where a licensing authority grants a personal licence, it must forthwith issue the applicant with the licence.

(2) The licence must-
   (a) specify the holder’s name and address, and
   (b) identify the licensing authority which granted it.

(3) It must also contain a record of each relevant offence and each foreign offence of which the holder has been convicted, the date of each conviction and the sentence imposed in respect of it.

(4) Subject to subsections (2) and (3), the licence must be in the prescribed form.

Theft, loss, etc. of personal licence

(1) Where a personal licence is lost, stolen, damaged or destroyed, the holder of the licence may apply to the relevant licensing authority for a copy of the licence.

(2) Subsection (1) is subject to regulations under section 133(2) (power to prescribe fee to accompany application).

(3) Where the relevant licensing authority receives an application under this section, it must issue the licence holder with a copy of the licence (certified by the authority to be a true copy) if it is satisfied that-
   (a) the licence has been lost, stolen, damaged or destroyed, and
   (b) where it has been lost or stolen, the holder of the licence has reported the loss or theft to the police.
(4) The copy issued under this section must be a copy of the licence in the form in which it existed immediately before it was lost, stolen, damaged or destroyed.

(5) This Act applies in relation to a copy issued under this section as it applies in relation to an original licence.

_Duty to notify certain changes_

**127** Duty to notify change of name or address

(1) The holder of a personal licence must, as soon as reasonably practicable, notify the relevant licensing authority of any change in his name or address as stated in the personal licence.

(2) Subsection (1) is subject to regulations under section 133(2) (power to prescribe fee to accompany notice).

(3) A notice under subsection (1) must also be accompanied by the personal licence or, if that is not practicable, by a statement of the reasons for the failure to provide the licence.

(4) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

_Conviction of licence holder for relevant offence_

**128** Duty to notify court of personal licence

(1) Where the holder of a personal licence is charged with a relevant offence, he must, no later than the time he makes his first appearance in a magistrates' court in connection with that offence-

- (a) produce to the court the personal licence, or
- (b) if that is not practicable, notify the court of the existence of the personal licence and the identity of the relevant licensing authority and of the reasons why he cannot produce the licence.

(2) Subsection (3) applies where a person charged with a relevant offence is granted a personal licence-

- (a) after his first appearance in a magistrates' court in connection with that offence, but
- (b) before-
  - (i) his conviction, and sentencing for the offence, or his acquittal, or,
  - (ii) where an appeal is brought against his conviction, sentence or acquittal, the disposal of that appeal.

(3) At his next appearance in court in connection with that offence, that person must-

- (a) produce to the court the personal licence, or
- (b) if that is not practicable, notify the court of the existence of the personal licence and the identity of the relevant licensing authority and of the reasons why he cannot produce the licence.

(4) Where-

- (a) a person charged with a relevant offence has produced his licence to, or notified, a court under subsection (1) or (3), and
- (b) before he is convicted of and sentenced for, or acquitted of, that offence, a notifiable event occurs in respect of the licence,

he must, at his next appearance in court in connection with that offence, notify the court of that event.

(5) For this purpose a “notifiable event” in relation to a personal licence means any of the following-

- (a) the making or withdrawal of an application for renewal of the licence;
- (b) the surrender of the licence under section 116;
- (c) the renewal of the licence under section 121;
- (d) the revocation of the licence under section 124.
(6) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

129 Forfeiture or suspension of licence on conviction for relevant offence

(1) This section applies where the holder of a personal licence is convicted of a relevant offence by or before a court in England and Wales.

(2) The court may-
   (a) order the forfeiture of the licence, or
   (b) order its suspension for a period not exceeding six months.

(3) In determining whether to make an order under subsection (2), the court may take account of any previous conviction of the holder for a relevant offence.

(4) Where a court makes an order under this section it may suspend the order pending an appeal against it.

(5) Subject to subsection (4) and section 130, an order under this section takes effect immediately after it is made.

130 Powers of appellate court to suspend order under section 129

(1) This section applies where-
   (a) a person (“the offender”) is convicted of a relevant offence, and
   (b) an order is made under section 129 in respect of that conviction (“the section 129 order”).

(2) In this section any reference to the offender’s sentence includes a reference to the section 129 order and to any other order made on his conviction and, accordingly, any reference to an appeal against his sentence includes a reference to an appeal against any order forming part of his sentence.

(3) Where the offender-
   (a) appeals to the Crown Court, or
   (b) appeals or applies for leave to appeal to the Court of Appeal, against his conviction or his sentence, the Crown Court or, as the case may be, the Court of Appeal may suspend the section 129 order.

(4) Where the offender appeals or applies for leave to appeal to the House of Lords-
   (a) under section 1 of the Administration of Justice Act 1960 (c.65) from any decision of the High Court which is material to his conviction or sentence, or
   (b) under section 33 of the Criminal Appeal Act 1968 (c.19) from any decision of the Court of Appeal which is material to his conviction or sentence, the High Court or, as the case may require, the Court of Appeal may suspend the section 129 order.

(5) Where the offender makes an application in respect of the decision of the court in question under section 111 of the Magistrates’ Courts Act 1980 (c.43) (statement of case by magistrates’ court) or section 28 of the Supreme Court Act 1981 (c.54) (statement of case by Crown Court) the High Court may suspend the section 129 order.

(6) Where the offender-
   (a) applies to the High Court for a quashing order to remove into the High Court any proceedings of a magistrates’ court or of the Crown Court, being proceedings in or in consequence of which he was convicted or his sentence was passed, or
   (b) applies to the High Court for permission to make such an application, the High Court may suspend the section 129 order.

(7) Any power of a court under this section to suspend the section 129 order is a power to do so on such terms as the court thinks fit.

(8) Where, by virtue of this section, a court suspends the section 129 order it must send notice of the suspension to the relevant licensing authority.

(9) Where the section 129 order is an order for forfeiture of the licence, an order under this section to suspend that order has effect to reinstate the licence for the period of the suspension.
131 Court’s duty to notify licensing authority of convictions

(1) This section applies where a person who holds a personal licence (“the relevant person”) is convicted, by or before a court in England and Wales, of a relevant offence in a case where-

(a) the relevant person has given notice under section 128 (notification of personal licence), or

(b) the court is, for any other reason, aware of the existence of that personal licence.

(2) The appropriate officer of the court must (as soon as reasonably practicable)-

(a) send to the relevant licensing authority a notice specifying-

(i) the name and address of the relevant person,

(ii) the nature and date of the conviction, and

(iii) any sentence passed in respect of it, including any order made under section 129, and

(b) send a copy of the notice to the relevant person.

(3) Where, on an appeal against the relevant person’s conviction for the relevant offence or against the sentence imposed on him for that offence, his conviction is quashed or a new sentence is substituted for that sentence, the court which determines the appeal must (as soon as reasonably practicable) arrange-

(a) for notice of the quashing of the conviction or the substituting of the sentence to be sent to the relevant licensing authority, and

(b) for a copy of the notice to be sent to the relevant person.

(4) Where the case is referred to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (c.33) (review of lenient sentence), the court must cause-

(a) notice of any action it takes under subsection (1) of that section to be sent to the relevant licensing authority, and

(b) a copy of the notice to be sent to the relevant person.

(5) For the purposes of subsection (2) “the appropriate officer” is-

(a) in the case of a magistrates’ court, the clerk of the court, and

(b) in the case of the Crown Court, the appropriate officer;

and section 141 of the Magistrates’ Courts Act 1980 (c.43) (meaning of “clerk of a magistrates’ court”) applies in relation to this subsection as it applies in relation to that section.

132 Licence holder’s duty to notify licensing authority of convictions

(1) Subsection (2) applies where the holder of a personal licence-

(a) is convicted of a relevant offence, in a case where section 131(1) does not apply, or

(b) is convicted of a foreign offence.

(2) The holder must-

(a) as soon as reasonably practicable after the conviction, give the relevant licensing authority a notice containing details of the nature and date of the conviction, and any sentence imposed on him in respect of it, and

(b) as soon as reasonably practicable after the determination of any appeal against the conviction or sentence, or of any reference under section 36 of the Criminal Justice Act 1988 (c.33) in respect of the case, give the relevant licensing authority a notice containing details of the determination.

(3) A notice under subsection (2) must be accompanied by the personal licence or, if that is not practicable, a statement of the reasons for the failure to provide the licence.

(4) A person commits an offence if he fails, without reasonable excuse, to comply with this section.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
**General provision**

**133 Form etc. of applications and notices under Part 6**

(1) In relation to any application under section 117 or notice under this Part, regulations may prescribe-
   (a) its form,
   (b) the manner in which it is to be made or given, and
   (c) the information and documents that must accompany it.

(2) Regulations may also-
   (a) require applications under section 117 or 126 or notices under section 127 to be accompanied by a fee, and
   (b) prescribe the amount of the fee.

**134 Licensing authority’s duty to update licence document**

(1) Where-
   (a) the relevant licensing authority makes a determination under section 121 or 124(4),
   (b) it receives a notice under section 123(1), 127, 131 or 132, or
   (c) an appeal against a decision under this Part is disposed of,
   in relation to a personal licence, the authority must make the appropriate amendments (if any) to the licence.

(2) Where, under section 131, notice is given of the making of an order under section 129, the relevant licensing authority must make an endorsement on the licence stating the terms of the order.

(3) Where, under section 131, notice is given of the quashing of such an order, any endorsement previously made under subsection (2) in respect of it must be cancelled.

(4) Where a licensing authority is not in possession of a personal licence, it may, for the purposes of discharging its obligations under this section, require the holder of the licence to produce it to the authority within 14 days beginning with the day on which he is notified of the requirement.

(5) A person commits an offence if he fails, without reasonable excuse, to comply with a requirement under subsection (4).

(6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**Production of licence**

**135 Licence holder’s duty to produce licence**

(1) This section applies where the holder of a personal licence is on premises to make or authorise the supply of alcohol, and such supplies-
   (a) are authorised by a premises licence in respect of those premises, or
   (b) are a permitted temporary activity on the premises by virtue of a temporary event notice given under Part 5 in respect of which he is the premises user.

(2) Any constable or authorised officer may require the holder of the personal licence to produce that licence for examination.

(3) An authorised officer exercising the power conferred by subsection (2) must, if so requested, produce evidence of his authority to exercise the power.

(4) A person who fails, without reasonable excuse, to comply with a requirement under subsection (2) is guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) In this section “authorised officer” means an officer of a licensing authority authorised by the authority for the purposes of this Act.
PART 7
OFFENCES

Unauthorised licensable activities

136 Unauthorised licensable activities

(1) A person commits an offence if-
   (a) he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or
   (b) he knowingly allows a licensable activity to be so carried on.

(2) Where the licensable activity in question is the provision of regulated entertainment, a person does not commit an offence under this section if his only involvement in the provision of the entertainment is that he-
   (a) performs in a play,
   (b) participates as a sportsman in an indoor sporting event,
   (c) boxes or wrestles in a boxing or wrestling entertainment,
   (d) performs live music,
   (e) plays recorded music,
   (f) performs dance, or
   (g) does something coming within paragraph 2(1)(h) of Schedule 1 (entertainment similar to music, dance, etc.).

(3) Subsection (2) is to be construed in accordance with Part 3 of Schedule 1.

(4) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

(5) In this Part “authorisation” means-
   (a) a premises licence,
   (b) a club premises certificate, or
   (c) a temporary event notice in respect of which the conditions of section 98(2) to (4) are satisfied.

137 Exposing alcohol for unauthorised sale

(1) A person commits an offence if, on any premises, he exposes for sale by retail any alcohol in circumstances where the sale by retail of that alcohol on those premises would be an unauthorised licensable activity.

(2) For that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation.

(3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

(4) The court by which a person is convicted of an offence under this section may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order.

138 Keeping alcohol on premises for unauthorised sale etc.

(1) A person commits an offence if he has in his possession or under his control alcohol which he intends to sell by retail or supply in circumstances where that activity would be an unauthorised licensable activity.

(2) For that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation.

(3) In subsection (1) the reference to the supply of alcohol is a reference to the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) The court by which a person is convicted of an offence under this section may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order.
Defence of due diligence

(1) In proceedings against a person for an offence to which subsection (2) applies, it is a defence that-

(a) his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and

(b) he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

(2) This subsection applies to an offence under-

(a) section 136(1)(a) (carrying on unauthorised licensable activity),

(b) section 137 (exposing alcohol for unauthorised sale), or

(c) section 138 (keeping alcohol on premises for unauthorised sale).

Allowing disorderly conduct on licensed premises etc.

(1) A person to whom subsection (2) applies commits an offence if he knowingly allows disorderly conduct on relevant premises.

(2) This subsection applies-

(a) to any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the conduct,

(b) in the case of licensed premises, to-

(i) the holder of a premises licence in respect of the premises, and

(ii) the designated premises supervisor (if any) under such a licence,

(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who at the time the conduct takes place is present on the premises in a capacity which enables him to prevent it, and

(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Sale of alcohol to a person who is drunk

(1) A person to whom subsection (2) applies commits an offence if, on relevant premises, he knowingly-

(a) sells or attempts to sell alcohol to a person who is drunk, or

(b) allows alcohol to be sold to such a person.

(2) This subsection applies-

(a) to any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell the alcohol concerned,

(b) in the case of licensed premises, to-

(i) the holder of a premises licence in respect of the premises, and

(ii) the designated premises supervisor (if any) under such a licence,

(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who at the time the sale (or attempted sale) takes place is present on the premises in a capacity which enables him to prevent it, and

(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

(3) This section applies in relation to the supply of alcohol by or on behalf of a club to or to the order of a member of the club as it applies in relation to the sale of alcohol.

(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
142  Obtaining alcohol for a person who is drunk
(1) A person commits an offence if, on relevant premises, he knowingly obtains or attempts to obtain alcohol for consumption on those premises by a person who is drunk.
(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

143  Failure to leave licensed premises etc.
(1) A person who is drunk or disorderly commits an offence if, without reasonable excuse-
(a) he fails to leave relevant premises when requested to do so by a constable or by a person to whom subsection (2) applies, or
(b) he enters or attempts to enter relevant premises after a constable or a person to whom subsection (2) applies has requested him not to enter.
(2) This subsection applies-
(a) to any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to make such a request,
(b) in the case of licensed premises, to-
   (i) the holder of a premises licence in respect of the premises, or
   (ii) the designated premises supervisor (if any) under such a licence,
(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who is present on the premises in a capacity which enables him to make such a request, and
(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.
(3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.
(4) On being requested to do so by a person to whom subsection (2) applies, a constable must-
(a) help to expel from relevant premises a person who is drunk or disorderly;
(b) help to prevent such a person from entering relevant premises.

Smuggled goods
144  Keeping of smuggled goods
(1) A person to whom subsection (2) applies commits an offence if he knowingly keeps or allows to be kept, on any relevant premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported.
(2) This subsection applies-
(a) to any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to prevent the keeping of the goods on the premises,
(b) in the case of licensed premises, to-
   (i) the holder of a premises licence in respect of the premises, and
   (ii) the designated premises supervisor (if any) under such a licence,
(c) in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who is present on the premises at any time when the goods are kept on the premises in a capacity which enables him to prevent them being so kept, and
(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.
(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
(4) The court by which a person is convicted of an offence under this section may order the goods in question, and any container for them, to be forfeited and either destroyed or dealt with in such other manner as the court may order.
Children and alcohol

Unaccompanied children prohibited from certain premises

(1) A person to whom subsection (3) applies commits an offence if-
   (a) knowing that relevant premises are within subsection (4), he allows an
       unaccompanied child to be on the premises at a time when they are open for the
       purposes of being used for the supply of alcohol for consumption there, or
   (b) he allows an unaccompanied child to be on relevant premises at a time between
       the hours of midnight and 5 a.m. when the premises are open for the purposes of
       being used for the supply of alcohol for consumption there.

(2) For the purposes of this section-
   (a) “child” means an individual aged under 16,
   (b) a child is unaccompanied if he is not in the company of an individual aged 18 or
       over.

(3) This subsection applies-
   (a) to any person who works at the premises in a capacity, whether paid or unpaid,
       which authorises him to request the unaccompanied child to leave the premises,
   (b) in the case of licensed premises, to-
       (i) the holder of a premises licence in respect of the premises, and
       (ii) the designated premises supervisor (if any) under such a licence,
   (c) in the case of premises in respect of which a club premises certificate has effect, to
       any member or officer of the club which holds the certificate who is present on the
       premises in a capacity which enables him to make such a request, and
   (d) in the case of premises which may be used for a permitted temporary activity by
       virtue of Part 5, to the premises user in relation to the temporary event notice in
       question.

(4) Relevant premises are within this subsection if-
   (a) they are exclusively or primarily used for the supply of alcohol for consumption
       on the premises, or
   (b) they are open for the purposes of being used for the supply of alcohol for
       consumption on the premises by virtue of Part 5 (permitted temporary activities)
       and, at the time the temporary event notice in question has effect, they are
       exclusively or primarily used for such supplies.

(5) No offence is committed under this section if the unaccompanied child is on the
    premises solely for the purpose of passing to or from some other place to or from which
    there is no other convenient means of access or egress.

(6) Where a person is charged with an offence under this section by reason of his own
    conduct it is a defence that-
    (a) he believed that the unaccompanied child was aged 16 or over or that an
        individual accompanying him was aged 18 or over, and
    (b) either-
        (i) he had taken all reasonable steps to establish the individual’s age, or
        (ii) nobody could reasonably have suspected from the individual’s appearance
            that he was aged under 16 or, as the case may be, under 18.

(7) For the purposes of subsection (6), a person is treated as having taken all reasonable
    steps to establish an individual’s age if-
    (a) he asked the individual for evidence of his age, and
    (b) the evidence would have convinced a reasonable person.

(8) Where a person (“the accused”) is charged with an offence under this section by reason
    of the act or default of some other person, it is a defence that the accused exercised all
    due diligence to avoid committing it.

(9) A person guilty of an offence under this section is liable on summary conviction to a
    fine not exceeding level 3 on the standard scale.

(10) In this section “supply of alcohol” means-
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146 Sale of alcohol to children

(1) A person commits an offence if he sells alcohol to an individual aged under 18.

(2) A club commits an offence if alcohol is supplied by it or on its behalf-
   (a) to, or to the order of, a member of the club who is aged under 18, or
   (b) to the order of a member of the club, to an individual who is aged under 18.

(3) A person commits an offence if he supplies alcohol on behalf of a club-
   (a) to, or to the order of, a member of the club who is aged under 18, or
   (b) to the order of a member of the club, to an individual who is aged under 18.

(4) Where a person is charged with an offence under this section by reason of his own conduct it is a defence that-
   (a) he believed that the individual was aged 18 or over, and
   (b) either-
      (i) he had taken all reasonable steps to establish the individual’s age, or
      (ii) nobody could reasonably have suspected from the individual’s appearance that he was aged under 18.

(5) For the purposes of subsection (4), a person is treated as having taken all reasonable steps to establish an individual’s age if-
   (a) he asked the individual for evidence of his age, and
   (b) the evidence would have convinced a reasonable person.

(6) Where a person (“the accused”) is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.

(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

147 Allowing the sale of alcohol to children

(1) A person to whom subsection (2) applies commits an offence if he knowingly allows the sale of alcohol on relevant premises to an individual aged under 18.

(2) This subsection applies to a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the sale.

(3) A person to whom subsection (4) applies commits an offence if he knowingly allows alcohol to be supplied on relevant premises by or on behalf of a club-
   (a) to or to the order of a member of the club who is aged under 18, or
   (b) to the order of a member of the club, to an individual who is aged under 18.

(4) This subsection applies to-
   (a) a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the supply, and
   (b) any member or officer of the club who at the time of the supply is present on the relevant premises in a capacity which enables him to prevent it.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

148 Sale of liqueur confectionery to children under 16

(1) A person commits an offence if he-
   (a) sells liqueur confectionery to an individual aged under 16, or
   (b) supplies such confectionery, on behalf of a club-
      (i) to or to the order of a member of the club who is aged under 16, or
      (ii) to the order of a member of the club, to an individual who is aged under 16.

(2) A club commits an offence if liqueur confectionery is supplied by it or on its behalf-
   (a) to or to the order of a member of the club who is aged under 16, or
   (b) to the order of a member of the club, to an individual who is aged under 16.
(3) Where a person is charged with an offence under this section by reason of his own conduct it is a defence that-
(a) he believed that the individual was aged 16 or over, and
(b) either-
   (i) he had taken all reasonable steps to establish the individual’s age, or
   (ii) nobody could reasonably have suspected from the individual’s appearance that he was aged under 16.

(4) For the purposes of subsection (3), a person is treated as having taken all reasonable steps to establish an individual’s age if-
(a) he asked the individual for evidence of his age, and
(b) the evidence would have convinced a reasonable person.

(5) Where a person (“the accused”) is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(7) In this section “liqueur confectionery” has the meaning given in section 191(2).

### 149 Purchase of alcohol by or on behalf of children

(1) An individual aged under 18 commits an offence if-
(a) he buys or attempts to buy alcohol, or
(b) where he is a member of a club-
   (i) alcohol is supplied to him or to his order by or on behalf of the club, as a result of some act or default of his, or
   (ii) he attempts to have alcohol supplied to him or to his order by or on behalf of the club.

(2) But subsection (1) does not apply where the individual buys or attempts to buy the alcohol at the request of-
(a) a constable, or
(b) a weights and measures inspector, who is acting in the course of his duty.

(3) A person commits an offence if-
(a) he buys or attempts to buy alcohol on behalf of an individual aged under 18, or
(b) where he is a member of a club, on behalf of an individual aged under 18 he-
   (i) makes arrangements whereby alcohol is supplied to him or to his order by or on behalf of the club, or
   (ii) attempts to make such arrangements.

(4) A person (“the relevant person”) commits an offence if-
(a) he buys or attempts to buy alcohol for consumption on relevant premises by an individual aged under 18, or
(b) where he is a member of a club-
   (i) by some act or default of his, alcohol is supplied to him, or to his order, by or on behalf of the club for consumption on relevant premises by an individual aged under 18, or
   (ii) he attempts to have alcohol so supplied for such consumption.

(5) But subsection (4) does not apply where-
(a) the relevant person is aged 18 or over,
(b) the individual is aged 16 or 17,
(c) the alcohol is beer, wine or cider,
(d) its purchase or supply is for consumption at a table meal on relevant premises, and
(e) the individual is accompanied at the meal by an individual aged 18 or over.
(6) Where a person is charged with an offence under subsection (3) or (4) it is a defence that he had no reason to suspect that the individual was aged under 18.

(7) A person guilty of an offence under this section is liable on summary conviction-
(a) in the case of an offence under subsection (1), to a fine not exceeding level 3 on the standard scale, and
(b) in the case of an offence under subsection (3) or (4), to a fine not exceeding level 5 on the standard scale.

150 Consumption of alcohol by children
(1) An individual aged under 18 commits an offence if he knowingly consumes alcohol on relevant premises.

(2) A person to whom subsection (3) applies commits an offence if he knowingly allows the consumption of alcohol on relevant premises by an individual aged under 18.

(3) This subsection applies-
(a) to a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the consumption, and
(b) where the alcohol was supplied by a club to or to the order of a member of the club, to any member or officer of the club who is present at the premises at the time of the consumption in a capacity which enables him to prevent it.

(4) Subsections (1) and (2) do not apply where-
(a) the individual is aged 16 or 17,
(b) the alcohol is beer, wine or cider,
(c) its consumption is at a table meal on relevant premises, and
(d) the individual is accompanied at the meal by an individual aged 18 or over.

(5) A person guilty of an offence under this section is liable on summary conviction-
(a) in the case of an offence under subsection (1), to a fine not exceeding level 3 on the standard scale, and
(b) in the case of an offence under subsection (2), to a fine not exceeding level 5 on the standard scale.

151 Delivering alcohol to children
(1) A person who works on relevant premises in any capacity, whether paid or unpaid, commits an offence if he knowingly delivers to an individual aged under 18-
(a) alcohol sold on the premises, or
(b) alcohol supplied on the premises by or on behalf of a club to or to the order of a member of the club.

(2) A person to whom subsection (3) applies commits an offence if he knowingly allows anybody else to deliver to an individual aged under 18 alcohol sold on relevant premises.

(3) This subsection applies to a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the delivery of the alcohol.

(4) A person to whom subsection (5) applies commits an offence if he knowingly allows anybody else to deliver to an individual aged under 18 alcohol supplied on relevant premises by or on behalf of a club to or to the order of a member of the club.

(5) This subsection applies-
(a) to a person who works on the premises in a capacity, whether paid or unpaid, which authorises him to prevent the supply, and
(b) to any member or officer of the club who at the time of the supply in question is present on the premises in a capacity which enables him to prevent the supply.

(6) Subsections (1), (2) and (4) do not apply where-
(a) the alcohol is delivered at a place where the buyer or, as the case may be, person supplied lives or works, or
(b) the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol, or
(c) the alcohol is sold or supplied for consumption on the relevant premises.
(7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**152 Sending a child to obtain alcohol**

(1) A person commits an offence if he knowingly sends an individual aged under 18 to obtain—

(a) alcohol sold or to be sold on relevant premises for consumption off the premises, or

(b) alcohol 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.

(2) For the purposes of this section, it is immaterial whether the individual aged under 18 is sent to obtain the alcohol from the relevant premises or from other premises from which it is delivered in pursuance of the sale or supply.

(3) Subsection (1) does not apply where the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol.

(4) Subsection (1) also does not apply where the individual aged under 18 is sent by—

(a) a constable, or

(b) weights and measures inspector, who is acting in the course of his duty.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**153 Prohibition of unsupervised sales by children**

(1) A responsible person commits an offence if on any relevant premises he knowingly allows an individual aged under 18 to make on the premises—

(a) any sale of alcohol, or

(b) any supply of alcohol by or on behalf of a club to or to the order of a member of the club,

unless the sale or supply has been specifically approved by that or another responsible person.

(2) But subsection (1) does not apply where—

(a) the alcohol is sold or supplied for consumption with a table meal,

(b) it is sold or supplied in premises which are being used for the service of table meals (or in a part of any premises which is being so used), and

(c) the premises are (or the part is) not used for the sale or supply of alcohol otherwise than to persons having table meals there and for consumption by such a person as an ancillary to his meal.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

(4) In this section “responsible person” means—

(a) in relation to licensed premises—

(i) the holder of a premises licence in respect of the premises,

(ii) the designated premises supervisor (if any) under such a licence, or

(iii) any individual aged 18 or over who is authorised for the purposes of this section by such a holder or supervisor,

(b) in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables him to prevent the supply in question, and

(c) in relation to premises which may be used for a permitted temporary activity by virtue of Part 5—

(i) the premises user, or

(ii) any individual aged 18 or over who is authorised for the purposes of this section by the premises user.
154 **Enforcement role for weights and measures authorities**

(1) It is the duty of every local weights and measures authority in England and Wales to enforce within its area the provisions of sections 146 and 147, so far as they apply to sales of alcohol made on or from premises to which the public have access.

(2) A weights and measures inspector may make, or authorise any person to make on his behalf, such purchases of goods as appear expedient for the purpose of determining whether those provisions are being complied with.

**Confiscation of alcohol**

155 **Confiscation of sealed containers of alcohol**

(1) In section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (c.33) (right to require surrender of alcohol)-

(a) in subsection (1), omit “(other than a sealed container)”,

(b) after that subsection insert-

“(1A) But a constable may not under subsection (1) require a person to surrender any sealed container unless the constable reasonably believes that the person is, or has been, consuming, or intends to consume, alcohol in any relevant place, and”

(c) in subsection (6), after “subsection (1)” insert “and (1A)”.

(2) In section 12(2)(b) of the Criminal Justice and Police Act 2001 (c.16) (right to require surrender of alcohol), omit “(other than a sealed container)”.

**Vehicles and trains**

156 **Prohibition on sale of alcohol on moving vehicles**

(1) A person commits an offence under this section if he sells by retail alcohol on or from a vehicle at a time when the vehicle is not permanently or temporarily parked.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

(3) In proceedings against a person for an offence under this section, it is a defence that-

(a) his act was due to a mistake, or to reliance on information given to him, or to an act or omission by another person, or to some other cause beyond his control, and

(b) he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

157 **Power to prohibit sale of alcohol on trains**

(1) A magistrates’ court acting for a petty sessions area may make an order prohibiting the sale of alcohol, during such period as may be specified, on any railway vehicle-

(a) at such station or stations as may be specified, being stations in that area, or

(b) travelling between such stations as may be specified, at least one of which is in that area.

(2) A magistrates’ court may make an order under this section only on the application of a senior police officer.

(3) A magistrates’ court may not make such an order unless it is satisfied that the order is necessary to prevent disorder.

(4) Where an order is made under this section, the responsible senior police officer must, forthwith, serve a copy of the order on the train operator (or each train operator) affected by the order.

(5) A person commits an offence if he knowingly-

(a) sells or attempts to sell alcohol in contravention of an order under this section, or

(b) allows the sale of alcohol in contravention of such an order.

(6) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

(7) In this section-

“railway vehicle” has the meaning given by section 83 of the Railways Act 1993;
“responsible senior police officer”, in relation to an order under this section, means the senior police officer who applied for the order or, if the chief officer of police of the force in question has designated another senior police officer for the purpose, that other officer;
“senior police officer” means a police officer of, or above, the rank of inspector;
“specified” means specified in the order under this section;
“station” has the meaning given by section 83 of the Railways Act 1993 (c.43); and
“train operator” means a person authorised by a licence under section 8 of that Act to operate railway assets (within the meaning of section 6 of that Act).

158 False statements made for the purposes of this Act

(1) A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with-
(a) an application for the grant, variation, transfer or review of a premises licence or club premises certificate,
(b) an application for a provisional statement,
(c) a temporary event notice, an interim authority notice or any other notice under this Act,
(d) an application for the grant or renewal of a personal licence, or
(e) a notice within section 178(1) (notice by freeholder etc. conferring right to be notified of changes to licensing register).

(2) For the purposes of subsection (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

159 Interpretation of Part 7

In this Part-
“authorisation” has the meaning given in section 136(5);
“relevant premises” means-
(a) licensed premises, or
(b) premises in respect of which there is in force a club premises certificate, or
(c) premises which may be used for a permitted temporary activity by virtue of Part 5;
“table meal” means a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table; and
“weights and measures inspector” means an inspector of weights and measures appointed under section 72(1) of the Weights and Measures Act 1985 (c.72).

160 Orders to close premises in area experiencing disorder

(1) Where there is or is expected to be disorder in any petty sessions area, a magistrates’ court acting for the area may make an order requiring all premises-
(a) which are situated at or near the place of the disorder or expected disorder, and
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(b) in respect of which a premises licence or a temporary event notice has effect, to be closed for a period, not exceeding 24 hours, specified in the order.

(2) A magistrates’ court may make an order under this section only on the application of a police officer who is of the rank of superintendent or above.

(3) A magistrates’ court may not make such an order unless it is satisfied that it is necessary to prevent disorder.

(4) Where an order is made under this section, a person to whom subsection (5) applies commits an offence if he knowingly keeps any premises to which the order relates open, or allows any such premises to be kept open, during the period of the order.

(5) This subsection applies-
(a) to any manager of the premises,
(b) in the case of licensed premises, to-
   (i) the holder of a premises licence in respect of the premises, and
   (ii) the designated premises supervisor (if any) under such a licence,
   (iii) and
   (c) in the case of premises in respect of which a temporary event notice has effect, to the premises user in relation to that notice.

(6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) A constable may use such force as may be necessary for the purpose of closing premises ordered to be closed under this section.

Closure of identified premises

161 Closure orders for identified premises

(1) A senior police officer may make a closure order in relation to any relevant premises if he reasonably believes that-
   (a) there is, or is likely imminently to be, disorder on, or in the vicinity of and related to, the premises and their closure is necessary in the interests of public safety, or
   (b) a public nuisance is being caused by noise coming from the premises and the closure of the premises is necessary to prevent that nuisance.

(2) A closure order is an order under this section requiring relevant premises to be closed for a period not exceeding 24 hours beginning with the coming into force of the order.

(3) In determining whether to make a closure order in respect of any premises, the senior police officer must have regard, in particular, to the conduct of each appropriate person in relation to the disorder or nuisance.

(4) A closure order must-
   (a) specify the premises to which it relates,
   (b) specify the period for which the premises are to be closed,
   (c) specify the grounds on which it is made, and
   (d) state the effect of sections 162 to 168.

(5) A closure order in respect of any relevant premises comes into force at the time a constable gives notice of it to an appropriate person who is connected with any of the activities to which the disorder or nuisance relates.

(6) A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of a closure order or any extension of it.

(7) A person guilty of an offence under subsection (6) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

(8) In this section-
   “relevant premises” means premises in respect of which one or more of the following have effect-
   (a) a premises licence,
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(b) a temporary event notice; and
“senior police officer” means a police officer of, or above, the rank of inspector.

162 Extension of closure order

(1) Where, before the end of the period for which relevant premises are to be closed under a closure order or any extension of it (the “closure period”), the responsible senior police officer reasonably believes that-
(a) a relevant magistrates’ court will not have determined whether to exercise its powers under section 165(2) in respect of the closure order, and any extension of it, by the end of the closure period, and
(b) the conditions for an extension are satisfied,
he may extend the closure period for a further period not exceeding 24 hours beginning with the end of the previous closure period.

(2) The conditions for an extension are that-
(a) in the case of an order made by virtue of section 161(1)(a), closure is necessary in the interests of public safety because of disorder or likely disorder on, or in the vicinity of and related to, the premises,
(b) in the case of an order made by virtue of section 161(1)(b), closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises.

(3) An extension in relation to any relevant premises comes into force when a constable gives notice of it to an appropriate person connected with any of the activities to which the disorder or nuisance relates or is expected to relate.

(4) But the extension does not come into force unless the notice is given before the end of the previous closure period.

163 Cancellation of closure order

(1) The responsible senior police officer may cancel a closure order and any extension of it at any time-
(a) after the making of the order, but
(b) before a relevant magistrates’ court has determined whether to exercise its powers under section 165(2) in respect of the order and any extension of it.

(2) The responsible senior police officer must cancel a closure order and any extension of it if he does not reasonably believe that-
(a) in the case of an order made by virtue of section 161(1)(a), closure is necessary in the interests of public safety because of disorder or likely disorder on, or in the vicinity of and related to, the premises,
(b) in the case of an order made by virtue of section 161(1)(b), closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises.

(3) Where a closure order and any extension of it are cancelled under this section, the responsible senior police officer must give notice of the cancellation to an appropriate person connected with any of the activities related to the disorder (or anticipated disorder) or nuisance in respect of which the closure order was made.

164 Application to magistrates’ court by police

(1) The responsible senior police officer must, as soon as reasonably practicable after a closure order comes into force in respect of any relevant premises, apply to a relevant magistrates court for it to consider the order and any extension of it.

(2) Where an application is made under this section in respect of licensed premises, the responsible senior officer must also notify the relevant licensing authority-
(a) that a closure order has come into force,
(b) of the contents of the order and of any extension of it, and
(c) of the application under subsection (1).

165 Consideration of closure order by magistrates’ court

(1) A relevant magistrates’ court must as soon as reasonably practicable after receiving an application under section 164(1)-
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165 (a) hold a hearing to consider whether it is appropriate to exercise any of the court’s powers under subsection (2) in relation to the closure order or any extension of it, and
(b) determine whether to exercise any of those powers.

(2) The relevant magistrates’ court may-
(a) revoke the closure order and any extension of it;
(b) order the premises to remain, or to be, closed until such time as the relevant licensing authority has made a determination in respect of the order for the purposes of section 167;
(c) order the premises to remain or to be closed until that time subject to such exceptions as may be specified in the order;
(d) order the premises to remain or to be closed until that time unless such conditions as may be specified in the order are satisfied.

(3) In determining whether the premises will be, or will remain, closed the relevant magistrates’ court must, in particular, consider whether-
(a) in the case of an order made by virtue of section 161(1)(a), closure is necessary in the interests of public safety because of disorder or likely disorder on the premises, or in the vicinity of and related to, the premises;
(b) in the case of an order made by virtue of section 161(1)(b), closure is necessary to ensure that no public nuisance is, or is likely to be, caused by noise coming from the premises.

(4) In the case of licensed premises, the relevant magistrates’ court must notify the relevant licensing authority of any determination it makes under subsection (1)(b).

(5) Subsection (2) does not apply if, before the relevant magistrates’ court discharges its functions under that subsection, the premises cease to be relevant premises.

(6) Any order made under subsection (2) ceases to have effect if the premises cease to be relevant premises.

(7) A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of an order under subsection (2)(b), (c) or (d).

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

(9) The powers conferred on a magistrates’ court by this section are to be exercised in the place required by the Magistrates’ Courts Act 1980 (c.43) for the hearing of a complaint and may be exercised by a single justice.

(10) Evidence given for the purposes of proceedings under this section must be given on oath.

166 Appeal from decision of magistrates’ court

(1) Any person aggrieved by a decision of a magistrates’ court under section 165 may appeal to the Crown Court against the decision.

(2) An appeal under subsection (1) must be commenced by notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day the decision appealed against was made.

167 Review of premises licence following closure order

(1) This section applies where-
(a) a closure order has come into force in relation to premises in respect of which a premises licence has effect, and
(b) the relevant licensing authority has received a notice under section 165(4) (notice of magistrates’ court’s determination), in relation to the order and any extension of it.

(2) The relevant licensing authority must review the premises licence.

(3) The authority must reach a determination on the review no later than 28 days after the day on which it receives the notice mentioned in subsection (1)(b).

(4) The Secretary of State must by regulations-
(a) require the relevant licensing authority to give, to the holder of the premises licence and each responsible authority, notice of-
   (i) the review,
   (ii) the closure order and any extension of it, and
   (iii) any order made in relation to it under section 165(2);
(b) require the authority to advertise the review and invite representations about it to be made to the authority by responsible authorities and interested parties;
(c) prescribe the period during which representations may be made by the holder of the premises licence, any responsible authority or any interested party;
(d) require any notice under paragraph (a) or advertisement under paragraph (b) to specify that period.

(5) The relevant licensing authority must-
   (a) hold a hearing to consider-
      (i) the closure order and any extension of it,
      (ii) any order under section 165(2), and
      (iii) any relevant representations, and
   (b) take such of the steps mentioned in subsection (6) (if any) as it considers necessary for the promotion of the licensing objectives.

(6) Those steps are-
   (a) to modify the conditions of the premises licence,
   (b) to exclude a licensable activity from the scope of the licence,
   (c) to remove the designated premises supervisor from the licence,
   (d) to suspend the licence for a period not exceeding three months, or
   (e) to revoke the licence;
and for this purpose the conditions of a premises licence are modified if any of them is altered or omitted or any new condition is added.

(7) Subsection (5)(b) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

(8) Where the authority takes a step within subsection (6)(a) or (b), it may provide that the modification or exclusion is to have effect only for a specified period (not exceeding three months).

(9) In this section “relevant representations” means representations which-
   (a) are relevant to one or more of the licensing objectives, and
   (b) meet the requirements of subsection (10).

(10) The requirements are-
   (a) that the representations are made by the holder of the premises licence, a responsible authority or an interested party within the period prescribed under subsection (4)(c),
   (b) that they have not been withdrawn, and
   (c) if they are made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

(11) Where the relevant licensing authority determines that any representations are frivolous or vexatious, it must notify the person who made them of the reasons for that determination.

(12) Where a licensing authority determines a review under this section it must notify the determination and its reasons for making it to-
   (a) the holder of the licence,
   (b) any person who made relevant representations, and
   (c) the chief officer of police for the police area (or each police area) in which the premises are situated.

(13) Section 168 makes provision about when the determination takes effect.
168 Provision about decisions under section 167

(1) Subject to this section, a decision under section 167 does not have effect until the relevant time.

(2) In this section “the relevant time”, in relation to any decision, means-
(a) the end of the period given for appealing against the decision, or
(b) if the decision is appealed against, the time the appeal is disposed of.

(3) Subsections (4) and (5) apply where-
(a) the relevant licensing authority decides on a review under section 167 to take one or more of the steps mentioned in subsection (6)(a) to (d) of that section, and
(b) the premises to which the licence relates have been closed, by virtue of an order under section 165(2)(b), (c) or (d), until that decision was made.

(4) The decision by the relevant licensing authority to take any of the steps mentioned in section 167(6)(a) to (d) takes effect when it is notified to the holder of the licence under section 167(12).

This is subject to subsection (5) and paragraph 18(3) of Schedule 5 (power of magistrates’ court to suspend decision pending appeal).

(5) The relevant licensing authority may, on such terms as it thinks fit, suspend the operation of that decision (in whole or in part) until the relevant time.

(6) Subsection (7) applies where-
(a) the relevant licensing authority decides on a review under section 167 to revoke the premises licence, and
(b) the premises to which the licence relates have been closed, by virtue of an order under section 165(2)(b), (c) or (d), until that decision was made.

(7) The premises must remain closed (but the licence otherwise in force) until the relevant time.

This is subject to paragraph 18(4) of Schedule 5 (power of magistrates’ court to modify closure order pending appeal).

(8) A person commits an offence if, without reasonable excuse, he allows premises to be open in contravention of subsection (7).

(9) A person guilty of an offence under subsection (8) is liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000, or to both.

169 Enforcement of closure order

A constable may use such force as may be necessary for the purposes of closing premises in compliance with a closure order.

170 Exemption of police from liability for damages

(1) A constable is not liable for relevant damages in respect of any act or omission of his in the performance or purported performance of his functions in relation to a closure order or any extension of it.

(2) A chief officer of police is not liable for relevant damages in respect of any act or omission of a constable under his direction or control in the performance or purported performance of a function of the constable’s in relation to a closure order or any extension of it.

(3) But neither subsection (1) nor (2) applies-
(a) if the act or omission is shown to have been in bad faith, or
(b) so as to prevent an award of damages in respect of an act or omission on the grounds that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998 (c.42) (incompatibility of act or omission with Convention rights).

(4) This section does not affect any other exemption from liability for damages (whether at common law or otherwise).
In this section, “relevant damages” means damages awarded in proceedings for judicial review, the tort of negligence or misfeasance in public office.

Interpretation

171 Interpretation of Part 8

(1) This section has effect for the purposes of this Part.

(2) Relevant premises are open if a person who is not within subsection (4) enters the premises and-
   (a) he buys or is otherwise supplied with food, drink or anything usually sold on the premises, or
   (b) while he is on the premises, they are used for the provision of regulated entertainment.

(3) But in determining whether relevant premises are open the following are to be disregarded-
   (a) where no premises licence has effect in respect of the premises, any use of the premises for activities (other than licensable activities) which do not take place during an event period specified in a temporary event notice having effect in respect of the premises,
   (b) any use of the premises for a qualifying club activity under and in accordance with a club premises certificate, and
   (c) any supply exempted under paragraph 3 of Schedule 2 (certain supplies of hot food and drink by clubs, hotels etc. not a licensable activity) in circumstances where a person will neither be admitted to the premises, nor be supplied as mentioned in sub-paragraph (1)(b) of that paragraph, except by virtue of being a member of a recognised club or a guest of such a member.

(4) A person is within this subsection if he is-
   (a) an appropriate person in relation to the premises,
   (b) a person who usually lives at the premises, or
   (c) a member of the family of a person within paragraph (a) or (b).

(5) The following expressions have the meanings given-
   “appropriate person”, in relation to any relevant premises, means-
   (a) any person who holds a premises licence in respect of the premises,
   (b) any designated premises supervisor under such a
   (c) the premises user in relation to any temporary event notice which has effect in respect of the premises, or
   (d) a manager of the premises;
   “closure order” has the meaning given in section 161(2);
   “extension”, in relation to a closure order, means an extension of the order under section 162;
   “manager”, in relation to any premises, means a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to close them;
   “relevant licensing authority”, in relation to any licensed premises, has the same meaning as in Part 3;
   “relevant magistrates’ court”, in relation to any relevant premises, means a magistrates’ court acting for the petty sessions area in which the premises are situated;
   “relevant premises” has the meaning given in section 161(8);
   “responsible senior police officer”, in relation to a closure order, means-
   (a) the senior police officer who made the order, or
   (b) if another senior police officer is designated for the purpose by the chief officer of police for the police area in which the premises are situated, that other officer;
   “senior police officer” has the meaning given in section 161(8).
A temporary event notice has effect from the time it is given in accordance with Part 5 until—
(a) the time it is withdrawn,
(b) the time a counter notice is given under that Part, or
(c) the expiry of the event period specified in the temporary event notice, whichever first occurs.

PART 9
MISCELLANEOUS AND SUPPLEMENTARY

Special occasions

172 Relaxation of opening hours for special occasions
(1) Where the Secretary of State considers that a period (“the celebration period”) marks an occasion of exceptional international, national, or local significance, he may make a licensing hours order.
(2) A licensing hours order is an order which provides that during the specified relaxation period premises licences and club premises certificates have effect (to the extent that it is not already the case) as if specified times were included in the opening hours.
(3) An order under this section may—
(a) make provision generally or only in relation to premises in one or more specified areas;
(b) make different provision in respect of different days during the specified relaxation period;
(c) make different provision in respect of different licensable activities.
(4) Before making an order under this section, the Secretary of State must consult such persons as he considers appropriate.
(5) In this section—
“opening hours” means—
(a) in relation to a premises licence, the times during which the premises may be used for licensable activities in accordance with the licence, and
(b) in relation to a club premises certificate, the times during which the premises may be used for qualifying club activities in accordance with the certificate;
“relaxation period” means—
(a) if the celebration period does not exceed four days, that period, or
(b) any part of that period not exceeding four days; and
“specified”, in relation to a licensing hours order, means specified in the order.

Exemptions etc

173 Activities in certain locations not licensable
(1) An activity is not a licensable activity if it is carried on—
(a) aboard an aircraft, hovercraft or railway vehicle engaged on a journey,
(b) aboard a vessel engaged on an international journey,
(c) at an approved wharf at a designated port or hoverport,
(d) at an examination station at a designated airport,
(e) at a royal palace,
(f) at premises which, at the time when the activity is carried on, are permanently or temporarily occupied for the purposes of the armed forces of the Crown,
(g) at premises in respect of which a certificate issued under section 174 (exemption for national security) has effect, or
(h) at such other place as may be prescribed.
(2) For the purposes of subsection (1) the period during which an aircraft, hovercraft, railway vehicle or vessel is engaged on a journey includes—
(a) any period ending with its departure when preparations are being made for the
to journey, and
(b) any period after its arrival at its destination when it continues to be occupied by
those (or any of those) who made the journey (or any part of it).

(3) The Secretary of State may by order designate a port, hoverport or airport for the
purposes of subsection (1), if it appears to him to be one at which there is a substantial
amount of international passenger traffic.

(4) Any port, airport or hoverport where section 86A or 87 of the Licensing Act 1964 (c.26)
is in operation immediately before the commencement of this section is, on and after
that commencement, to be treated for the purposes of subsection (1) as if it were
designated.

(5) But provision may by order be made for subsection (4) to cease to have effect in relation
to any port, airport or hoverport.

(6) For the purposes of this section-

"approved wharf" has the meaning given by section 20A of the Customs and Excise
Management Act 1979 (c.2);
"designated" means designated by an order under subsection (3);
"examination station" has the meaning given by section 22A of that Act;
"international journey" means-
(a) a journey from a place in the United Kingdom to an immediate destination outside
the United Kingdom, or
(b) a journey from a place outside the United Kingdom to an immediate destination in
the United Kingdom; and
"railway vehicle" has the meaning given by section 83 of the Railways Act 1993 (c.43).

174 Certifying of premises on grounds of national security

(1) A Minister of the Crown may issue a certificate under this section in respect of any
premises, if he considers that it is appropriate to do so for the purposes of safeguarding
national security.

(2) A certificate under this section may identify the premises in question by means of a
general description.

(3) A document purporting to be a certificate under this section is to be received in
evidence and treated as being a certificate under this section unless the contrary is
proved.

(4) A document which purports to be certified by or on behalf of a Minister of the Crown
as a true copy of a certificate given by a Minister of the Crown under this section is
evidence of that certificate.

(5) A Minister of the Crown may cancel a certificate issued by him, or any other Minister of
the Crown, under this section.

(6) The powers conferred by this section on a Minister of the Crown may be exercised only
by a Minister who is a member of the Cabinet or by the Attorney General.

(7) In this section “Minister of the Crown” has the meaning given by the Ministers of the
Crown Act 1975 (c.26).

175 Exemption for raffle, tombola, etc.

(1) The conduct of a lottery which, but for this subsection, would to any extent constitute a
licensable activity by reason of one or more of the prizes in the lottery consisting of
alcohol, is not (for that reason alone) to be treated as constituting a licensable activity if-

(a) the lottery is promoted as an incident of an exempt entertainment,
(b) after the deduction of all relevant expenses, the whole proceeds of the
entertainment (including those of the lottery) are applied for purposes other than
private gain, and
(c) subsection (2) does not apply.

(2) This subsection applies if-

(a) the alcohol consists of or includes alcohol not in a sealed container,
(b) any prize in the lottery is a money prize,
(c) a ticket or chance in the lottery is sold or issued, or the result of the lottery is declared, other than at the premises where the entertainment takes place and during the entertainment, or
(d) the opportunity to participate in a lottery or in gaming is the only or main inducement to attend the entertainment.

(3) For the purposes of subsection (1)(b), the following are relevant expenses-
(a) the expenses of the entertainment, excluding expenses incurred in connection with the lottery,
(b) the expenses incurred in printing tickets in the lottery,
(c) such reasonable and proper expenses as the promoters of the lottery appropriate on account of any expenses they incur in buying prizes in the lottery.

(4) In this section-
“exempt entertainment” has the same meaning as in section 3 (1) of the Lotteries and Amusements Act 1976 (c.32);
“gaming” has the meaning given by section 52 of the Gaming Act 1968 (c.65);
“money” and “ticket” have the meaning given by section 23 of the Lotteries and Amusements Act 1976; and
“private gain” in relation to the proceeds of an entertainment, is to be construed in accordance with section 22 of that Act.

Service areas and garages etc

176 Prohibition of alcohol sales at service areas, garages etc.

(1) No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.

(2) In this section “excluded premises” means-
(a) premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I (with or without other classes); or
(b) premises used primarily as a garage or which form part of premises which are primarily so used.

(3) The Secretary of State may by order amend the definition of excluded premises in subsection (2) so as to include or exclude premises of such description as may be specified in the order.

(4) For the purposes of this section-
(a) “special road” and “special road authority” have the same meaning as in the Highways Act 1980 (c.66), except that “special road” includes a trunk road to which (by virtue of paragraph 3 of Schedule 23 to that Act) the provisions of that Act apply as if the road were a special road,
(b) “class I” means class I in Schedule 4 to the Highways Act 1980 as varied from time to time by an order under section 17 of that Act, but if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in subsection (2)(a) to traffic of class I so as to take account of the additional class, and
(c) premises are used as a garage if they are used for one or more of the following-
(i) the retailing of petrol,
(ii) the retailing of derv,
(iii) the sale of motor vehicles,
(iv) the maintenance of motor vehicles.

Small premises

177 Dancing and live music in certain small premises

(1) Subsection (2) applies where-
(a) a premises licence authorises-
   (i) the supply of alcohol for consumption on the premises, and
   (ii) the provision of music entertainment, and
(b) the premises-
   (i) are used primarily for the supply of alcohol for consumption on the premises, and
   (ii) have a permitted capacity of not more than 200 persons.

(2) At any time when-
   (a) the premises-
       (i) are open for the purposes of being used for the supply of alcohol for consumption on the premises, and
       (ii) are being used for the provision of music entertainment, and
   (b) subsection (4) does not apply,
any licensing authority imposed condition of the premises licence which relates to the provision of music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within subsection (5) or (6).

(3) Subsection (4) applies where-
   (a) a premises licence authorises the provision of music entertainment, and
   (b) the premises have a permitted capacity of not more than 200 persons.

(4) At any time between the hours of 8 a.m. and midnight when the premises-
   (a) are being used for the provision of music entertainment which consists of-
       (i) the performance of unamplified, live music, or
       (ii) facilities for enabling persons to take part in entertainment within subparagraph (i), but
   (b) are not being used for the provision of any other description of regulated entertainment,
any licensing authority imposed condition of the premises licence which relates to the provision of the music entertainment does not have effect, in relation to the provision of that entertainment, unless it falls within subsection (6).

(5) A condition falls within this subsection if the premises licence specifies that the licensing authority which granted the licence considers the imposition of the condition necessary on one or both of the following grounds-
   (a) the prevention of crime and disorder,
   (b) public safety.

(6) A condition falls within this subsection if, on a review of the premises licence-
   (a) it is altered so as to include a statement that this section does not apply to it, or
   (b) it is added to the licence and includes such a statement.

(7) This section applies in relation to a club premises certificate as it applies in relation to a premises licence except that, in the application of this section in relation to such a certificate, the definition of “licensing authority imposed condition” in subsection (8) has effect as if for “section 18(3)(b)” to the end there were substituted “section 72(3)(b) (but is not referred to in section 72(2)) or which is imposed by virtue of section 85(3)(b) or 88(3)”.

(8) In this section-
   “licensing authority imposed condition” means a condition which is imposed by virtue of section 18(3)(b) (but is not referred to in section 18(2)(a)) or which is imposed by virtue of 35(3)(b), 52(3) or 167(5)(b) or in accordance with section 21;
   “music entertainment” means-
   (a) entertainment of a description falling within, or of a similar description to that falling within, paragraph 2(1)(e) or (g) of Schedule 1, or
   (b) facilities enabling persons to take part in entertainment within paragraph (a);
   “permitted capacity”, in relation to any premises, means-
(a) where a fire certificate issued under the Fire Precautions Act 1971 (c.40) is in force in respect of the premises and that certificate imposes a requirement under section 6(2)(d) of that Act, the limit on the number of persons who, in accordance with that requirement, may be on the premises at any one time, and
(b) in any other case, the limit on the number of persons who may be on the premises at any one time in accordance with a recommendation made by, or on behalf of, the fire authority for the area in which the premises are situated (or, if the premises are situated in the area of more than one fire authority, those authorities); and

“supply of alcohol” means-
(a) the sale by retail of alcohol, or
(b) the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

Rights of freeholders etc

178 Right of freeholder etc. to be notified of licensing matters

(1) This section applies where-
(a) a person with a property interest in any premises situated in the area of a licensing authority gives notice of his interest to that authority, and
(b) the notice is in the prescribed form and accompanied by the prescribed fee.

(2) The notice has effect for a period of 12 months beginning with the day it is received by the licensing authority.

(3) If a change relating to the premises to which the notice relates is made to the register at a time when the notice has effect, the licensing authority must forthwith notify the person who gave the notice-
(a) of the application, notice or other matter to which the change relates, and
(b) of his right under section 8 to request a copy of the information contained in any entry in the register.

(4) For the purposes of this section a person has a property interest in premises if-
(a) he has a legal interest in the premises as freeholder or leaseholder,
(b) he is a legal mortgagee (within the meaning of the Law of Property Act 1925 (c.20)) in respect of the premises,
(c) he is in occupation of the premises, or
(d) he has a prescribed interest in the premises.

(5) In this section-
(a) a reference to premises situated in the area of a licensing authority includes a reference to premises partly so situated, and
(b) “register” means the register kept under section 8 by the licensing authority mentioned in subsection (1)(a).

Rights of entry

179 Rights of entry to investigate licensable activities

(1) Where a constable or an authorised person has reason to believe that any premises are being, or are about to be, used for a licensable activity, he may enter the premises with a view to seeing whether the activity is being, or is to be, carried on under and in accordance with an authorisation.

(2) An authorised person exercising the power conferred by this section must, if so requested, produce evidence of his authority to exercise the power.

(3) A person exercising the power conferred by this section may, if necessary, use reasonable force.

(4) A person commits an offence if he intentionally obstructs an authorised person exercising a power conferred by this section.
(5) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In this section-
“authorisation” means-
(a) a premises licence,
(b) a club premises certificate, or
(c) a temporary event notice in respect of which the conditions of section 98(2) to (4) are satisfied; and
“authorised person” means an authorised person within the meaning of Part 3 or 4 or an authorised officer within the meaning of section 108(5).

(7) Nothing in this section applies in relation to premises in respect of which there is a club premises certificate but no other authorisation.

180 Right of entry to investigate offences

(1) A constable may enter and search any premises in respect of which he has reason to believe that an offence under this Act has been, is being or is about to be committed.

(2) A constable exercising a power conferred by this section may, if necessary, use reasonable force.

Appeals

181 Appeals against decisions of licensing authorities

(1) Schedule 5 (which makes provision for appeals against decisions of licensing authorities) has effect.

(2) On an appeal in accordance with that Schedule against a decision of a licensing authority, a magistrates’ court may-
(a) dismiss the appeal,
(b) substitute for the decision appealed against any other decision which could have been made by the licensing authority, or
(c) remit the case to the licensing authority to dispose of it in accordance with the direction of the court,
and may make such order as to costs as it thinks fit.

Guidance, hearings etc

182 Guidance

(1) The Secretary of State must issue guidance (“the licensing guidance”) to licensing authorities on the discharge of their functions under this Act.

(2) But the Secretary of State may not issue the licensing guidance unless a draft of it has been laid before, and approved by resolution of, each House of Parliament.

(3) The Secretary of State may, from time to time, revise the licensing guidance.

(4) A revised version of the licensing guidance does not come into force until the Secretary of State lays it before Parliament.

(5) Where either House, before the end of the period of 40 days beginning with the day on which a revised version of the licensing guidance is laid before it, by resolution disapproves that version-
(a) the Secretary of State must, under subsection (3), make such further revisions to the licensing guidance as appear to him to be required in the circumstances, and
(b) before the end of the period of 40 days beginning with the date on which the resolution is made, lay a further revised version of the licensing guidance before Parliament.

(6) In reckoning any period of 40 days for the purposes of subsection (5), no account is to be taken of any time during which-
(a) Parliament is dissolved or prorogued, or
(b) both Houses are adjourned for more than four days.

(7) The Secretary of State must arrange for any guidance issued or revised under this section to be published in such manner as he considers appropriate.
183 Hearings

(1) Regulations may prescribe the procedure to be followed in relation to a hearing held by a licensing authority under this Act and, in particular, may-
(a) require a licensing authority to give notice of hearings to such persons as may be prescribed;
(b) make provision for expedited procedures in urgent cases;
(c) make provision about the rules of evidence which are to apply to hearings;
(d) make provision about the legal representation at hearings of the parties to it;
(e) prescribe the period within which an application, in relation to which a hearing has been held, must be determined or any other step in the procedure must be taken.

(2) But a licensing authority may not make any order as to the costs incurred by a party in connection with a hearing under this Act.

184 Giving of notices, etc.

(1) This section has effect in relation to any document required or authorised by or under this Act to be given to any person ("relevant document").

(2) Where that person is a licensing authority, the relevant document must be given by addressing it to the authority and leaving it at or sending it by post to-
(a) the principal office of the authority, or
(b) any other office of the authority specified by it as one at which it will accept documents of the same description as that document.

(3) In any other case the relevant document may be given to the person in question by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(4) A relevant document may-
(a) in the case of a body corporate (other than a licensing authority), be given to the secretary or clerk of that body;
(b) in the case of a partnership, be given to a partner or a person having the control or management of the partnership business;
(c) in the case of an unincorporated association (other than a partnership), be given to an officer of the association.

(5) For the purposes of this section and section 7 of the Interpretation Act 1978 (c.30) (service of documents by post) in its application to this section, the proper address of any person to whom a relevant document is to be given is his last known address, except that-
(a) in the case of a body corporate or its secretary or clerk, it is the address of the registered office of that body or its principal office in the United Kingdom,
(b) in the case of a partnership, a partner or a person having control or management of the partnership business, it is that of the principal office of the partnership in the United Kingdom, and
(c) in the case of an unincorporated association (other than a partnership) or any officer of the association, it is that of its principal office in the United Kingdom.

(6) But if a relevant document is given to a person in his capacity as the holder of a premises licence, club premises certificate or personal licence, or as the designated premises supervisor under a premises licence, his relevant registered address is also to be treated, for the purposes of this section and section 7 of the Interpretation Act 1978 (c.30), as his proper address.

(7) In subsection (6) "relevant registered address", in relation to such a person, means the address given for that person in the record for the licence or certificate (as the case may be) which is contained in the register kept under section 8 by the licensing authority which granted the licence or certificate.

(8) The following provisions of the Local Government Act 1972 (c.70) do not apply in relation to the service of a relevant document-
(a) section 231 (service of notices on local authorities etc.),
(b) section 233 (service of notices by local authorities).
185 **Provision of information**

(1) This section applies to information which is held by or on behalf of a licensing authority or a responsible authority (including information obtained by or on behalf of the authority before the coming into force of this section).

(2) Information to which this section applies may be supplied-
   (a) to a licensing authority, or
   (b) to a responsible authority,
   for the purposes of facilitating the exercise of the authority’s functions under this Act.

(3) Information obtained by virtue of this section must not be further disclosed except to a licensing authority or responsible authority for the purposes mentioned in subsection (2).

(4) In this section “responsible authority” means a responsible authority within the meaning of Part 3 or 4.

186 **Proceedings for offences**

(1) In this section “offence” means an offence under this Act.

(2) Proceedings for an offence may be instituted-
   (a) by a licensing authority,
   (b) by the Director of Public Prosecutions, or
   (c) in the case of an offence under section 146 or 147 (sale of alcohol to children), by a local weights and measures authority (within the meaning of section 69 of the Weights and Measures Act 1985 (c.72)).

(3) In relation to any offence, section 127(1) of the Magistrates’ Courts Act 1980 (information to be laid within six months of offence) is to have effect as if for the reference to six months there were substituted a reference to 12 months.

187 **Offences by bodies corporate etc.**

(1) If an offence committed by a body corporate is shown-
   (a) to have been committed with the consent or connivance of an officer, or
   (b) to be attributable to any neglect on his part,
   the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body.

(3) In subsection (1) “officer”, in relation to a body corporate, means-
   (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, or
   (b) an individual who is a controller of the body.

(4) If an offence committed by a partnership is shown-
   (a) to have been committed with the consent or connivance of a partner, or
   (b) to be attributable to any neglect on his part,
   the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In subsection (4) “partner” includes a person purporting to act as a partner.

(6) If an offence committed by an unincorporated association (other than a partnership) is shown-
   (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
   (b) to be attributable to any neglect on the part of such an officer or member,
   that officer or member as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.
(7) Regulations may provide for the application of any provision of this section, with such modifications as the Secretary of State considers appropriate, to a body corporate or unincorporated association formed or recognised under the law of a territory outside the United Kingdom.

(8) In this section “offence” means an offence under this Act.

188 Jurisdiction and procedure in respect of offences

(1) A fine imposed on an unincorporated association on its conviction for an offence is to be paid out of the funds of the association.

(2) Proceedings for an offence alleged to have been committed by an unincorporated association must be brought in the name of the association (and not in that of any of its members).

(3) Rules of court relating to the service of documents are to have effect as if the association were a body corporate.

(4) In proceedings for an offence brought against an unincorporated association, section 33 of the Criminal Justice Act 1925 (c. 86) and Schedule 3 to the Magistrates’ Courts Act 1980 (c. 43) (procedure) apply as they do in relation to a body corporate.

(5) Proceedings for an offence may be taken-

(a) against a body corporate or unincorporated association at any place at which it has a place of business;

(b) against an individual at any place where he is for the time being.

(6) Subsection (5) does not affect any jurisdiction exercisable apart from this section.

(7) In this section “offence” means an offence under this Act.

Vessels, vehicles and moveable structures

189 Vessels, vehicles and moveable structures

(1) This Act applies in relation to a vessel which is not permanently moored or berthed as if it were premises situated in the place where it is usually moored or berthed.

(2) Where a vehicle which is not permanently situated in the same place is, or is proposed to be, used for one or more licensable activities while parked at a particular place, the vehicle is to be treated for the purposes of this Act as if it were premises situated at that place.

(3) Where a moveable structure which is not permanently situated in the same place is, or is proposed to be, used for one or more licensable activities while set in a particular place, the structure is to be treated for the purposes of this Act as if it were premises situated at that place.

(4) Where subsection (2) applies in relation to the same vehicle, or subsection (3) applies in relation to the same structure, in respect of more than one place, the premises which by virtue of that subsection are situated at each such place are to be treated as separate premises.

(5) Sections 29 to 31 (which make provision in respect of provisional statements relating to premises licences) do not apply in relation to a vessel, vehicle or structure to which this section applies.

Interpretation

190 Location of sales

(1) This section applies 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.

(2) For the purposes of this Act the sale of alcohol is to be treated as taking place where the alcohol is appropriated to the contract.

191 Meaning of “alcohol”

(1) In this Act, “alcohol” means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but does not include-

(a) alcohol which is of a strength not exceeding 0.5%; at the time of the sale or supply in question,

(b) perfume,
flavouring essences recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor,

(d) the aromatic flavouring essence commonly known as Angostura bitters,

(e) alcohol which is, or is included in, a medicinal product,

(f) denatured alcohol,

(g) methyl alcohol,

(h) naphtha, or

(i) alcohol contained in liqueur confectionery.

(2) In this section-

“denatured alcohol” has the same meaning as in section 5 of the Finance Act 1995 (c.4);

“dutiable alcoholic liquor” has the same meaning as in the Alcoholic Liquor Duties Act 1979 (c.4);

“liqueur confectionery” means confectionery which-

(a) contains alcohol in a proportion not greater than 0.2 litres of alcohol (of a strength not exceeding 57%) per kilogram of the confectionery, and

(b) either consists of separate pieces weighing not more than 42g or is designed to be broken into such pieces for the purpose of consumption;

“medicinal product” has the same meaning as in section 130 of the Medicines Act 1968 (c.67); and

“strength” is to be construed in accordance with section 2 of the Alcoholic Liquor Duties Act 1979.

192 Meaning of “sale by retail”

(1) For the purposes of this Act “sale by retail”, in relation to any alcohol, means a sale of alcohol to any person, other than a sale of alcohol that-

(a) is within subsection (2),

(b) is made from premises owned by the person making the sale, or occupied by him under a lease to which the provisions of Part 2 of the Landlord and Tenant Act 1954 (c.56) (security of tenure) apply, and

(c) is made for consumption off the premises.

(2) A sale of alcohol is within this subsection if it is-

(a) to a trader for the purposes of his trade,

(b) to a club, which holds a club premises certificate, for the purposes of that club,

(c) to the holder of a personal licence for the purpose of making sales authorised by a premises licence,

(d) to the holder of a premises licence for the purpose of making sales authorised by that licence, or

(e) to the premises user in relation to a temporary event notice for the purpose of making sales authorised by that notice.

193 Other definitions

In this Act-

“beer” has the same meaning as in the Alcoholic Liquor Duties Act 1979 (c.4);

“cider” has the same meaning as in that Act;

“crime prevention objective” means the licensing objective mentioned in section 4(2)(a) (prevention of crime and disorder);

“licensed premises” means premises in respect of which a premises licence has effect;

“licensing functions” is to be construed in accordance with section 4(1);

“order”, except so far as the contrary intention appears, means an order made by the Secretary of State;

“premises” means any place and includes a vehicle, vessel or moveable structure;

“prescribed” means prescribed by regulations;

“recognised club” means a club which satisfies conditions 1 to 3 of the general conditions in section 62;
“regulations” means regulations made by the Secretary of State;
“vehicle” means a vehicle intended or adapted for use on roads;
“vessel” includes a ship, boat, raft or other apparatus constructed or adapted for floating on water;
“wine” means-
(a) “wine” within the meaning of the Alcoholic Liquor Duties Act 1979, and
(b) “made-wine” within the meaning of that Act;
“working day” means 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 (c.80) in England and Wales.

194 Index of defined expressions
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195 Crown application

(1) This Act binds the Crown and has effect in relation to land in which there is-
   (a) an interest belonging to Her Majesty in right of the Crown,
   (b) an interest belonging to a government department, or
   (c) an interest held in trust for Her Majesty for the purposes of such a department.

(2) This Act also applies to-
   (a) land which is vested in, but not occupied by, Her Majesty in right of the Duchy of
       Lancaster, and
   (b) land which is vested in, but not occupied by, the possessor for the time being of the
       Duchy of Cornwall.

(3) No contravention by the Crown of any provision made by or under this Act makes the
    Crown criminally liable; but the High Court may declare unlawful any act or omission
    of the Crown which constitutes such a contravention.

(4) Provision made by or under this Act applies to persons in the public service of the
    Crown as it applies to other persons.

(5) But nothing in this Act affects Her Majesty in Her private capacity.

196 Removal of privileges and exemptions

No privilege or exemption mentioned in section 199(a) or (b) of the Licensing Act 1964 (c.26)
(University of Cambridge and the Vintners of the City of London) operates to exempt any
person from the requirements of this Act.

197 Regulations and orders

(1) Any power of the Secretary of State to make regulations or an order under this Act is
    exercisable by statutory instrument.

(2) Regulations or an order under this Act-
   (a) may include incidental, supplementary, consequential or transitional provision or
       savings;
   (b) may make provision generally or only in relation to specified cases;
   (c) may make different provision for different purposes.

(3) A statutory instrument containing regulations or an order under this Act, other than
    one containing-
   (a) an order under section 5(2) (order appointing start of first period for which
       statement of licensing policy to be prepared),
   (b) an order under section 100(8)(alteration of maximum temporary event period),
   (c) an order under section 107(12) (alteration of limit on number of temporary event
       notices),
(d) an order under section 172 (relaxation of opening hours for special occasions),
(e) an order under section 176(3) (order amending definition of “excluded premises” where alcohol sales are prohibited),
(f) an order under section 201 (commencement), or
(g) an order under paragraph 4 of Schedule 1 (power to amend meaning of regulated entertainment),
is subject to annulment in pursuance of a resolution of either House of Parliament.

(4) A statutory instrument containing an order within subsection (3)(b), (c), (d), (e) or (g) is not to be made unless a draft of the instrument containing the order has been laid before and approved by a resolution of each House of Parliament.

(5) If a draft of an order within subsection (3)(d) would, apart from this subsection, be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

198 Minor and consequential amendments

(1) Schedule 6 (which makes minor and consequential amendments) has effect.

(2) The Secretary of State may, in consequence of any provision of this Act or of any instrument made under it, by order make such amendments (including repeals or revocations) as appear to him to be appropriate in-
(a) any Act passed, or
(b) any subordinate legislation (within the meaning of the Interpretation Act 1978 (c.30) made,
before that provision comes into force.

199 Repeals

The enactments mentioned in Schedule 7 (which include provisions that are spent) are repealed to the extent specified.

200 Transitional provision etc.

Schedule 8 (which makes transitional and transitory provision and savings) has effect.

201 Short title, commencement and extent

(1) This Act may be cited as the Licensing Act 2003.

(2) The preceding provisions (and the Schedules) come into force in accordance with provision made by order.

(3) Subject to subsections (4) and (5), this Act extends to England and Wales only.

(4) Section 155(1) also extends to Northern Ireland.

(5) An amendment or repeal contained in Schedule 6 or 7 has the same extent as the enactment to which it relates.
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.

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-
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(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.

SCHEDULE 3

Section 8

MATTERS TO BE ENTERED IN LICENSING REGISTER

The licensing register kept by a licensing authority under section 8 must contain a record of the following matters-

(a) any application made to the licensing authority under section 17 (grant of premises licence),
(b) any application made to it under section 25 (theft etc. of premises licence or summary),
(c) any notice given to it under section 28 (surrender of premises licence),
(d) any application made to it under section 29 (provisional notice in respect of premises),
(e) any notice given to it under section 33 (change of name, etc. of holder of premises licence),
(f) any application made to it under section 34 (variation of premises licence),
(g) any application made to it under section 37 (variation of licence to specify individual as premises supervisor),
(h) any notice given to it under section 41 (request from designated premises supervisor for removal from premises licence),
(i) any application made to it under section 42 (transfer of premises licence),
(j) any notice given to it under section 47 (interim authority notice),
(k) any application made to it under section 51 (review of premises licence),
(l) any application made to it under section 71 (application for club premises certificate),
(m) any application made to it under section 79 (theft, loss, etc. of certificate or summary),
(n) any notice given to it under section 81 (surrender of club premises certificate),
(o) any notice given to it under section 82 or 83 (notification of change of name etc.),
(p) any application made to it under section 84 (application to vary club premises certificate),
(q) any application made to it under section 87 (application for review of club premises certificate),
(r) any notice given to it under section 103 (withdrawal of temporary event notice),
(s) any counter notice given by it under section 105 (counter notice following police objection to temporary event notice),
(t) any copy of a temporary event notice give to it under section 106 (notice given following the making of modifications to a temporary event notice with police consent),
(u) any application made to it under section 110 (theft etc. of temporary event notice),
(v) any notice given to it under section 116 (surrender of personal licence),
(w) any application made to it under section 117 (grant or renewal of personal licence),
(x) any application made to it under section 126 (theft, loss or destruction of personal licence),
(y) any notice given to it under section 127 (change of name, etc. of personal licence holder),
(z) any notice given to it under section 165(4) (magistrates’ court to notify any determination made after closure order),
(zi) any application under paragraph 2 of Schedule 8 (application for conversion of old licences into premises licence),
(zii) any application under paragraph 14 of that Schedule (application for conversion of club certificate into club premises certificate).
SCHEDULE 4

PERSONAL LICENCE: RELEVANT OFFENCES

Section 113

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).
SCHEDULE 5

Section 181

APPEALS

PART 1

PREMISES LICENCES

Rejection of applications relating to premises licences

1 Where a licensing authority-
(a) rejects an application for a premises licence under section 18,
(b) rejects (in whole or in part) an application to vary a premises licence under section 35,
(c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
(d) rejects an application to transfer a premises licence under section 44,
the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2 (1) This paragraph applies where a licensing authority grants a premises licence under section 18.
(2) The holder of the licence may appeal against any decision-
(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

3 Where a person who made relevant representations in relation to the application desires to contend-
(a) that the licence ought not to have been granted, or
(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,
he may appeal against the decision.

Issue of provisional statement

3 (1) This paragraph applies where a provisional statement is issued under subsection (3)(c) of section 31.
(2) An appeal against the decision may be made by-
(a) the applicant, or
(b) any person who made relevant representations in relation to the application.

Variation of licence under section 35

4 (1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.
(2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.
(3) Where a person who made relevant representations in relation to the application desires to contend-
(a) that any variation made ought not to have been made, or
(b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section,
he may appeal against the decision.
Variation of licence to specify individual as premises supervisor

5 (1) This paragraph applies where an application to vary a premises licence is granted under section 39(2) in a case where a chief officer of police gave a notice under section 37(5) (which was not withdrawn).

(2) The chief officer of police may appeal against the decision to grant the application.

Transfer of licence

6 (1) This paragraph applies where an application to transfer a premises licence is granted under section 44 in a case where a chief officer of police gave a notice under section 42(6) (which was not withdrawn).

(2) The chief officer of police may appeal against the decision to grant the application.

Interim authority notice

7 (1) This paragraph applies where-

(a) an interim authority notice is given in accordance with section 47, and

(b) a chief officer of police gives a notice under section 48(2) (which is not withdrawn).

(2) Where the relevant licensing authority decides to cancel the interim authority notice under subsection (3) of section 48, the person who gave the interim authority notice may appeal against that decision.

(3) Where the relevant licensing authority decides not to cancel the notice under that subsection, the chief officer of police may appeal against that decision.

(4) Where an appeal is brought under sub-paragraph (2), the court to which it is brought may, on such terms as it thinks fit, order the reinstatement of the interim authority notice pending-

(a) the disposal of the appeal, or

(b) the expiry of the interim authority period, whichever first occurs.

(5) Where the court makes an order under sub-paragraph (4), the premises licence is reinstated from the time the order is made, and section 47 has effect in a case where the appeal is dismissed or abandoned before the end of the interim authority period as if-

(a) the reference in subsection (7)(b) to the end of the interim authority period were a reference to the time when the appeal is dismissed or abandoned, and

(b) the reference in subsection (9)(a) to the interim authority period were a reference to that period disregarding the part of it which falls after that time.

(6) In this paragraph “interim authority period” has the same meaning as in section 47.

Review of premises licence

8 (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.

(2) An appeal may be made against that decision by-

(a) the applicant for the review,

(b) the holder of the premises licence, or

(c) any other person who made relevant representations in relation to the application.

(3) In sub-paragraph (2) “relevant representations” has the meaning given in section 52(7).

General provision about appeals under this Part

9 (1) An appeal under this Part must be made to the magistrates’ court for the petty sessions area (or any such area) in which the premises concerned are situated.

(2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period...
of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

(3) On an appeal under paragraph 2(3), 3(2)(b), 4(3), 5(2), 6(2) or 8(2)(a) or (c), the holder of the premises licence is to be the respondent in addition to the licensing authority.

(4) On an appeal under paragraph 7(3), the person who gave the interim authority notice is to be the respondent in addition to the licensing authority.

PART 2
CLUB PREMISES CERTIFICATES

Rejection of applications relating to club premises certificates

10 Where a licensing authority-
(a) rejects an application for a club premises certificate under section 72, or
(b) rejects (in whole or in part) an application to vary a club premises certificate under section 85,
the club that made the application may appeal against the decision.

Decision to grant club premises certificate or impose conditions etc.

11 (1) This paragraph applies where a licensing authority grants a club premises certificate under section 72.

(2) The club holding the certificate may appeal against any decision-
(a) to impose conditions on the certificate under subsection (2) or (3)(b) of that section, or
(b) to take any step mentioned in subsection (4)(b) of that section (exclusion of qualifying club activity).

(3) Where a person who made relevant representations in relation to the application desires to contend-
(a) that the certificate ought not to have been granted, or
(b) that, on granting the certificate, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) of that section,
he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 72(7).

Variation of club premises certificate

12 (1) This paragraph applies where an application to vary a club premises certificate is granted (in whole or in part) under section 85.

(2) The club may appeal against any decision to modify the conditions of the certificate under subsection (3)(b) of that section.

(3) Where a person who made relevant representations in relation to the application desires to contend-
(a) that any variation ought not to have been made, or
(b) that, when varying the certificate, the licensing authority ought not to have modified the conditions of the certificate, or ought to have modified them in a different way, under subsection (3)(b) of that section,
he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 85(5).

Review of club premises certificate

13 (1) This paragraph applies where an application for a review of a club premises certificate is decided under section 88.

(2) An appeal may be made against that decision by-
(a) the applicant for the review,
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Withdrawal of club premises certificate

14 Where the relevant licensing authority gives notice withdrawing a club premises certificate under section 90, the club which holds or held the certificate may appeal against the decision to withdraw it.

General provision about appeals under this Part

15 (1) An appeal under this Part must be made to the magistrates’ court for the petty sessions area (or any such area) in which the premises concerned are situated.

(2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

(3) On an appeal under paragraph 11(3), 12(3) or 13(2)(a) or (c), the club that holds or held the club premises certificate is to be the respondent in addition to the licensing authority.

Part 3

Other appeals

Temporary event notices

16 (1) This paragraph applies where-

(a) a temporary event notice is given under section 100, and

(b) a chief officer of police gives an objection notice in accordance with section 104(2).

(2) Where the relevant licensing authority gives a counter notice under section 105(3), the premises user may appeal against that decision.

(3) Where that authority decides not to give such a counter notice, the chief officer of police may appeal against that decision.

(4) An appeal under this paragraph must be made to the magistrates’ court for the petty sessions area (or any such area) in which the premises concerned are situated.

(5) An appeal under this paragraph must be commenced by notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

(6) But no appeal may be brought later than five working days before the day on which the event period specified in the temporary event notice begins.

(7) On an appeal under sub-paragraph (3), the premises user is to be the respondent in addition to the licensing authority.

(8) In this paragraph-

“objection notice” has the same meaning as in section 104; and

“relevant licensing authority” has the meaning given in section 99.

Personal licences

17 (1) Where a licensing authority-

(a) rejects an application for the grant of a personal licence under section 120, or

(b) rejects an application for the renewal of a personal licence under section 121,

the applicant may appeal against that decision.

(2) Where a licensing authority grants an application for a personal licence under section 120(7), the chief officer of police who gave the objection notice (within the meaning of section 120(5)) may appeal against that decision.
(3) Where a licensing authority grants an application for the renewal of a personal licence under section 121(6), the chief officer of police who gave the objection notice (within the meaning of section 121(3)) may appeal against that decision.

(4) Where a licensing authority revokes a personal licence under section 124(4), the holder of the licence may appeal against that decision.

(5) Where in a case to which section 124 (convictions coming to light after grant or renewal) applies-

(a) the chief officer of police for the licensing authority’s area gives a notice under subsection (3) of that section (and does not later withdraw it), and

(b) the licensing authority decides not to revoke the licence, the chief officer of police may appeal against the decision.

(6) An appeal under this paragraph must be made to the magistrates’ court for a petty sessions area in which the licensing authority’s area (or any part of it) is situated.

(7) An appeal under this paragraph must be commenced by notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

(8) On an appeal under sub-paragraph (2), (3) or (5), the holder of the personal licence is to be the respondent in addition to the licensing authority.

(9) Sub-paragraph (10) applies where the holder of a personal licence gives notice of appeal against a decision of a licensing authority to refuse to renew it.

(10) The relevant licensing authority, or the magistrates’ court to which the appeal has been made, may, on such conditions as it thinks fit-

(a) order that the licence is to continue in force until the relevant time, if it would otherwise cease to have effect before that time, or

(b) where the licence has already ceased to have effect, order its reinstatement until the relevant time.

(11) In sub-paragraph (10) “the relevant time” means-

(a) the time the appeal is dismissed or abandoned, or

(b) where the appeal is allowed, the time the licence is renewed.

Closure orders

18 (1) This paragraph applies where, on a review of a premises licence under section 167, the relevant licensing authority decides under subsection (5)(b) of that section-

(a) to take any of the steps mentioned in subsection (6) of that section, in relation to a premises licence for those premises, or

(b) not to take any such step.

(2) An appeal may be made against that decision by-

(a) the holder of the premises licence, or

(b) any other person who made relevant representations in relation to the review.

(3) Where an appeal is made under this paragraph against a decision to take any of the steps mentioned in section 167(6)(a) to (d) (modification of licence conditions etc.), the appropriate magistrates’ court may in a case within section 168(3) (premises closed when decision taken)-

(a) if the relevant licensing authority has not made an order under section 168(5) (order suspending operation of decision in whole or part), make any order under section 168(5) that could have been made by the relevant licensing authority, or

(b) if the authority has made such an order, cancel it or substitute for it any order which could have been made by the authority under section 168(5).

(4) Where an appeal is made under this paragraph in a case within section 168(6) (premises closed when decision to revoke made to remain closed pending appeal), the appropriate magistrates court may, on such conditions as it thinks fit, order that section 168(7) (premises to remain closed pending appeal) is not to apply to the premises.
(5) An appeal under this paragraph must be commenced by notice of appeal given by
the appellant to the justices’ chief executive for the magistrates’ court within the
period of 21 days beginning with the day on which the appellant was notified by
the relevant licensing authority of the decision appealed against.

(6) On an appeal under this paragraph by a person other than the holder of the
premises licence, that holder is to be the respondent in addition to the licensing
authority that made the decision.

(7) In this paragraph-
“appropriate magistrates’ court” means the magistrates court for the petty
sessions area (or any such area) in which the premises concerned are situated;
“relevant licensing authority” has the same meaning as in Part 3 of this Act; and
“relevant representations” has the meaning given in section 167(9).

SCHEDULE 6

MINOR AND CONSEQUENTIAL AMENDMENTS

Universities (Wine Licences) Act 1743 (c.40)
1 The Universities (Wine Licences) Act 1743 ceases to have effect.

Disorderly Houses Act 1751 (c.36)
2 The Disorderly Houses Act 1751 does not apply in relation to relevant premises within
the meaning of section 159 of the Licensing Act 2003.

Sunday Observance Act 1780 (c.49)
3 The Sunday Observance Act 1780 ceases to have effect.

Town Police Clauses Act 1847 (c.89)
4 Section 35 of the Town Police Clauses Act 1847 (harbouring thieves or prostitutes at a
public venue) ceases to have effect.

Cambridge Award Act 1856 (c.xvii)
5 The following provisions of the Cambridge Award Act 1856 cease to have effect-
(a) section 9 (revocation of alehouse licence by justice of the peace following complaint
by Vice Chancellor of the University), and
(b) section 11 (power to grant wine licence, etc. to remain vested in the Chancellor,
Masters and Scholars of the University).

Inebriates Act 1898 (c.60)
6 In the First Schedule to the Inebriates Act 1898 (offences by reference to which section 6
of the Licensing Act 1902 operates)-
(a) omit the entry relating to section 18 of the Licensing Act 1872 and the entry relating
to section 41 of the Refreshment Houses Act 1860, and
(b) after the entries relating to the Merchant Shipping Act 1894 insert-
“Failing to leave licensed premises, etc.
when asked to do so.
Entering, or attempting to enter, licensed
premises, etc. when asked not to do so.
Licensing Act 2003, s 143.”

Licensing Act 1902 (c.28)
7 The Licensing Act 1902 is amended as follows.
8 (1) Section 6 (prohibition of sale of alcohol to person declared by the court to be a
habitual drunkard) is amended as follows.
(2) For subsection (2) substitute-
“(2) Subsections (2A) to (2C) apply where a court, in pursuance of this Act, orders
notice of a conviction to be sent to a police authority.
(2A) The court shall inform the convicted person that the notice is to be sent to a police
authority.
(2B) The convicted person commits an offence if, within the three year period, he buys or obtains, or attempts to buy or obtain, alcohol on relevant premises.

(2C) A person to whom subsection (2D) applies commits an offence if, within the three year period, he knowingly-
(a) sells, supplies or distributes alcohol on relevant premises, or
(b) allows the sale, supply or distribution of alcohol on relevant premises, to, or for consumption by, the convicted person.

(2D) This subsection applies-
(a) to any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell, supply or distribute the alcohol concerned,
(b) in the case of licensed premises, to-
   (i) the holder of a premises licence which authorises the sale or supply of alcohol, and
   (ii) the designated premises supervisor (if any) under such a licence,
(c) in the case of premises in respect of which a club premises certificate authorising the sale or supply of alcohol has effect, to any member or officer of the club which holds the certificate who at the time the sale, supply or distribution takes place is present on the premises in a capacity which enables him to prevent it, and
(d) in the case of premises which may be used for a permitted temporary activity by virtue of Part 5 of the Licensing Act 2003, the premises user in respect of a temporary event notice authorising the sale or supply of alcohol.

(2E) A person guilty of an offence under this section is liable on summary conviction-
(a) in the case of an offence under subsection (2B), to a fine not exceeding level 1 on the standard scale, and
(b) in the case of an offence under subsection (2C), to a fine not exceeding level 2 on the standard scale.”

(3) In subsection (3), for “licensed persons, and secretaries of clubs registered under Part III of this Act,” substitute “persons to whom subsection (4) applies”.

(4) After that subsection insert-
“(4) This subsection applies to-
(a) the holder of a premises licence which authorises the sale or supply of alcohol,
(b) the designated premises supervisor (if any) under such a licence,
(c) the holder of a club premises certificate authorising the sale or supply of alcohol, and
(d) the premises user in relation to a temporary event notice authorising the sale or supply of alcohol.

(5) In this section-
“alcohol”, “club premises certificate”, “designated premises supervisor”, “licensed premises”, “permitted temporary activity”, “premises licence”, “premises user” and “temporary event notice” have the same meaning as in the Licensing Act 2003,”
“relevant premises” means premises which are relevant premises within the meaning of section 159 of that Act and on which alcohol may be lawfully sold or supplied, and
“the three year period”, in relation to the convicted person, means the period of three years beginning with the day of the conviction.”

9 After section 8 (meaning of “public place”) insert-
“8A Interpretation of “licensed premises”
For those purposes, “licensed premises” includes-
Appendix 1: Licensing Act 2003

(a) any licensed premises within the meaning of section 193 of the Licensing Act 2003, and
(b) any premises which may be used for a permitted temporary activity by virtue of Part 5 of that Act.”

Celluloid and Cinematograph Film Act 1922 (c.35)
10 At the end of section 2 of the Celluloid and Cinematograph Film Act 1922 (premises to which the Act does not apply), add “or which may, by virtue of an authorisation (within the meaning of section 136 of the Licensing Act 2003), be used for an exhibition of a film (within the meaning of paragraph 15 of Schedule 1 to that Act)”.

Sunday Entertainments Act 1932 (c.51)
11 The Sunday Entertainments Act 1932 ceases to have effect.

Children and Young Persons Act 1933 (c.12)
12 The Children and Young Persons Act 1933 is amended as follows.
13 In section 5 (giving alcohol to a child under five) for “intoxicating liquor” substitute “alcohol (within the meaning given by section 191 of the Licensing Act 2003, but disregarding subsection (1)(f) to (i) of that section)”.

Children and Young Persons Act 1933 (c.12)
14 In section 12 (failing to provide for safety of children at entertainments)-
(a) in subsection (3) omit the words from “, and also” to the end,
(b) in subsection (5), for paragraph (a) substitute-
“(a) in the case of a building in respect of which a premises licence authorising the provision of regulated entertainment has effect, be the duty of the relevant licensing authority;”, and
(c) after that subsection, insert-
“(5A) For the purposes of this section-
(a) “premises licence” and “the provision of regulated entertainment” have the meaning given by the Licensing Act 2003, and
(b) “the relevant licensing authority”, in relation to a building in respect of which a premises licence has effect, means the relevant licensing authority in relation to that building under section 12 of that Act.”

Public Health Act 1936 (c.49)
15 In section 107 (interpretation), omit the definition of “intoxicating liquor”.

London Building Acts (Amendment) Act 1939 (c.xcvii)
17 In each of the following provisions of the London Building Acts (Amendment) Act 1939, for “the premises are so licensed” substitute “the premises are premises which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises” -
(a) section 11(9)(b) (exemption of licensed premises from provision as to naming of buildings),
(b) paragraph (A) of the proviso to section 13 (offences as to numbering or naming of buildings).

Civic Restaurants Act 1947 (c.22)
18 In section 1(4) of the Civic Restaurants Act 1947 (civic restaurant authority to be subject to law relating to sale of alcohol), for “the enactments relating to the sale of intoxicating liquor” substitute “the Licensing Act 2003 and any other enactment relating to the sale of intoxicating liquor”.

Public Health Act 1936 (c.49)
**London County Council (General Powers) Act 1947 (c.xlvi)**

19 In section 6(1)(b) of the London County Council (General Powers) Act 1947 (saving in connection with the provision of entertainment for enactments relating to the sale of alcohol), for “any enactment relating to the sale of intoxicating liquor” substitute “the Licensing Act 2003 and any other enactment relating to the sale of intoxicating liquor”.

**National Parks and Access to the Countryside Act 1949 (c.97)**

20 In each of the following provisions of the National Parks and Countryside Act 1949, for “intoxicating liquor” substitute “alcohol (within the meaning of the Licensing Act 2003)”-

- (a) section 12(1)(a) (provision of facilities in National Park),
- (b) section 54(2) (provision of facilities along long-distance routes).

**Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 (c.65)**

21 The Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 is amended as follows.

22 In section 14(2)(a) (protection against insecurity of tenure of place of residence), after “premises” insert “in England and Wales which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) on the premises or in Scotland which are”.

23 In section 18(3)(a) (protection against insecurity of tenure in connection with employment), after “premises” insert “in England and Wales which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) on the premises for consumption on the premises or in Scotland which are”.

24 In section 27(1) (renewal of tenancy expiring during period of service), in the second paragraph (c), for the words “licensed for the sale of intoxicating liquor for consumption on the premises” substitute “which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises”.

**Hypnotism Act 1952 (c.46)**

25 The Hypnotism Act 1952 is amended as follows.

26 (1) Section 1 (inclusion in an entertainment licence of conditions in relation to demonstrations of hypnotism) is amended as follows.

(2) In subsection (1)-

(a) after “any area” insert “in Scotland”, and

(b) for “places kept or ordinarily used for public dancing, singing, music or other public entertainment of the like kind” substitute “theatres or other places of public amusement or public entertainment”.

(3) Omit subsection (2).

27 In section 2 (requirement for authorisation for demonstration of hypnotism)-

(a) in subsection (1), for the words from “in relation” to the end substitute “, unless-

(a) the controlling authority have authorised that exhibition, demonstration or performance under this section, or

(b) the place is in Scotland and a licence mentioned in section 1 of this Act is in force in relation to it.”,

(b) in subsection (1A) for the words from “either at premises” to the end substitute “at premises in Scotland in respect of which a licence under that Act is in force”,

(c) after subsection (3) insert-

“(3A) A function conferred by this section on a licensing authority is, for the purposes of section 7 of the Licensing Act 2003 (exercise and delegation by licensing authority of licensing functions), to be treated as a licensing function within the meaning of that Act.”,
(d) for subsection (4) substitute-

“(4) In this section-

“controlling authority” means-

(a) in relation to a place in England and Wales, the licensing authority in whose area the place, or the greater or greatest part of it, is situated, and

(b) in relation to a place in Scotland, the authority having power to grant licences of the kind mentioned in section 1 in that area, and “licensing authority” has the meaning given by the Licensing Act 2003.”

Obscene Publications Act 1959 (c.66)

28 (1) Section 2 of the Obscene Publications Act 1959 (prohibition of publication of obscene matter) is amended as follows.

(2) In subsections (3A) and (4A), for “a film exhibition” in each place it occurs, substitute “an exhibition of a film”.

(3) For subsection (7) substitute-

“(7) In this section, “exhibition of a film” has the meaning given in paragraph 15 of Schedule 1 to the Licensing Act 2003.”

Betting, Gaming and Lotteries Act 1963 (c.2)

29 The Betting, Gaming and Lotteries Act 1963 is amended as follows.

30 In section 10(1B) (conduct of licensed betting offices) for “the provision in a licensed betting office of any facility in respect of which a licence under the Licensing Act 1964 or the Licensing (Scotland) Act 1976 is required” substitute-

“(a) in a licensed betting office in England and Wales, the supply of alcohol (within the meaning of section 14 of the Licensing Act 2003) in circumstances where that supply is a licensable activity (within the meaning of that Act);

(b) in a licensed betting office in Scotland, the provision of any facility in respect of which a licence is required under the Licensing (Scotland) Act 1976”.

31 In Schedule 4 (rules for licensed betting offices), in paragraph 10(2) (a), for “intoxicating liquor within the meaning of section 201(1) of the Licensing Act 1964” substitute “alcohol within the meaning of section 191 of the Licensing Act 2003”.

Children and Young Persons Act 1963 (c.37)

32 For section 37(2)(b) of the Children and Young Persons Act 1963 (restriction on performance by child in licensed premises) substitute-

“(b) any performance in premises-

(i) which, by virtue of an authorisation (within the meaning of section 136 of the Licensing Act 2003), may be used for the supply of alcohol (within the meaning of section 14 of that Act), or

(ii) which are licensed premises (within the meaning of the Licensing (Scotland) Act 1976) or in respect of which a club is registered under that Act;”.

Offices, Shops and Railway Premises Act 1963 (c.41)

33 In section 90 of the Offices, Shops and Railway Premises Act 1963 (interpretation), omit the definition of “place of public entertainment”.

Greater London Council (General Powers) Act 1966 (c.xxviii)

34 The Greater London Council (General Powers) Act 1966 is amended as follows.

35 In section 21(1) (licensing of public exhibitions, etc.)-

(a) for “intoxicating liquor” substitute “alcohol (within the meaning of the Licensing Act 2003)”, and

(b) for “a film exhibition within the meaning of the Cinemas Act 1985” substitute “an exhibition of a film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003)”.

36 In section 22 (application to old buildings of provisions for protection against fire in the London Building Acts (Amendment) Act 1939)-

(a) in subsection (1), for the words from “being in either case” to “for that purpose” substitute “which may lawfully be used for the provision of regulated
entertainment (within the meaning of the Licensing Act 2003) only by virtue of an authorisation under that Act", and
(b) in subsection (2), for the words from “where“ to “that licence” substitute “where a building, or part of a building, is being used for the provision of regulated entertainment by virtue of a premises licence (under the Licensing Act 2003) granted by a borough council, the Common Council, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple”.

Finance Act 1967 (c.54)
37 In section 5 of the Finance Act 1967 (no requirement for excise licence)-(a) in subsection (1), omit paragraph (c), and (b) in subsection (3), omit “which is registered within the meaning of the Licensing Act 1964 or”.

Criminal Appeal Act 1968 (c.19)
38 The Criminal Appeal Act 1968 is amended as follows.
39 In section 10 (appeal against sentence to Crown Court), at the end of subsection (3)(c) add-“(viii) an order under section 129 of the Licensing Act 2003 (forfeiture or suspension of personal licence); or”.
40 In section 31 (powers of Court of Appeal under Part 1 exercisable by single judge), after subsection (2B) insert-“(2C) The power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge in the same manner as it may be exercised by the Court.”
41 In section 44 (powers of Court of Appeal under Part 2 exercisable by single judge), after subsection (2) insert-“(3) The power of the Court of Appeal, under section 130 of the Licensing Act 2003, to suspend an order under section 129 of that Act may be exercised by a single judge, but where the judge refuses an application to exercise that power the applicant shall be entitled to have the application determined by the Court.”
42 In section 50 (meaning of “sentence”), at the end of subsection (1) insert “; and (i) an order under section 129(2) of the Licensing Act 2003 (forfeiture or suspension of personal licence).”

Theatres Act 1968 (c.54)
43 The Theatres Act 1968 is amended as follows.
44 The following provisions cease to have effect in England and Wales-(a) section 1(2) (local authority may not impose conditions on nature of plays), (b) sections 12 to 14 (licensing of premises for public performance of plays), (c) Schedule 1 (provision about licences to perform plays).
45 In section 15 (warrant to enter theatre where offence suspected)-(a) in subsection (1)- (i) paragraph (b) and the word “or” immediately preceding it, and (ii) the words “or, in a case falling within paragraph (b) above, any police officer or authorised officer of the licensing authority”, cease to have effect in England and Wales, (b) subsections (2) to (5) cease to have effect in England and Wales, and (c) subsection (6) is omitted.
46 Section 17 (existing letters patent) ceases to have effect.
47 In section 18(1) (interpretation), in the definition of “licensing authority”, omit paragraphs (a), (b) and (bb).

Gaming Act 1968 (c.65)
48 The Gaming Act 1968 is amended as follows.
49 (1) Section 6 (playing games on premises used for sale of alcohol) is amended as follows.
(2) For subsection (2) substitute—

“(2) This section applies to any premises in England and Wales in respect of which there is in force a premises licence authorising the supply of alcohol for consumption on the premises.

(2A) This section also applies to any premises in Scotland in respect of which a hotel licence or public house licence under the Licensing (Scotland) Act 1976 is in force.”

(3) In subsection (3)—

(a) for paragraph (a) substitute—

“(a) of the holder of the licence which has effect in respect of any premises to which this section applies,”; and

(b) for “the licensing justices for the licensing district, or, in Scotland, the licensing board for the licensing area, in which the premises are situated” substitute “the relevant licensing authority, or, in Scotland, the licensing board for the licensing area in which the premises are situated,”.

(4) In subsection (4)—

(a) for “the licensing justices for the licensing district, or, in Scotland, the licensing board for the licensing area, in which the premises are situated” substitute “the relevant licensing authority, or, in Scotland, the licensing board for the licensing area in which the premises are situated,”; and

(b) for “the justices” substitute “the authority”.

(5) In subsection (5), for “licensing justices or a licensing board, the justices or board” substitute “a licensing authority or a licensing board, the authority or board”.

(6) In subsection (6) -

(a) for “the licensing justices or” substitute “the relevant licensing authority or the”;

(b) for paragraph (a) substitute—

“(a) to the holder of the licence,”; and

(c) for “the police area” substitute “each police area”.

(7) After subsection (7) insert—

“(7A) A function conferred by this section on a licensing authority is, for the purposes of section 7 of the Licensing Act 2003 (exercise and delegation by licensing authority of licensing functions), to be treated as a licensing function within the meaning of that Act.”

(8) For subsection (8) substitute—

“(8) In this section—

“licensing area” has the same meaning as in the Licensing (Scotland) Act 1976,

“licensing authority” and “premises licence” have the same meaning as in the Licensing Act 2003,

“relevant licensing authority”, in relation to premises in respect of which a premises licence has effect, means the authority determined in relation to those premises in accordance with section 12 of that Act, and

“supply of alcohol” has the meaning given in section 14 of that Act.”

50 For section 7(2) (offence to allow child to take part in gaming on licensed premises) substitute—

“(2) Neither the holder of the licence which has effect in respect of premises to which section 6 applies, nor anybody employed by him, may knowingly allow a person under 18 to take part on those premises in gaming to which this Part applies.”

51 For section 8(7) (penalty for contravention of section 7(2)) substitute—

“(7) Any person who contravenes section 7(2) is guilty of an offence and—

(a) where the offence is committed in England and Wales, the person is liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
(b) where the offence is committed in Scotland, the provisions of Schedule 5 to the Licensing (Scotland) Act 1976 are to have effect as they have effect in relation to a contravention of section 68(1) of that Act.”

52 (1) Schedule 9 (permits in respect of amusement machine premises) is amended as follows.

(2) In paragraph 1 (interpretation), for paragraph (a) substitute-
“(a) in relation to any premises in England and Wales in respect of which there is in force a premises licence authorising the supply of alcohol for consumption on the premises, means the relevant licensing authority in relation to those premises;”.

(3) After that paragraph, insert-
“1A A function conferred by this Schedule on a licensing authority is, for the purposes of section 7 of the Licensing Act 2003 (exercise and delegation by licensing authority of licensing functions), to be treated as a licensing function within the meaning of that Act.”

(4) In paragraph 10A (condition in case of licensed premises, etc. that amusement machine must be located in a bar), in sub-paragraph (2)(a), for “has the same meaning as in the Licensing Act 1964” substitute “means any place which, by virtue of a premises licence, may be used for the supply of alcohol and which is exclusively or mainly used for the supply and consumption of alcohol”.

(5) In paragraph 11-
(a) in sub-paragraphs (2) and (3) (appeals), for “proper officer of” substitute “clerk to”, and
(b) omit sub-paragraph (5).

(6) Omit paragraph 14 (payment of indemnity out of central funds).

(7) In paragraph 21 (fees), for “proper officer” substitute “clerk”.

(8) For paragraph 23 (interpretation of expressions relating to licensing) substitute-
“23 In this Schedule-
“alcohol”, “licensing authority” and “premises licence” have the same meaning as in the Licensing Act 2003;
“hotel licence” and “public house licence” have the same meaning as in Schedule 1 to the Licensing (Scotland) Act 1976;
“relevant licensing authority”, in relation to premises in respect of which a premises licence is in force, means the authority determined in relation to those premises in accordance with section 12 of the Licensing Act 2003; and
“supply of alcohol” is to be construed in accordance with section 14 of that Act.”

(9) Omit paragraph 24 (proper officer of an appropriate authority).

City of London (Various Powers) Act 1968 (c.xxxvii)
53 For section 5(3) of the City of London (Various Powers) Act 1968 (entitlement of Corporation of London to apply for and hold licence to sell alcohol in arrangements for catering facilities) substitute-
“(3) The Corporation of London or any person appointed by them in that behalf may, subject to section 16 of the Licensing Act 2003, for the purposes of this section apply for and hold a premises licence under that Act for the sale by retail of alcohol within the meaning of that Act.”

Finance Act 1970 (c.24)
54 In section 6(2)(b) of the Finance Act 1970 (Angostura bitters)-
(a) omit “, the Licensing Act 1964”, and
(b) for “either of those Acts” substitute “that Act”.

Sunday Theatre Act 1972 (c.26)
55 The Sunday Theatre Act 1972 ceases to have effect.
Local Government Act 1972 (c.70)

56 The Local Government Act 1972 is amended as follows.

57 In section 78(1) (supplementary provision relating to changes in local government areas), omit the definition of “public body”.

58 In section 101 (arrangements for discharge of functions by local authorities), after subsection (14) insert—

“(15) Nothing in this section applies in relation to any function under the Licensing Act 2003 of a licensing authority (within the meaning of that Act).”

59 In section 145(4) (provision of entertainment), for “intoxicating liquor” substitute “alcohol”.

60 Section 204 (licensed premises) ceases to have effect.

61 (1) Schedule 12 (meetings and proceedings of local authorities) is amended as follows.

(2) In the following provisions, for “premises licensed for the sale of intoxicating liquor” substitute “premises which at the time of such a meeting may, by virtue of a premises licence or temporary event notice under the Licensing Act 2003, be used for the supply of alcohol (within the meaning of section 14 of that Act)”-

(a) paragraph 10(1) (location of parish council meetings),

(b) paragraph 26(1) (location of community council meetings).

(3) In the following provisions, for “premises licensed for the sale of intoxicating liquor” substitute “premises which at the time of the meeting may, by virtue of a premises licence or temporary event notice under the Licensing Act 2003, be used for the supply of alcohol (within the meaning of section 14 of that Act)”-

(a) paragraph 14(5) (location of parish meetings),

(b) paragraph 32(2) (location of community meetings).

Lotteries and Amusements Act 1976 (c.32)

62 Schedule 3 to the Lotteries and Amusements Act 1976 (provision about permits for commercial provision of amusements with prizes) is amended as follows.

63 (1) Paragraph 1 (interpretation) is amended as follows.

(2) In sub-paragraph (1), for paragraph (a) substitute—

“(a) in relation to any premises in England and Wales in respect of which there is in force a premises licence authorising the supply of alcohol for consumption on the premises, the relevant licensing authority in relation to those premises;”.

(3) In sub-paragraph (2)-

(a) for the definition of “justices' on-licence”, “licensing district” and “Part IV licence” substitute—

“alcohol”, “licensing authority” and “premises licence” have the same meaning as in the Licensing Act 2003,”,

(b) omit the definition of “the proper officer of the authority”, and

(c) at the appropriate place, insert—

“relevant licensing authority”, in relation to premises in respect of which a premises licence is in force, means the licensing authority in relation to those premises determined in accordance with section 12 of the Licensing Act 2003,”, and

“supply of alcohol” has the same meaning as in section 14 of the Licensing Act 2003,”.

(4) After that sub-paragraph insert—

“(3) A function conferred by this Schedule on a licensing authority is, for the purposes of section 7 of the Licensing Act 2003 (exercise and delegation by licensing authority of licensing functions), to be treated as a licensing function within the meaning of that Act.”

64 In paragraph 8 (appeals)-

(a) in sub-paragraphs (2) and (3), for “proper officer of” substitute “clerk to”, and

(b) omit sub-paragraph (4).
Omit paragraph 11 (payment of indemnity from central funds).
In paragraph 18 (fees), for “proper officer” substitute “clerk”.

Rent Act 1977 (c.42)
In section 11 of the Rent Act 1977 (tenancy of licensed premises not to be protected or statutory tenancy), for “premises licensed for the sale of intoxicating liquors” substitute “premises which, by virtue of a premises licence under the Licensing Act 2003, may be used for the supply of alcohol (within the meaning of section 14 of that Act)”.

Greater London Council (General Powers) Act 1978 (c.xiii)
The Greater London Council (General Powers) Act 1978 is amended as follows.
Section 3 (human posing to be treated as entertainment) ceases to have effect.
In section 5(4)(a) (definition of “booking office”)-
(a) omit sub-paragraph (ii) and the word “or” immediately preceding it, and
(b) for “sub-paragraphs (i) and (ii)” substitute “sub-paragraph (i)”.

Alcoholic Liquor Duties Act 1979 (c.4)
In section 4 (interpretation)-
(a) in the definition of “justices’ licence” and “justices’ on-licence”, omit paragraph (a), and
(b) in the definition of “registered club”, omit “which is for the time being registered within the meaning of the Licensing Act 1964 or”.

In section 71 (exception to penalty for misdescribing alcohol as spirits)-
(a) after subsection (4) insert—
“(4A) Nothing in this section as it applies to England and Wales shall apply to any alcohol (within the meaning of the Licensing Act 2003) which is prepared on any premises which may be lawfully used for the supply of alcohol (within the meaning of section 14 of that Act) for immediate consumption there.”
(b) in subsection (5)-
(i) omit “England and Wales or”,
(ii) omit paragraph (c), and
(iii) for “, in that club or on board that aircraft, vessel or vehicle,” substitute “or in that club”.

Licensed Premises (Exclusion of Certain Persons) Act 1980 (c.32)
In section 4(1) of the Licensed Premises (Exclusion of Certain Persons) Act 1980 (interpretation), in the definition of “licensed premises” for the words “a justices’ on-licence (within the meaning of section 1 of the Licensing Act 1964)” substitute “a premises licence under the Licensing Act 2003 authorising the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises”.

Magistrates’ Courts Act 1980 (c.43)
In Part 3 of Schedule 6 to the Magistrates’ Courts Act 1980 (matters to which provision relating to fees taken by clerks to justices does not apply), paragraphs 3 and 5 are omitted.

Local Government, Planning and Land Act 1980 (c.65)
The Local Government, Planning and Land Act 1980 is amended as follows.
Sections 131 and 132 (licensing in new towns) cease to have effect.
In section 133 (miscellaneous provision about new towns), in subsection (1), omit the following definitions-
(a) “development corporation”,
(b) “the 1964 Act”.
In section 146 (disposal of land by urban development corporation)-
(a) in subsection (3), for “intoxicating liquor” substitute “alcohol”, and
(b) in subsection (6), for “intoxicating liquor” has the meaning assigned by section 201 of the Licensing Act 1964 substitute “alcohol” has the meaning given by section 191 of the Licensing Act 2003”.

Local Government, Planning and Land Act 1980 (c.65)
Appendix 1: Licensing Act 2003

Indecent Displays (Control) Act 1981 (c.42)

80 In section 1(4) of the Indecent Displays (Control) Act 1981 (exemptions from offence of displaying indecent matter—

(a) for paragraph (d) substitute—

“(d) included in a performance of a play (within the meaning of paragraph 14(1) of Schedule 1 to the Licensing Act 2003) in England and Wales or of a play (within the meaning of the Theatres Act 1968) in Scotland;”, and

(b) in paragraph (e) for “included in a film exhibition as defined in the Cinemas Act 1985” substitute “included in an exhibition of a film, within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003, in England and Wales, or a film exhibition, as defined in the Cinemas Act 1985, in Scotland”.

New Towns Act 1981 (c.64)

81 In section 18 of the New Towns Act 1981 (disposal by development corporation of land to occupiers of it before acquisition by corporation), in subsection (3) for the words “intoxicating liquor (“intoxicating liquor” having the meaning given in section 201(1) of the Licensing Act 1964)” substitute “alcohol (within the meaning of section 191 of the Licensing Act 2003)”.

Local Government (Miscellaneous Provisions) Act 1982 (c.30)

82 The Local Government (Miscellaneous Provisions) Act 1982 is amended as follows.

83 The following provisions cease to have effect—

(a) section 1 (licensing of public entertainment outside Greater London),

(b) sections 4 to 6 (controls on take-away food shops),

(c) Schedule 1 (licensing of public entertainment outside Greater London).

84 In section 10(11) (requirement that apparatus to be installed should be provided with cut-off switch disapproved in relation to cinemas) for the words “premises in respect of which a licence under section 1 of the Cinemas Act 1985 is for the time being in force” substitute “premises in respect of which a premises licence under the Licensing Act 2003 has effect authorising the use of the premises for an exhibition of a film, within the meaning of paragraph 15 of Schedule 1 to that Act”.

85 (1) Schedule 3 (control of sex establishments) is amended as follows.

(2) In paragraph 3(2) (premises not to be treated as a sex cinema merely because the exhibition of a film there must be authorised by a licence, etc)—

(a) for paragraph (a) substitute—

“(a) if they may be used for an exhibition of a film (within the meaning of paragraph 15 of Schedule 1 to the Licensing Act 2003) by virtue of an authorisation (within the meaning of section 136 of that Act), of their use in accordance with that authorisation”, and

(b) in paragraph (b), for “that Act” substitute “the Cinemas Act 1985”.

(3) In paragraph 3A (exemption for theatres and cinemas from provisions about sex encounter establishments) for paragraphs (i) and (ii) of the proviso substitute—

“(i) for the time being, being used for the provision of regulated entertainment (within the meaning of the Licensing Act 2003), in circumstances where that use is authorised under that Act; or

(ii) for the time being, being used for the purposes of late night refreshment (within the meaning of that Act), in circumstances where that use is so authorised; or”.

Representation of the People Act 1983 (c.2)

86 The Representation of the People Act 1983 is amended as follows.

87 In section 185 (interpretation of Part relating to legal proceedings), for the definition of “Licensing Acts” substitute—

“‘Licensing Acts’ means the Licensing (Scotland) Act 1976 and the Licensing (Northern Ireland) Order 1996 (as that Act or Order may from time to time have effect),”.

88 In Schedule 7 (transitional and saving provision), omit paragraph 4.
89 In section 3(7) of the Video Recordings Act 1984 (exempted supply of video recording)-
   (a) before paragraph (a) insert-
       "(za) premises in England and Wales which, by virtue of an authorisation within
       the meaning of section 136 of the Licensing Act 2003, may be used for the
       exhibition of a film within the meaning of paragraph 15 of Schedule 1 to that
       Act,”, and
   (b) in paragraphs (a) and (c) after “premises”, and in paragraph (b) after the first
       “premises”, insert “in Scotland”.

90 The Building Act 1984 is amended as follows.
91 In section 24(4) (provision of exits in buildings) for paragraph (c) substitute-
   “(c) premises in respect of which a club premises certificate has effect under the
   Licensing Act 2003,”.
92 In section 74(2) (exemption for certain premises from requirement for local authority’s
   consent for cellars and rooms below subsoil water level), omit paragraph (a) and the
   word “or” immediately following it.

93 In Schedule 1A to the Police and Criminal Evidence Act 1984 (arrestable offences) at the
   end there is inserted-
   “Licensing Act 2003
   26. An offence under section 143(1) of the Licensing Act 2003 (failure to leave licensed
   premises, etc.).”

94 In section 15(1) of the Greater London Council (General Powers) Act 1984 (exceptions to
   power of Council to refuse to register sleeping accommodation), at the end insert “; or
   (v) a building-
       (a) in respect of which there is in force immediately before the appointed day a
       premises licence under the Licensing Act 2003 authorising the supply of
       alcohol (within the meaning of section 14 of that Act) for consumption on the
       premises, and
       (b) the use of which for a specified purpose would not contravene the Town and
       Country Planning Act 1990.”

95 The Cinemas Act 1985 ceases to have effect in England and Wales.

96 The Sporting Events (Control of Alcohol etc.) Act 1985 is amended as follows.
97 In the following provisions, for “intoxicating liquor” substitute “alcohol”-
   (a) section 1(2) and (3) (alcohol on coaches and trains),
   (b) section 1A(2) and (3) (alcohol on certain other vehicles),
   (c) section 2(1) (alcohol at sports grounds).
98 Omit section 2(1A) (application to private rooms of offence of having alcohol at
   designated sporting event).
99 The following provisions cease to have effect-
   (a) sections 3 and 4 (order about licensing hours in sports grounds),
   (b) section 5 (appeal against such an order),
   (c) section 5A (restricted periods in relation to possession of alcohol in private rooms at
       sports grounds),
   (d) section 5B (occasional licences at sports grounds),
   (e) section 5C (supply of alcohol by clubs at sports grounds),
   (f) section 5D (non-retail sales of alcohol during sporting event),
   (g) section 6 (closure of bar during sporting event),
(h) the Schedule (procedure for obtaining order about licensing hours in sports grounds).

100 In section 8 (offences)-
   (a) in paragraph (b), for “, 2A(1), 3(10), 5B(2), 5C(3), 5D(2) or 6(2)” substitute “or 2A(1)”,”
   and
   (b) omit paragraphs (d) and (e).

101 In section 9 (interpretation)-
   (a) omit subsection (5), and
   (b) for subsection (7) substitute-
       “(7) An expression used in this Act and in the Licensing Act 2003 has the same
           meaning in this Act as in that Act.”

**Housing Act 1985 (c.68)**

102 The Housing Act 1985 is amended as follows.

103 In section 11 (provision of board facilities by local housing authority)-
   (a) for subsection (3) substitute-
       “(3) Where a premises licence under Part 3 of the Licensing Act 2003 authorises the
           sale by retail of alcohol in connection with the provision of facilities of the kind
           mentioned in subsection (1)(a), then, notwithstanding the terms of that licence,
           it does not have effect so as to authorise the sale by retail of alcohol for
           consumption otherwise than with a meal.”,
   (b) in subsection (4) after “the sale of intoxicating liquor” insert “or the sale by retail of
       alcohol”, and
   (c) after that subsection insert-
       “(5) An expression used in this section and in the Licensing Act 2003 has the same
           meaning in this section as in that Act.”

104 In Schedule 1 (tenancies which are not secure tenancies), in paragraph 9, for “premises
licensed for the sale of intoxicating liquor” substitute “premises which, by virtue of a
premises licence under the Licensing Act 2003, may be used for the supply of alcohol
(within the meaning of section 14 of that Act)”.

**Sex Discrimination Act 1986 (c.59)**

105 Section 5 of the Sex Discrimination Act 1986 (discrimination required by public
entertainment licence) ceases to have effect.

**Fire Safety and Safety of Places of Sport Act 1987 (c.27)**

106 After section 33(2) of the Fire Safety and Safety of Places of Sport Act 1987 (requirements
of safety certificate to take precedence over conflicting conditions imposed in licence,
etc.) insert-
   “(2A) For the purposes of subsection (2)-
       (a) “the licensing of premises” includes the granting of a premises licence or
           club premises certificate under the Licensing Act 2003, and
       (b) “licence” is to be construed accordingly.”

**Norfolk and Suffolk Broads Act 1988 (c.4)**

107 In paragraph 40(1) of Schedule 3 to the Norfolk and Suffolk Broads Act 1988 (provision
of facilities by Broads Authority), in paragraph (b) for “intoxicating liquor” substitute
“alcohol (within the meaning of the Licensing Act 2003)”.

**Housing Act 1988 (c.50)**

108 In Schedule 1 to the Housing Act 1988 (tenancies which cannot be assured tenancies), in
paragraph 5, for “premises licensed for the sale of intoxicating liquors” substitute
“premises which, by virtue of a premises licence under the Licensing Act 2003, may be
used for the supply of alcohol (within the meaning of section 14 of that Act)”.

**Town and Country Planning Act 1990 (c.8)**

109 Section 334 of the Town and Country Planning Act 1990 (licensing planning areas) ceases
to have effect.
Sunday Trading Act 1994 (c.20)

110 (1) Schedule 1 to the Sunday Trading Act 1994 (restrictions on Sunday opening of large shops) is amended as follows.

(2) In paragraph 1-
(a) for the definition of “intoxicating liquor” substitute—
“alcohol” has the same meaning as in the Licensing Act 2003,’; and
(b) in paragraph (a) of the definition of “sale of goods”, for “intoxicating liquor” substitute “alcohol”.

(3) In paragraph 3(1)(b) for “intoxicating liquor” substitute “alcohol”.

Criminal Justice and Public Order Act 1994 (c.33)

111 In section 63 of the Criminal Justice and Public Order Act 1994 (power to remove persons attending raves, etc.), for subsection (9)(a) substitute—
“(a) in England and Wales, to a gathering in relation to a licensable activity within section 1(1)(c) of the Licensing Act 2003 (provision of certain forms of entertainment) carried on under and in accordance with an authorisation within the meaning of section 136 of that Act.”.

Deregulation and Contracting Out Act 1994 (c.40)

112 Section 21 of the Deregulation and Contracting Out Act 1994 (Sunday Observance Act 1780 not to apply to sporting events) ceases to have effect.

London Local Authorities Act 1995 (c.x)

113 In section 14 of the London Local Authorities Act 1995 (interpretation of Part relating to near beer premises), in the definition of “near beer premises”—
(a) for “intoxicating liquor is provided exemption or saving from the provisions of the Act of 1964 by virtue of section 199 of that Act” substitute “alcohol is not a licensable activity under or by virtue of section 173 of the Licensing Act 2003”,
(b) for paragraph (A) substitute—
“(A) a premises licence under Part 3 of that Act which authorises the supply of alcohol (within the meaning of section 14 of that Act) for consumption on the premises;”,
(c) in paragraph (B)—
(i) omit “Schedule 12 to the London Government Act 1963,” and “or the Private Places of Entertainment (Licensing) Act 1967”, and
(ii) at the end insert “or a premises licence granted under Part 3 of the Licensing Act 2003 which authorises the provision of any form of regulated entertainment (within the meaning of Schedule 1 to that Act)”,
(d) omit paragraphs (C) to (E),
(e) for paragraphs (F) and (G) substitute—
“(F) a temporary event notice under the Licensing Act 2003, by virtue of which the premises may be used for the supply of alcohol (within the meaning of section 14 of that Act)”,
(f) for the words from “during the hours” to “licence:” substitute “during the hours permitted by such licence or notice:”, and
(g) for “such licence; and” substitute “such licence or notice; and”.

Employment Rights Act 1996 (c.18)

114 In section 232(7) of the Employment Rights Act 1996 (definition of “catering business”)—
(a) in paragraph (a) for “intoxicating liquor” substitute “alcohol”, and
(b) for “‘intoxicating liquor’ has the same meaning as in the Licensing Act 1964” substitute “‘alcohol’ has the same meaning as in the Licensing Act 2003”.

Confiscation of Alcohol (Young Persons) Act 1997 (c.33)

115 (1) Section 1 of the Confiscation of Alcohol (Young Persons) Act 1997 (confiscation of alcohol) is amended as follows.
(2) In subsection (1)-
   (a) for “intoxicating liquor”, in each place it occurs, substitute “alcohol”,
   (b) in paragraph (b) for “liquor” substitute “alcohol”, and
   (c) for “such liquor” substitute “alcohol”.

(3) For subsection (7) substitute-
   “(7) In this section-
   “alcohol”-
   (a) in relation to England and Wales, has the same meaning as in the
       Licensing Act 2003;
   (b) in relation to Northern Ireland, has the same meaning as “intoxicating
       liquor” in the Licensing (Northern Ireland) Order 1996; and
   “licensed premises”-
   (a) in relation to England and Wales, means premises which may by virtue of
       Part 3 or Part 5 of the Licensing Act 2003 (premises licence; permitted
       temporary activity) be used for the supply of alcohol within the meaning
       of section 14 of that Act;
   (b) in relation to Northern Ireland, has the same meaning as in the Licensing
       (Northern Ireland) Order 1996.”

Police Act 1997 (c.50)

116 In section 115(5) of the Police Act 1997 (enhanced criminal record certificates), after
paragraph (d) insert-
“(da) a personal licence under the Licensing Act 2003;”.

London Local Authorities Act 2000 (c.vii)

117 In section 32 of the London Local Authorities Act 2000 (interpretation of provisions about
the licensing of buskers), in the definition of “busking”, for paragraph (b) substitute-
“(b) under and in accordance with a premises licence under Part 3 of the Licensing Act
2003, or a temporary event notice having effect under Part 5 of that Act, which
authorises the provision of regulated entertainment (within paragraph 2(1)(e) to (h)
or 3(2) of Schedule 1 to that Act (music and dancing));”.

Private Security Industry Act 2001 (c.12)

118 (1) Paragraph 8 of Schedule 2 to the Private Security Industry Act 2001 (door
supervisors etc. for licensed premises) is amended as follows.

(2) In sub-paragraph (2), for paragraphs (a) to (d) substitute-
“(a) any premises in respect of which a premises licence or temporary event notice
has effect under the Licensing Act 2003 to authorise the supply of alcohol
(within the meaning of section 14 of that Act) for consumption on the premises;
(b) any premises in respect of which a premises licence or temporary event notice
has effect under that Act to authorise the provision of regulated entertainment;”.

(3) For sub-paragraph (3) substitute-
“(3) For the purposes of this paragraph, premises are not licensed premises-
(a) if there is in force in respect of the premises a premises licence which
authorises regulated entertainment within paragraph 2(1)(a) or (b) of
Schedule 1 to the Licensing Act 2003 (plays and films);
(b) in relation to any occasion on which the premises are being used-
   (i) exclusively for the purposes of a club which holds a club premises
   certificate in respect of the premises, or
   (ii) for regulated entertainment of the kind mentioned in paragraph (a),
       in circumstances where that use is a permitted temporary activity by
       virtue of Part 5 of that Act;
   (c) in relation to any occasion on which a licence is in force in respect of the
       premises under the Gaming Act 1968 (c.65) and the premises are being
used wholly or mainly for the purposes of gaming to which Part 2 of that Act applies; or

(d) in relation to any such other occasion as may be prescribed for the purposes of this sub-paragraph.”

(4) After sub-paragraph (5) insert—

“(6) Sub-paragraphs (2)(a) and (b) and (3)(a) and (b) are to be construed in accordance with the Licensing Act 2003.”

Criminal Justice and Police Act 2001 (c.16)

119 The Criminal Justice and Police Act 2001 is amended as follows.

120 In section 1(1) (offences leading to penalties on the spot), at the end of the Table insert—

“Section 149(4) of the Licensing Act 2003 Buying or attempting to buy alcohol for consumption on licensed premises, etc, by child

121 In section 12 (alcohol consumption in designated public place)—

(a) in subsections (1) and (2), for “intoxicating liquor”, in each place it occurs, substitute “alcohol”, and

(b) in subsection (2) for “such liquor” substitute “alcohol”.

122 In section 13 (designated public places), in subsection (2) for “intoxicating liquor” substitute “alcohol”.

123 (1) Section 14 (places which are not designated public places) is amended as follows.

(2) In subsection (1)—

(a) for paragraphs (a) to (d) substitute—

“(a) premises in respect of which a premises licence or club premises certificate, within the meaning of the Licensing Act 2003, has effect;

(b) a place within the curtilage of premises within paragraph (a);

(c) premises which by virtue of Part 5 of the Licensing Act 2003 may for the time being be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the last 20 minutes;”, and

(b) in paragraph (e), for “intoxicating liquor” substitute “alcohol”.

(3) Omit subsection (2).

124 In section 15(1)(a) (byelaw prohibiting consumption of alcohol), for “intoxicating liquor” substitute “alcohol”.

125 In section 16(1) (interpretation of sections 12 to 15)—

(a) before the definition of “designated public place” insert—

““alcohol” has the same meaning as in the Licensing Act 2003;”;

(b) omit the definition of “intoxicating liquor”, and the word “and” immediately following it, and

(c) after the definition of “public place” insert “; and

“supply of alcohol” has the meaning given by section 14 of the Licensing Act 2003”.

126 In each of the following provisions, for “unlicensed sale of intoxicating liquor” substitute “unauthorised sale of alcohol”—

(a) section 19(1) and (2) (service of closure notice by constable or local authority),

(b) section 20(3)(a) (no application for closure order where unauthorised sale of alcohol has ceased),

(c) section 21(1)(b) and (2)(b) (closure order),

(d) section 27(6) (fixing notice on premises where personal service cannot be effected).

127 In section 28 (interpretation of provisions relating to closure of unlicensed premises)—

(a) before the definition of “closure notice” insert—

““alcohol” has the same meaning as in the Licensing Act 2003;”,
(b) omit the definition of “intoxicating liquor”, and
(c) for the definition of “unlicensed sale” substitute—
“unauthorised sale”, in relation to any alcohol, means any supply of
the alcohol (within the meaning of section 14 of the Licensing Act 2003)
which—
(a) is a licensable activity within the meaning of that Act, but
(b) is made otherwise than under and in accordance with an authorisation (within
the meaning of section 136 of that Act).”

128 In Schedule 1 (powers of seizure)—
(a) at the end of Part 1 insert—
“Licensing Act 2003
74. The power of seizure conferred by section 90 of the Licensing Act 2003 (seizure
of documents relating to club).”, and
(b) at the end of Part 3 insert—
“Licensing Act 2003
110. The power of seizure conferred by section 90 of the Licensing Act 2003 (seizure
of documents relating to club).”

SCHEDULE 7

Section 199

REPEALS

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<td>officer of the authority”, and</td>
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<td>Licensing (Amendment) Act 1977 (c.26)</td>
<td>paragraphs 8(4) and 11.</td>
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<tr>
<td>Greater London Council (General Powers) Act 1978 (c.xiii)</td>
<td>In Schedule 7, paragraphs 9(a), (b), (d) and (f), 10, 11 and 12.</td>
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<tr>
<td>Customs and Excise Management Act 1979 (c.2)</td>
<td>Sections 5 to 8.</td>
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<td>Alcoholic Liquor Duties Act 1979 (c.4)</td>
<td>The whole Act.</td>
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<td>Greater London Council (General Powers) Act 1979 (c.xxiii)</td>
<td>Sections 3 and 4.</td>
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<td>Licensing (Amendment) Act 1980 (c.40)</td>
<td>Section 5(4)(a)(ii) and the word “or” immediately</td>
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<td>Magistrates’ Courts Act 1980 (c.43)</td>
<td>preceding it.</td>
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<td>Local Government, Planning and Land Act 1980 (c.65)</td>
<td>In Schedule 4, in paragraph 12, in the Table, the</td>
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<tr>
<td>Highways Act 1980 (c.66)</td>
<td>entry relating to the Licensing Act 1964.</td>
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<td>Finance Act 1981 (c.35)</td>
<td>In section 4-</td>
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<td>Licensing (Amendment) Act 1981 (c.40)</td>
<td>in the definition of “justices’ licence” and</td>
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<td>Supreme Court Act 1981 (c.54)</td>
<td>“justices’ on-licence”, paragraph (a), and</td>
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<td>New Towns Act 1981 (c.64)</td>
<td>in the definition of “registered club”, the words</td>
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<td>Local Government (Miscellaneous Provisions) Act 1982 (c.30)</td>
<td>“which is for the time being registered within the</td>
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<tr>
<td>Greater London Council (General Powers) Act 1982 (c.i)</td>
<td>meaning of the Licensing Act 1964 or”’.</td>
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<td>Representation of the People Act 1983 (c.2)</td>
<td>In section 71(5)-</td>
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<td>the words “England and Wales or”, and</td>
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<td>paragraph (c).</td>
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<td>In Schedule 3, paragraph 5.</td>
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<td>Greater London Council (General Powers) Act 1982 (c.i)</td>
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<td>In Schedule 6, in Part 3, paragraphs 3 and 5.</td>
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<td>In Schedule 7, paragraphs 45 to 48 and 50.</td>
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<td>Sections 131 and 132.</td>
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<td>In section 133(1), the definitions of “development</td>
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<td>corporation” and “the 1964 Act”.</td>
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<td>In Schedule 24, paragraph 12.</td>
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<td>In Schedule 8, paragraphs 24 and 25.</td>
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<td>The whole Act.</td>
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<td>In section 28(2)(b), the words “the Licensing Act</td>
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<td>In Schedule 2, paragraph 2.</td>
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<td>In Schedule 12, paragraphs 1 and 29(a)(i).</td>
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<td>In Schedule 8, paragraphs 7 to 10.</td>
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<td>Extent of repeal</td>
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<td>Building Act 1984 (c.55)</td>
<td>In section 74(2), paragraph (a) and the word “or” immediately following it.</td>
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<td>Greater London Council (General Powers) Act 1984 (c.xxvii)</td>
<td>Section 4(1) and (3).</td>
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<td>Cinemas Act 1985 (c.13)</td>
<td>Sections 19 to 22.</td>
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<td>Section 3(1A).</td>
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<td>Sections 17 and 18.</td>
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<td>In section 19(3), paragraph (a) and the word “or” immediately following it.</td>
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<td>In Schedule 2, paragraphs 2, 3, 6, 7, 8, 14, 15 and 16(a) and the word “and” immediately following it.</td>
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<td>Licensing (Amendment) Act 1985 (c.40)</td>
<td>The whole Act.</td>
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<td>Local Government Act 1985 (c.51)</td>
<td>In Schedule 8-paragraph 1(1), in paragraph 1(3), the words following paragraph (c), and paragraphs 2 to 5.</td>
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<tr>
<td>Sporting Events (Control of Alcohol etc.) Act 1985 (c.57)</td>
<td>Section 2(1A).</td>
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<td>Insolvency Act 1985 (c.65)</td>
<td>In Schedule 8, paragraph 12.</td>
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<td>Insolvency Act 1986 (c.45)</td>
<td>In Schedule 14, the entries relating to the Licensing Act 1964.</td>
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<td>Sex Discrimination Act 1986 (c.59)</td>
<td>Section 5.</td>
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<td>Public Order Act 1986 (c.64)</td>
<td>In Schedule 1, paragraphs 4, 5, 7(5) and 8.</td>
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<td>Greater London Council (General Powers) Act 1986 (c.iv)</td>
<td>Section 3.</td>
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<td>Fire Safety and Safety of Places of Sport Act 1987 (c.27)</td>
<td>Sections 42, 43, 45 and 46.</td>
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<td>Schedule 3.</td>
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<td>In Schedule 5- in paragraph 1, the definition of “the 1963 Act” and the definition of “the 1982 Act” and the word “and” immediately preceding it, and paragraphs 8 to 10.</td>
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<tr>
<td>Licensing (Retail Sales) Act 1988 (c.25)</td>
<td>The whole Act.</td>
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<td>Licensing (Amendment) Act 1989 (c.20)</td>
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<td>Employment Act 1989 (c.38)</td>
<td>In Schedule 6, paragraph 30.</td>
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<td>Town and Country Planning Act 1990 (c.8)</td>
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<td>Entertainments (Increased Penalties) Act 1990 (c.20)</td>
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<td>Licensing (Low Alcohol Drinks) Act 1990 (c.21)</td>
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<td>Broadcasting Act 1990 (c.42)</td>
<td>In Schedule 20, paragraphs 7 and 8.</td>
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<td>London Local Authorities Act 1990 (c.vii)</td>
<td>Sections 4 to 17, 19 and 20.</td>
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<td>London Local Authorities (No. 2) Act 1990 (c.xxx)</td>
<td>Section 6.</td>
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<td>Finance Act 1991 (c.31)</td>
<td>In Schedule 2, in paragraph 1, the words “the Licensing Act 1964”.</td>
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<td>London Local Authorities Act 1991 (c.xiii)</td>
<td>Sections 18 to 21.</td>
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<td>Sporting Events (Control of Alcohol etc.) (Amendment) Act 1992 (c.57)</td>
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<td>Charities Act 1993 (c.10)</td>
<td>In Schedule 6, paragraph 27.</td>
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<td>Local Government (Wales) Act 1994 (c.19)</td>
<td>In Schedule 2, paragraph 2.</td>
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<td>Coal Industry Act 1994 (c.21)</td>
<td>In Schedule 15, paragraph 41.</td>
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<td>Criminal Justice and Public Order Act 1994 (c.33)</td>
<td>In Schedule 16, paragraphs 22, 29, 32, 36, 69 and 73.</td>
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<td>Deregulation and Contracting Out Act 1994 (c.40)</td>
<td>In Schedule 9, paragraph 8.</td>
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<td>London Local Authorities Act 1994 (c.xii)</td>
<td>In section 63- in subsection (10), the definitions of “entertainment licence” and “local authority”, and subsection (11).</td>
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<td>Licensing (Sunday Hours) Act 1995 (c.33)</td>
<td>Section 18(1).</td>
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<td>London Local Authorities Act 1995 (c.x)</td>
<td>Section 19.</td>
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<td>London Local Authorities Act 1996 (c.ix)</td>
<td>Section 21.</td>
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<td>Confiscation of Alcohol (Young Persons) Act 1997 (c.33)</td>
<td>In Schedule 11, paragraph 1.</td>
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<tr>
<td>Public Entertainments Licences (Drug Misuse) Act 1997 (c.49)</td>
<td>Section 5.</td>
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<tr>
<td>Greater London Authority Act 1999 (c.29)</td>
<td>In section 14- in paragraph (B), the words “Schedule 12 to the London Government Act 1963,” and “or the Private Places of Entertainment (Licensing) Act 1967”, and paragraphs (C) to (E).</td>
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<td>Section 28.</td>
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<td>Sections 45 and 46.</td>
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<td>Sections 20 to 23.</td>
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<td>In Schedule 4, in paragraph 17(3), the words “other than any duties as secretary to a licensing planning committee under Part VII of the Licensing Act 1964”.</td>
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<td>In section 1(1), the words “(other than a sealed container)”.</td>
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<td>The whole Act.</td>
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<td>In Schedule 10, paragraphs 23 to 29 and 31.</td>
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<td>In Schedule 11, paragraph 17.</td>
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<td>In Schedule 13, paragraphs 36 to 56, 61, 62, 87, 124 and 132.</td>
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<td>In Schedule 29, paragraphs 6, 67, 70 and 71.</td>
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<td>Licensing (Young Persons) Act 2000 (c.30)</td>
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<td>Freedom of Information Act 2000 (c.36)</td>
<td>In Schedule 1, paragraph 17.</td>
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<td>London Local Authorities Act 2000 (c.vii)</td>
<td>Sections 22 to 26.</td>
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<td>Criminal Justice and Police Act 2001 (c.16)</td>
<td>Schedule 1.</td>
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<td>In section 1(1), in the Table, the entry relating to section 169C(3) of the Licensing Act 1964.</td>
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|                                                             | In section 12(2)(b), the words “(other than a sealed container)”.
|                                                             | Section 14(2).                                                                  |
|                                                             | In section 16(1), the definition of “intoxicating liquor” and the word “and” immediately following it. |
|                                                             | Sections 17 and 18.                                                            |
|                                                             | In section 28, the definition of “intoxicating liquor”.                        |
|                                                             | Sections 30 to 32.                                                             |
|                                                             | In Schedule 1, paragraphs 7 and 90.                                             |

**SCHEDULE 8**

**Section 200**

**TRANSITIONAL PROVISION ETC.**

**PART 1**

**PREMISES LICENCES**

**Introductory**

1. In this Part-
   “canteen licence” has the same meaning as in section 148 of the 1964 Act (licences for seamen’s canteens);
   “children’s certificate” has the same meaning as in section 168A of that Act;
   “existing licence” means-
   (a) a justices’ licence,
   (b) a canteen licence,
   (c) a licence under Schedule 12 to the London Government Act 1963 (c.33) (licensing of public entertainment in Greater London),
   (d) a licence under the Private Places of Entertainment (Licensing) Act 1967 (c.19),
   (e) a licence under the Theatres Act 1968 (c.54),
   (f) a licence under the Late Night Refreshment Houses Act 1969 (c.53),
   (g) a licence under Schedule 1 to the Local Government (Miscellaneous Provisions) Act 1982 (c.30) (licensing of public entertainments outside Greater London),
   (h) a licence under section 1 of the Cinemas Act 1985 (c.13), or
   (i) a licence under Part 2 of the London Local Authorities Act 1990 (c.vii) (night cafe licensing);
   “existing licensable activities”, under an existing licence, are-
   (a) the licensable activities authorised by the licence, and
   (b) any other licensable activities which may be carried on, at the premises in respect of which the licence has effect, by virtue of the existence of the licence (see sub-paragraph (2));
“first appointed day” means such day as may be specified as the first appointed day for the purposes of this Part;
“new licence” has the meaning given in paragraph 5(1);
“relevant existing licence”, in relation to an application under paragraph 2, means an existing licence to which the application relates;
“relevant licensing authority” has the same meaning as in Part 3 of this Act (premises licences);
“second appointed day” means such day as may be specified as the second appointed day for the purposes of this Part; and
“supply of alcohol” means-
(a) sale by retail of alcohol, or
(b) supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

(2) In determining, for the purposes of paragraph (b) of the definition of “existing licensable activities”, the other licensable activities which may be carried on by virtue of a licence-
(a) section 182 of the 1964 Act (relaxation of law relating to music and dancing licences) is to be disregarded so far as it relates to public entertainment by way of music and singing provided by not more than two performers, and
(b) in the case of an existing licence granted under the Theatres Act 1968 (c.54), the reference in that paragraph to the licence is to be read as including a reference to any notice in force under section 199(c) of the 1964 Act (notice of intention to sell alcohol by retail at licensed theatre premises) in relation to that licence.

(3) In the application of section 12 (relevant licensing authority in Part 3 of this Act) for the purposes of this Part, the reference in subsection (4)(a) of that section to an applicant for a premises licence is to be read as a reference to an applicant under paragraph 2 for the grant of a licence under paragraph 4.

Application for conversion of existing licence

2 (1) This paragraph applies where, in respect of any premises, one or more existing licences have effect on the first appointed day.

(2) A person may, within the period of six months beginning with the first appointed day, apply to the relevant licensing authority for the grant of a licence under paragraph 4 to succeed one or more of those existing licences.

(3) But an application may be made under this paragraph in respect of an existing licence only if-
(a) it is held by the applicant, or
(b) the holder of the licence consents to the application being made.

(4) An application under this paragraph must specify-
(a) the existing licensable activities under the relevant existing licence or, if there is more than one, the relevant existing licences,
(b) if any relevant existing licence authorises the supply of alcohol, specified information about the person whom the applicant wishes to be the premises supervisor under the licence granted under paragraph 4, and
(c) such other information as may be specified.

(5) The application must also be in the specified form and accompanied by-
(a) the relevant documents, and
(b) the specified fee.

(6) The relevant documents are-
(a) the relevant existing licence or, if there is more than one, each of them (or a certified copy of the licence or licences in question),
(b) a plan in the specified form of the premises to which the relevant existing licence or licences relate,
(c) if any relevant existing licence authorises the supply of alcohol, any children’s certificate in force in respect of the premises (or a certified copy of any such certificate),

(d) a form of consent in the specified form, given by the individual (if any) named in the application in accordance with sub-paragraph (4)(b),

(e) a form of consent in the specified form, given by any person who is required to consent to the application under sub-paragraph (3), and

(f) such other documents as may be specified.

(7) In this paragraph any reference to a certified copy of a document is a reference to a copy of that document certified to be a true copy-

(a) in the case of a justices’ licence, children’s certificate or canteen licence, by the chief executive of the licensing justices for the licensing district in which the premises are situated,

(b) in any other case, by the chief executive of the local authority which issued the licence,

(c) by a solicitor or notary, or

(d) by a person of a specified description.

(8) A document which purports to be a certified copy of an existing licence or children’s certificate is to be taken to be such a copy unless the contrary is shown.

Police consultation
3 (1) Where a person makes an application under paragraph 2, he must give a copy of the application (and any documents which accompanied it) to the chief officer of police for the police area (or each police area) in which the premises are situated no later than 48 hours after the application is made.

(2) Where-

(a) an appeal is pending against a decision to revoke, or to reject an application for the renewal of, the relevant existing licence or, if there is more than one such licence, a relevant existing licence, and

(b) a chief officer of police who has received a copy of the application under sub-paragraph (1) is satisfied that converting that existing licence in accordance with this Part would undermine the crime prevention objective, he must give the relevant licensing authority and the applicant a notice to that effect.

(3) Where a chief officer of police who has received a copy of an application under sub-paragraph (1) is satisfied that, because of a material change in circumstances since the relevant time, converting the relevant existing licence or, if there is more than one such licence, a relevant existing licence in accordance with this Part would undermine the crime prevention objective, he must give the relevant licensing authority and the applicant a notice to that effect.

(4) For this purpose “relevant time” means the time when the relevant existing licence was granted or, if it has been renewed, the last time it was renewed.

(5) The chief officer of police may not give a notice under subparagraph (2) or (3) after the end of the period of 28 days beginning with the day on which he received a copy of the application under sub-paragraph (1).

Determination of application
4 (1) This paragraph applies where an application is made in accordance with paragraph 2 and the applicant complies with paragraph 3(1).

(2) Subject to sub-paragraphs (3) and (5), the relevant licensing authority must grant the application.

(3) Where a notice is given under paragraph 3(2) or (3) in respect of an existing licence (and not withdrawn), the authority must-

(a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and
Appendix 1: Licensing Act 2003

(b) having regard to the notice-
   (i) in a case where the application relates only to that licence, reject the
       application, and
   (ii) in any other case, reject the application to the extent that it relates to that
       licence,
if it considers it necessary for the promotion of the crime prevention objective to do
so.

(4) If the relevant licensing authority fails to determine the application within the
period of two months beginning with the day on which it received it, then, subject
to sub-paragraph (5), the application is to be treated as granted by the authority
under this paragraph.

(5) An application must not be granted (and is not to be treated as granted under sub-
paragraph (4))- 
   (a) if the relevant existing licence has or, if there is more than one, all the relevant
       existing licences have ceased to be held by the applicant before the relevant
       time, or
   (b) where there is more than one relevant existing licence (but paragraph (a) does
       not apply), to the extent that the application relates to an existing licence which
       has ceased to be held by the applicant before the relevant time.

(6) For the purposes of sub-paragraph (5)-
   (a) where, for the purposes of paragraph 2(3)(b) a person has consented to an
       application being made in respect of a relevant existing licence, sub-paragraph
       (5)(a) and (b) applies in relation to that licence as if the reference to the
       applicant were a reference to-
       (i) that person, or
       (ii) any other person to whom the existing licence has been transferred and
           who has given his consent for the purposes of this paragraph, and
   (b) “the relevant time” is the time of the determination of the application or, in a
       case within sub-paragraph (4), the end of the period mentioned in that sub-
       paragraph.

(7) Section 10 applies as if the relevant licensing authority’s functions under
sub-paragraph (3) were included in the list of functions in subsection (4) of that
section (functions which cannot be delegated to an officer of the licensing
authority).

Notification of determination and issue of new licence

5 (1) Where an application is granted (in whole or in part) under paragraph 4, the
relevant licensing authority must forthwith-
   (a) give the applicant a notice to that effect, and
   (b) issue the applicant with-
       (i) a licence in respect of the premises (a “new licence”) in accordance with
           paragraph 6, and
       (ii) a summary of the new licence.

(2) Where an application is rejected (in whole or in part) under paragraph 4, the
relevant licensing authority must forthwith give the applicant a notice to that effect
stating the authority’s reasons for its decision to reject the application.

(3) The relevant licensing authority must give a copy of any notice it gives under sub-
paragraph (1) or (2) to the chief officer of police for the police area (or each police
area) in which the premises to which the notice relates are situated.

The new licence

6 (1) This paragraph applies where a new licence is granted under paragraph 4 in respect
of one or more existing licences.

(2) Where an application under paragraph 2 is granted in part only, any relevant
existing licence in respect of which the application was rejected is to be disregarded
for the purposes of the following provisions of this paragraph.
(3) The new licence is to be treated as if it were a premises licence (see section 11), and sections 19, 20 and 21 (mandatory conditions for premises licences) apply in relation to it accordingly.

(4) The new licence takes effect on the second appointed day.

(5) The new licence must authorise the premises in question to be used for the existing licensable activities under the relevant existing licence or, if there is more than one relevant existing licence, the relevant existing licences.

(6) Subject to sections 19, 20 and 21 and the remaining provisions of this paragraph, the new licence must be granted subject to such conditions as reproduce the effect of-

(a) the conditions subject to which the relevant existing licence has effect at the time the application is granted, or

(b) if there is more than one relevant existing licence, all the conditions subject to which those licences have effect at that time.

(7) Where the new licence authorises the supply of alcohol, the new licence must designate the person named in the application under paragraph 2(4)(b) as the premises supervisor.

(8) The new licence must also be granted subject to conditions which reproduce the effect of any restriction imposed on the use of the premises for the existing licensable activities under the relevant existing licence or licences by any enactment specified for the purposes of this Part.

(9) In determining those restrictions, the relevant licensing authority must have regard to any children’s certificate which accompanied (or a certified copy of which accompanied) the application and which remains in force.

(10) Nothing in sub-paragraph (6) or (8) requires the new licence to be granted for a limited period.

(11) But, where the application under paragraph 2 includes a request for the new licence to have effect for a limited period, the new licence is to be granted subject to that condition.

Variation of new licence

7 (1) A person who makes an application under paragraph 2 may (notwithstanding that no licence has yet been granted in consequence of that application) at the same time apply-

(a) under section 37 for any licence so granted to be varied so as to specify the individual named in the application as the premises supervisor, or

(b) under section 34 for any other variation of any such licence, and for the purposes of an application within paragraph (a) or (b) the applicant is to be treated as the holder of that licence.

(2) In relation to an application within sub-paragraph (1)(a) or (b), the relevant licensing authority may discharge its functions under section 35 or 39 only if, and when, the application under paragraph 2 has been granted.

(3) Where an application within sub-paragraph (1)(a) or (b) is not determined by the relevant licensing authority within the period of two months beginning with the day the application was received by the authority, it is to be treated as having been rejected by the authority under section 35 or 39 (as the case may be) at the end of that period.

Existing licence revoked after grant of new licence

8 (1) This paragraph applies where the relevant licensing authority grants a new licence under this Part in respect of one or more existing licences.

(2) If sub-paragraph (4) applies to the existing licence (or each of the existing licences) which the new licence succeeds, the new licence lapses.

(3) If-

(a) where the new licence relates to more than one relevant existing licence, sub-paragraph (4) applies to one or more, but not all, of those licences, or

(b) sub-paragraph (4) applies to a children’s certificate in respect of the premises,
the licensing authority must amend the new licence so as to remove from it any provision which would not have been included in it but for the existence of any existing licence or certificate to which subparagraph (4) applies.

(4) This sub-paragraph applies to an existing licence or children’s certificate if-
(a) it is revoked before the second appointed day, or
(b) where an appeal against a decision to revoke it is pending immediately before that day, the appeal is dismissed or abandoned.

(5) Any amendment under sub-paragraph (3) takes effect when it is notified to the holder of the new licence by the relevant licensing authority.

(6) The relevant licensing authority must give a copy of any notice under sub-paragraph (5) to the chief officer of police for the police area (or each police area) in which the premises to which the new licence relates are situated.

Appeals
9 (1) Where an application under paragraph 2 is rejected (in whole or in part) by the relevant licensing authority, the applicant may appeal against that decision.

(2) Where a licensing authority grants such an application (in whole or in part), any chief officer of police who gave a notice in relation to it under paragraph 3(2) or (3) (that was not withdrawn) may appeal against that decision.

(3) Where a licence is amended under paragraph 8, the holder of the licence may appeal against that decision.

(4) Section 181 and paragraph 9(1) and (2) of Schedule 5 (general provision about appeals against decisions under Part 3 of this Act) apply in relation to appeals under this paragraph as they apply in relation to appeals under Part 1 of that Schedule.

(5) Paragraph 9(3) of that Schedule applies in relation to an appeal under sub-paragraph (2).

False statements
10 (1) A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with an application under paragraph 2.

(2) For the purposes of sub-paragraph (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Opening hours
11 (1) This paragraph applies where-
(a) within such period (of not less than six months) as may be specified, the holder of a justices’ licence for any premises applies, in accordance with Part 3 of this Act, for the grant of a premises licence in respect of those premises, and
(b) the licence, if granted in the form applied for, would authorise the sale by retail of alcohol.

(2) In determining the application for the premises licence under section 18, the relevant licensing authority may not, by virtue of subsection (3)(b) of that section, grant the licence subject to conditions which prevent the sale of alcohol on the premises during the permitted hours.

(3) But sub-paragraph (2) does not apply where-
(a) there has been a material change in circumstances since the relevant time, and
(b) the relevant representations made in respect of the application include representations made by the chief officer of police for the police area (or any police area) in which the premises are situated advocating that, for the purposes of promoting the crime prevention objective, the premises licence ought to authorise the sale of alcohol during more restricted hours than the permitted hours.
(4) In this paragraph-
“permitted hours” means the permitted hours during which the holder of the justices’ licence is permitted to sell alcohol on the premises under Part 3 of the 1964 Act;
“relevant representations” has the meaning given in section 18(6); and
“relevant time” means the time when the justices’ licence was granted or, if it has been renewed, the last time it was renewed.

Provisional licences

12 (1) Where-
(a) during such period as may be specified the relevant licensing authority receives an application in accordance with Part 3 of this Act for the grant of a premises licence in respect of any premises (“the relevant premises”),
(b) under section 6 of the 1964 Act, a provisional grant of a justices’ licence has been made for-
(i) the relevant premises or a part of them, or
(ii) premises that are substantially the same as the relevant premises or a part of them, and
(c) the conditions of sub-paragraph (2) are satisfied,
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.

(2) The conditions are-
(a) that the provisional grant of the justices’ licence has not been declared final, and
(b) that the premises to which the provisional grant 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 consented to under section 6(3) of that Act.

PART 2

CLUB PREMISES CERTIFICATES

Introductory

13 (1) In this Part-
“existing club certificate” means a certificate held by a club under Part 2 of the 1964 Act for any premises;
“existing qualifying club activities” means the qualifying club activities authorised by the relevant existing club certificate in respect of those premises;
“first appointed day” means such day as may be specified as the first appointed day for the purposes of this Part;
“relevant existing club certificate”, in relation to an application under paragraph 14, means the existing club certificate to which the application relates;
“relevant licensing authority” has the same meaning as in Part 4 of this Act (club premises certificates); and
“second appointed day” means such day as may be specified as the second appointed day for the purposes of this Part.

(2) In the application of section 68 (relevant licensing authority in Part 4 of this Act) for the purposes of this Part, the reference in subsection (4) of that section to an applicant for a club premises certificate is to be read as a reference to an applicant under paragraph 14 for the grant of a certificate under paragraph 16.
Application for conversion of existing club certificate

14 (1) This paragraph applies where, in respect of any premises, a club holds an existing club certificate on the first appointed day.

(2) The club may, within the period of six months beginning with the first appointed day, apply to the relevant licensing authority for the grant of a certificate under paragraph 16 to succeed the existing club certificate so far as it relates to those premises.

(3) An application under this Part must specify the existing qualifying club activities and such other information as may be specified.

(4) The application must also be in the specified form and accompanied by-
   (a) the relevant documents, and
   (b) the specified fee.

(5) The relevant documents are-
   (a) the relevant existing club certificate (or a certified copy of it),
   (b) a plan in the specified form of the premises to which that certificate relates, and
   (c) such other documents as may be specified.

(6) In this paragraph any reference to a certified copy of a document is a reference to a copy of that document certified to be a true copy-
   (a) by the chief executive of the licensing justices for the licensing district in which the premises are situated,
   (b) by a solicitor or notary, or
   (c) by a person of a specified description.

(7) A document which purports to be a certified copy of an existing club certificate is to be taken to be such a copy unless the contrary is shown.

Police consultation

15 (1) Where a person makes an application under paragraph 14, he must give a copy of the application (and any documents which accompany it) to the chief officer of police for the police area (or each police area) in which the premises are situated no later than 48 hours after the application is made.

(2) Where-
   (a) an appeal is pending against a decision to revoke, or to reject an application for the renewal of, the relevant existing club certificate, and
   (b) a chief officer of police who has received a copy of the application under sub-paragraph (1) is satisfied that converting that existing club certificate in accordance with this Part would undermine the crime prevention objective,

he must give the relevant licensing authority and the applicant a notice to that effect.

(3) Where a chief officer of police who has received a copy of the application under sub-paragraph (1) is satisfied that, because of a material change in circumstances since the relevant time, converting the relevant existing club certificate in accordance with this Part would undermine the crime prevention objective, he must give the relevant licensing authority and the applicant a notice to that effect.

(4) For this purpose “the relevant time” means the time when the relevant existing club certificate was granted or, if it has been renewed, the last time it was renewed.

(5) The chief officer of police may not give a notice under subparagraph (2) or (3) after the end of the period of 28 days beginning with the day on which he received a copy of the application under sub-paragraph (1).

Determination of application

16 (1) This paragraph applies where an application is made in accordance with paragraph 14 and the applicant complies with paragraph 15(1).

(2) Subject to sub-paragraphs (3) and (5), the licensing authority must grant the application.

(3) Where a notice is given under paragraph 15(2) or (3) (and not withdrawn), the authority must-
(a) hold a hearing to consider it, unless the authority, the applicant and the chief
officer of police who gave the notice agree that a hearing is unnecessary, and
(b) having regard to the notice, reject the application if it considers it necessary for
the promotion of the crime prevention objective to do so.

(4) If the relevant licensing authority fails to determine the application within the
period of two months beginning with the day on which it received it, then, subject
to sub-paragraph (5), the application is to be treated as granted by the authority
under this paragraph.

(5) An application must not be granted (and is not to be treated as granted under sub-
paragraph (4)) if the existing club certificate has ceased to have effect at-
(a) the time of the determination of the application, or
(b) in a case within sub-paragraph (4), the end of the period mentioned in that sub-
paragraph.

(6) Section 10 applies as if the relevant licensing authority’s functions under sub-
paragraph (3) were included in the list of functions in subsection (4) of that section
(functions which cannot be delegated to an officer of the licensing authority).

Notification of determination and issue of new certificate

17 (1) Where an application is granted under paragraph 16, the relevant licensing
authority must forthwith-
(a) give the applicant a notice to that effect, and
(b) issue the applicant with-
(i) a certificate in respect of the premises (“the new certificate”) in accordance
with paragraph 18, and
(ii) a summary of the new certificate.

(2) Where an application is rejected under paragraph 16, the relevant licensing
authority must forthwith give the applicant a notice to that effect containing a
statement of the authority’s reasons for its decision to reject the application.

(3) The relevant licensing authority must give a copy of any notice it gives under sub-
paragraph (1) or (2) to the chief officer of police for the police area (or each police
area) in which the premises to which the notice relates are situated.

The new certificate

18 (1) The new certificate is to be treated as if it were a club premises certificate (see
section 60), and sections 73, 74 and 75 apply in relation to it accordingly.

(2) The new certificate takes effect on the second appointed day.

(3) The new certificate must authorise the premises to be used for the existing
qualifying club activities.

(4) Subject to sections 73, 74 and 75, the new certificate must be granted subject to such
conditions as reproduce the effect of the conditions subject to which the relevant
existing club certificate has effect at the time the application is granted.

(5) The new certificate must also be granted subject to conditions which reproduce the
effect of any restriction imposed on the use of the premises for the existing
qualifying club activities by any enactment specified for the purposes of this Part.

(6) Nothing in sub-paragraph (4) or (5) requires the new certificate to be granted for a
limited period.

Variation of new certificate

19 (1) A person who makes an application under paragraph 14 may (notwithstanding that
no certificate has yet been granted in consequence of that application) at the same
time apply under section 84 for a variation of the certificate, and, for the purposes of
such an application, the applicant is to be treated as the holder of that certificate.

(2) In relation to an application within sub-paragraph (1), the relevant licensing
authority may discharge its functions under section 85 only if, and when, the
application under this Part has been granted.

(3) Where an application within sub-paragraph (1) is not determined by the relevant
licensing authority within the period of two months beginning with the day the
Existing club certificate revoked after grant of new certificate

20 Where the relevant licensing authority grants a new certificate under this Part, that certificate lapses if and when-

(a) the existing club certificate is revoked before the second appointed day, or
(b) where an appeal against a decision to revoke it is pending immediately before that day, the appeal is dismissed or abandoned.

Appeals

21 (1) Where an application under paragraph 14 is rejected by the relevant licensing authority, the applicant may appeal against that decision.

(2) Where a licensing authority grants such an application, any chief officer of police who gave a notice under paragraph 15(2) or (3) (that was not withdrawn) may appeal against that decision.

(3) Section 181 and paragraph 15(1) and (2) of Schedule 5 (general provision about appeals against decisions under Part 4 of this Act) apply in relation to appeals under this paragraph as they apply in relation to appeals under Part 2 of that Schedule.

(4) Paragraph 15(3) of that Schedule applies in relation to an appeal under sub-paragraph (2).

False statements

22 (1) A person commits an offence if he knowingly or recklessly makes a false statement in or in connection with an application under paragraph 14.

(2) For the purposes of sub-paragraph (1) a person is to be treated as making a false statement if he produces, furnishes, signs or otherwise makes use of a document that contains a false statement.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 3

PERSONAL LICENCES

Introductory

23 (1) Paragraphs 24 to 27 apply where-

(a) during the transitional period, the holder of a justices’ licence applies to the relevant licensing authority for the grant of a personal licence under section 117,
(b) the application is accompanied by the documents mentioned in sub-paragraph (3), and
(c) the applicant gives a copy of the application to the chief officer of police for the relevant licensing authority’s area within 48 hours from the time the application is made.

(2) In this paragraph “transitional period” means such period (of not less than six months) as may be specified for the purposes of this Part.

(3) The documents are-

(a) the justices’ licence (or a certified copy of that licence),
(b) a photograph of the applicant in the specified form which is endorsed, by a person of a specified description, with a statement verifying the likeness of the photograph to the applicant, and
(c) where the applicant has been convicted of any relevant offence or foreign offence on or after the relevant date, a statement giving details of the offence.

(4) In this paragraph any reference to a certified copy of a justices’ licence is to a copy of that licence certified to be a true copy-

(a) by the chief executive of the licensing justices for the licensing district concerned,
(b) by a solicitor or notary, or
(c) by a person of a specified description.

(5) A document which purports to be a certified copy of a justices’ licence is to be taken
to be such a copy, unless the contrary is shown.

Section 120 disapplied

Section 120 (determination of application for grant) does not apply in relation to the
application.

Police objections

(1) Sub-paragraph (2) applies where-
(a) the applicant has been convicted of any relevant offences or foreign offences on
or after the relevant date, and
(b) having regard to-
(i) any conviction of the applicant for a relevant offence, and
(ii) any conviction of his for a foreign offence which the chief officer of police
considers to be comparable to a relevant offence,
whether occurring before or after the relevant date, the chief officer of police is
satisfied that the exceptional circumstances of the case are such that granting
the application would undermine the crime prevention objective.

(2) The chief officer of police must give a notice stating the reasons why he is so
satisfied (an “objection notice”)-
(a) to the relevant licensing authority, and
(b) to the applicant.

(3) The objection notice must be given no later than 28 days after the day on which the
chief officer of police receives a copy of the application in accordance with
paragraph 23(1)(c).

(4) For the purposes of this paragraph-
(a) “relevant offence” and “foreign offence” have the meaning given in section 113,
and
(b) section 114 (spent convictions) applies for the purposes of this paragraph as it
applies for the purposes of section 120.

Determination of application

(1) The relevant licensing authority must grant the application if-
(a) it is satisfied that the applicant holds a justices’ licence, and
(b) no objection notice has been given within the period mentioned in paragraph
25(3) or any notice so given has been withdrawn.

(2) Where the authority is not satisfied that the applicant holds a justices’ licence, it
must reject the application.

(3) Where the authority is so satisfied, but sub-paragraph (1)(b) does not apply, it-
(a) must hold a hearing to consider the objection notice, and
(b) having regard to the notice, must-
(i) reject the application if it considers it necessary for the promotion of the
crime prevention objective to do so, and
(ii) grant the application in any other case.

(4) If the authority fails to determine the application within the period of three months
beginning with the day on which it receives it, then, the application is to be treated
as granted by the authority under this paragraph.

(5) Section 10 applies as if the relevant licensing authority’s functions under sub-
paragraph (3) were included in the list of functions in subsection (4) of that section
(functions which cannot be delegated to an officer of the licensing authority).

(6) In the application of section 122 (notification of determinations) to a determination
under this paragraph, the references to an objection notice are to be read as
references to an objection notice within the meaning of paragraph 25(2).
Appeals

27 (1) Where a licensing authority rejects an application under paragraph 26, the applicant may appeal against that decision.

(2) Where a licensing authority grants an application for a personal licence under paragraph 26(3), the chief officer of police who gave the objection notice may appeal against that decision.

(3) Section 181 and paragraph 17(6) and (7) of Schedule 5 (general provision about appeals relating to personal licences) apply in relation to appeals under this paragraph as they apply in relation to appeals under paragraph 17 of that Schedule.

(4) Paragraph 17(8) of that Schedule applies in relation to an appeal under sub-paragraph (2) above.

Interpretation of Part 3

28 For the purposes of this Part-

“relevant date”, in relation to the holder of a justices’ licence, means-

(a) the date when the licence was granted, or

(b) where it has been renewed, the last date when it was renewed, or

(c) where it has been transferred to the holder and has not been renewed since the transfer, the date when it was transferred; and

“relevant licensing authority”, in relation to an application for a personal licence under section 117, means the authority to which the application is made in accordance with that section.

PART 4

MISCELLANEOUS AND GENERAL

Consultation on licensing policy

29 Until such time as section 59 of the 1964 Act (prohibition of sale, etc. of alcohol except during permitted hours and in accordance with justices’ licence etc.) ceases to have effect in accordance with this Act, section 5(3) of this Act (licensing authority’s duty to consult before determining licensing policy) has effect as if for paragraphs (c) to (e) there were substituted-

“(c) such persons as the licensing authority considers to be representative of holders of existing licences (within the meaning of Part 1 of Schedule 8) in respect of premises situated in the authority’s area,

(d) such persons as the licensing authority considers to be representative of clubs registered (within the meaning of the Licensing Act 1964 (c.26)) in respect of any premises situated in the authority’s area,”.

Meaning of “methylated spirits” (transitory provision)

30 Until such time as an order is made under subsection (6) of section 5 of the Finance Act 1995 (c.4) (denatured alcohol) bringing that section into force, section 191 of this Act (meaning of “alcohol”) has effect as if-

(a) for subsection (1)(f) there were substituted-

“(f) methylated spirits,”, and

(b) in subsection (2), the definition of “denatured alcohol” were omitted and at the appropriate place there were inserted-

“methylated spirits” has the same meaning as in the Alcoholic Liquor Duties Act 1979 (c.4);”.

Savings

31 Notwithstanding the repeal by this Act of Schedule 12 to the London Government Act 1963 (c.33) (licensing of public entertainment in Greater London), or of any enactment amending that Schedule, that Schedule shall continue to apply in relation to-

(a) licences granted under section 21 of the Greater London Council (General Powers) Act 1966 (c.xxviii) (licensing of public exhibitions in London), and

(b) licences granted under section 5 of the Greater London Council (General Powers)
Act 1978 (c.xiii) (licensing of entertainments booking offices in London), as it applied before that repeal.

32 (1) In Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (c.30) (control of sex establishments), paragraph (ii) of the proviso to paragraph 3A (as substituted by paragraph 85(3) of Schedule 6 to this Act) does not apply in relation to a borough of a participating council (within the meaning of section 2 of the London Local Authorities Act 1990 (c.vii)) which has appointed a day under section 3 of that Act for the coming into force of section 18 of that Act (repeal of paragraph (ii) of the proviso to paragraph 3A of Schedule 3 to that Act).

(2) On or after the coming into force of paragraph 85(3) of Schedule 6 to this Act, the reference in section 18 of that Act to paragraph (ii) of the proviso to paragraph 3A of Schedule 3 to that Act is to be read as a reference to that paragraph as substituted by paragraph 85(3) of Schedule 6 to this Act.

33 Notwithstanding that by virtue of this Act the Cinemas Act 1985 (c.13) ceases to have effect in England and Wales, section 6 of that Act (other than subsection (3)), and sections 5, 20 and 21 of that Act so far as relating to that section, shall continue to have effect there for the purposes of-

(a) paragraph 3(2)(b) of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (definition of “sex cinema”), and

(b) section 3(6)(b) of the Video Recordings Act 1984 (c.39) (exempted supplies).

Interpretation

34 In this Schedule-

“justices’ licence” means a justices’ licence under Part 1 of the 1964 Act;

“specified” means specified by order; and

“the 1964 Act” means the Licensing Act 1964 (c.26).
APPENDIX 2: LICENSING ACT 2003
(PREMISES LICENCES AND CLUB PREMISES CERTIFICATES) REGULATIONS 2005

2005 No. 42

LICENCES AND LICENSING

The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005

Made -------------------------------12th January 2005
Laid before Parliament ------------------13th January 2005
Coming into force ---------------------7th February 2005

The Secretary of State, in exercise of the powers conferred upon her by sections 13(4)(i), 17(3)(b), 17(4)(b), 17(5)(a)(ii), 17(5)(c), 17(5)(c), 24(1), 29(6), 30(2), 34(5), 37(3)(a), 47(2)(a), 51(3), 54, 69(4), 71(4)(b), 71(5), 71(6), 78(1), 84(4), 87(3), 91, 167(4), 178(1)(b), 178(4)(a) and 197 of the Licensing Act 2003\(^1\), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 and shall come into force on 7th February 2005.

Interpretation

2.—(1) In these Regulations, unless the context requires otherwise—

“the Act” means the Licensing Act 2003;
“alternative scale plan” means a plan in a scale other than the standard scale;
“application” means an application made to a relevant licensing authority under Part 3 or Part 4 of the Act as the case may require and a reference to applications shall be construed accordingly;
“club” means a qualifying club within the meaning of section 61 of the Act;
“fire and other safety equipment” includes fire extinguishers, fire doors, fire alarms, marine safety equipment, marine evacuation equipment and other similar equipment;
“legible in all material respects” means that the information contained in the application, notice or representations is available to the recipient to no lesser extent than it would be if given by means of a document in written form;
“notice” means a notice given to a relevant licensing authority under Part 3 or Part 4 of the Act as the case may require and a reference to notices shall be construed accordingly;
“prescribed fee” in relation to an application or notice, shall be the fee for such application or notice calculated in accordance with regulations made by the Secretary of State under Part 3 and Part 4 of the Act or in accordance with an order made by the Secretary of State under Schedule 8 to the Act;
“relevant licensing authority” shall be construed in accordance with section 12, 68 or 171 of, or paragraph 1 or 13 of Schedule 8 to, the Act, as the case requires;
“representations” means representations made to a relevant licensing authority under Part 3, Part 4 or Part 8 of the Act as the case may require made by an interested party or a responsible authority in relation to an application or a review;
“review” means a review under Part 3, 4 or 8 of the Act as the case may require and a reference to reviews shall be construed accordingly;
“second appointed day” in relation to a premises licence, means the day as specified as such for the purposes of Part 1 of Schedule 8 to the Act and, in relation to a club premises

\(^1\) 2003 c.17
certificate means the day as specified as such for the purposes of Part 2 of Schedule 8 to the Act; and

“standard scale” means that 1 millimetre represents 100 millimetres.

(2) For the purposes of these Regulations a reference to—

(a) a paragraph in a regulation or in a Schedule, a Schedule or a Part is a reference to the paragraph in that regulation or that Schedule, the Schedule or the Part in these Regulations; and

(b) a section should be construed as a reference to the section of the Act.

PART 1
INTRODUCTORY

Scope of Regulations

3. These Regulations apply to applications, notices, representations and reviews.

4. A person applying for a premises licence, a provisional statement, a variation of a premises licence, a review of a premises licence or a transfer of a premises licence or giving an interim authority notice shall comply with the appropriate provisions of Parts 2 and 4.

5. A club applying for a club premises certificate or a variation of a club premises certificate or a person applying for a review of a club premises certificate shall comply with the appropriate provisions of Parts 3 and 4.

6. The relevant licensing authority in relation to an application, notice, representations or a review shall comply with the appropriate provisions of Parts 4 and 5.

Responsible authorities

7. For the purposes of sections 13(4) and 69(4), the local weights and measures authority (within the meaning of section 69 of the Weights and Measures Act 1985) for any area in which the premises is situated is a responsible authority.

Person giving interim authority notice

8. For the purposes of section 47(2)(a), a person has a prescribed interest in the premises concerned if he has a legal interest in the premises as freeholder or leaseholder.

Rights of freeholder etc. to be notified of licensing matters

9. In a case of a person giving a notice of his property interest in any premises under section 178, that notice shall be in the form and shall contain the information set out in Schedule 1 and shall be accompanied by the prescribed fee.

PART 2
PREMISES LICENCES

Premises licences

10. An application for a premises licence under section 17 shall be in the form and shall contain the information set out in Schedule 2 and shall be accompanied by the prescribed fee.

Provisional statements

11. An application for a provisional statement under section 29 shall be in the form and shall contain the information set out in Schedule 3 and shall be accompanied by the prescribed fee.

Variation of premises licences

12. An application to vary a premises licence under section 34 shall be in the form and shall contain the information set out in Schedule 4 and shall be accompanied by the prescribed fee.
Variation of premises licences to specify premises supervisor

13. An application to vary a premises licence so as to specify the individual named in the application as the premises supervisor under section 37 shall be in the form and shall contain the information set out in Schedule 5 and shall be accompanied by the prescribed fee (provided that in a case where the application is made at the same time as an application under paragraph 2 of Schedule 8 to the Act, the application shall be in the form and shall contain the information set out in Part B of Schedule 1 to the Licensing Act 2003 (Transitional provisions) Order 2005).

Transfer of premises licences

14. An application to transfer a premises licence under section 42 shall be in the form and shall contain the information set out in Schedule 6 and shall be accompanied by the prescribed fee.

Interim authority notices

15. An interim authority notice given under section 47 shall be in the form and shall contain the information set out in Schedule 7 and shall be accompanied by the prescribed fee.

Review of premises licences

16. An application for a review of a premises licence under section 51 shall be in the form and shall contain the information set out in Schedule 8.

PART 3

CLUB PREMISES CERTIFICATES

Qualifying club

17. A club applying for a club premises certificate under section 71 on or before making such an application shall make a declaration to the relevant licensing authority in the form and containing the information set out in Part A of Schedule 9.

Club premises certificates

18. An application for a club premises certificate under section 71 shall be in the form and shall contain the information set out in Part B of Schedule 9 and shall be accompanied by the prescribed fee.

Variation of club premises certificates

19. An application to vary a club premises certificate under section 84 shall be in the form and shall contain the information set out in Schedule 10 and shall be accompanied by the prescribed fee (provided that in a case where the application to vary is made at the same time as an application under paragraph 14 of Schedule 8 to the Act, the application shall be in the form and shall contain the information set out in Part B of Schedule 4 to the Licensing Act 2003 (Transitional provisions) Order 2005).

Review of club premises certificates

20. An application to review a club premises certificate under section 87 shall be in the form and shall contain the information set out in Schedule 8.
PART 4
GENERAL

Applications, notices and representations

21. —(1) An application, a notice or representations shall be given in writing.
(2) Notwithstanding the requirement in paragraph (1) and subject to paragraph (3), that requirement shall be satisfied in a case where—
   (a) the text of the application, notice or representations—
      (i) is transmitted by electronic means;
      (ii) is capable of being accessed by the recipient;
      (iii) is legible in all material respects; and
      (iv) is capable of being read and reproduced in written form and used for subsequent reference;
   (b) the person to whom the application or notice is to be given or the representations are to be made has agreed in advance that an application or a notice may be given or representations may be made by electronic means; and
   (c) forthwith on sending the text of the application, notice or representations by electronic means, the application, notice or representations is given or made, as applicable, to the recipient in writing.
(3) Where the text of the application, notice or representations is or are transmitted by electronic means, the giving of the application or notice or the making of the representation shall be effected at the time the requirements of paragraph 2(a) are satisfied, provided that where any application or notice is required to be accompanied by a fee, plan or other document or information that application or notice shall not be treated as given until the fee, plan or other document or information has been received by the relevant licensing authority.

Representations

22.—An interested party or a responsible authority making representations to a relevant licensing authority, may make those representations—
   (a) in the case of a review of a premises licence following a closure order, at any time up to and including seven days starting on the day after the day on which the authority received the notice under section 165(4) in relation to the closure order and any extension to it;
   (b) in any other case, at any time during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant.

Plans

23.—(1) An application for a premises licence under section 17, or a club premises certificate under section 71, shall be accompanied by a plan of the premises to which the application relates and which shall comply with the following paragraphs of this regulation.
(2) Unless the relevant licensing authority has previously agreed in writing with the applicant following a request by the applicant that an alternative scale plan is acceptable to it, in which case the plan shall be drawn in that alternative scale, the plan shall be drawn in standard scale.
(3) The plan shall show—
   (a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
   (b) the location of points of access to and egress from the premises;
   (c) if different from sub-paragraph (3)(b), the location of escape routes from the premises;
   (d) in a case where the premises is to be used for more than one licensable activity, the area within the premises used for each activity;
Appendix 2: LA 2003 (PL and CPC) Regs 2005

(e) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
(f) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
(g) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
(h) in the case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
(i) the location and type of any fire safety and any other safety equipment including, if applicable, marine safety equipment; and
(j) the location of a kitchen, if any, on the premises.

(3) The plan may include a legend through which the matters mentioned or referred to in paragraph (3) are sufficiently illustrated by the use of symbols on the plan.

Consents

24.—(1) In the case of an application under section 17 which relates to the supply of alcohol or section 37, the consent of the individual who the applicant wishes to have specified in the licence as the premises supervisor under section 17(3)(c) or 37(3)(a) in the premises licence shall be in the form set out in Part A of Schedule 11.
(2) In the case of an application to transfer a premises licence under section 42 or 43, the consent of the holder of the premises licence under section 43(4) or 44(4) shall be in the form set out in Part B of Schedule 11.

Advertisement of applications

25. In the case of an application for a premises licence under section 17, for a provisional statement under section 29, to vary a premises licence under section 34, for a club premises certificate under section 71 or to vary a club premises certificate under section 84, the person making the application shall advertise the application, in both cases containing the appropriate information set out in regulation 26—
(a) for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority, by displaying a notice,
   (i) which is—
      (aa) of a size equal or larger than A4,
      (bb) of a pale blue colour,
      (cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;
   (ii) in all cases, prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises and in the case of a premises covering an area of more than fifty metres square, a further notice in the same form and subject to the same requirements every fifty metres along the external perimeter of the premises abutting any highway; and
(b) by publishing a notice—
   (i) in a local newspaper or, if there is none, in a local newsletter, circular or similar document, circulating in the vicinity of the premises;
   (ii) on at least one occasion during the period of ten working days starting on the day after the day on which the application was given to the relevant licensing authority.

26.—(1) In the case of an application for a premises licence or a club premises certificate, the notices referred to in regulation 25 shall contain a statement of the relevant licensable activities or relevant qualifying club activities as the case may require which it is proposed will be carried on on or from the premises.
(2) In the case of an application for a provisional statement, the notices referred to in regulation 25—
(a) shall state that representations are restricted after the issue of a provisional statement; and
(b) where known, may state the relevant licensable activities which it is proposed will be carried on on or from the premises.

(3) In the case of an application to vary a premises licence or a club premises certificate, the notices referred to in regulation 25 shall briefly describe the proposed variation.

(4) In all cases, the notices referred to in regulation 25 shall state—

(a) the name of the applicant or club;
(b) the postal address of the premises or club premises, if any, or if there is no postal address for the premises a description of those premises sufficient to enable the location and extent of the premises or club premises to be identified;
(c) the postal address and, where applicable, the worldwide web address where the register of the relevant licensing authority is kept and where and when the record of the application may be inspected;
(d) the date by which an interested party or responsible authority may make representations to the relevant licensing authority;
(e) that representations shall be made in writing; and
(f) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

Notice to responsible authority

27. In the case of an application for a premises licence under section 17, a provisional statement under section 29, a variation of a premises licence under section 34, a review under section 51, a club premises certificate under section 71, a review under section 87 or a variation of a club premises certificate under section 84, the person making the application shall give notice of his application to each responsible authority by giving to each authority a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority.

Notice to chief officer of police etc.

28. In the case of—

(a) an application to vary a premises licence under section 37 (to specify an individual as premises supervisor), the person making the application shall give to—

(i) the chief officer of police, and

(ii) the designated premises supervisor, if any,

a copy of the application together with its accompanying documents, if any, on the same day as the day on which the application is given to the relevant licensing authority;

(b) an application for the transfer of a premises licence under section 42 or the giving of an interim authority notice under section 47, the person making the application or giving the notice shall give to the chief officer of police a copy of the application or interim authority notice together with its accompanying documents, if any, on the same day as the day on which the application or notice is given to the relevant licensing authority.

Notification of review

29. In the case of an application for a review of a premises licence under section 51 or a review of a club premises certificate under section 87, the person making the application shall give notice of his application to each responsible authority and to the holder of the premises licence or the club in whose name the club premises certificate is held and to which the application relates by giving to the authority, the holder or the club a copy of the application for review together with its accompanying documents, if any, on the same day as the day on which the application for review is given to the licensing authority.
PART 5

LICENSING AUTHORITIES – MISCELLANEOUS

Validity of premises licences and club premises certificates

30. A relevant licensing authority may not grant a premises licence or club premises certificate to have effect before the second appointed day.

Frivolous, vexatious or repetitious representations

31. Where the relevant licensing authority notifies the person who made the representations that the representations are frivolous, vexatious or a repetition as the case requires, that notification shall be given in writing to the person who made the representations and as soon as is reasonably practicable and in any event before the determination of the application to which the representations relate.

Notification that any ground for review is frivolous, vexatious or a repetition

32. Where the relevant licensing authority rejects a ground for a review under section 51(4)(b) or section 87(4)(b) it shall give notification in writing as soon as is reasonably practicable to the person making the application for a review.

Form of premises licence and summary

33. A premises licence shall—
(a) include an identifier for the relevant licensing authority;
(b) include a number that is unique to the licence; and
(c) be in the form and shall contain the information set out in Part A of Schedule 12.

34. A summary of a premises licence shall—
(a) include the identifier for the relevant licensing authority;
(b) include the licence number referred to in regulation 33; and
(c) be in the form and shall contain the information set out in Part B of Schedule 12, printed on paper of a size equal to or larger than A4.

Form of club premises certificate and summary

35. A club premises certificate shall—
(a) include an identifier for the relevant licensing authority;
(b) include a number that is unique to the certificate; and
(c) be in the form and shall contain the information set out in Part A of Schedule 13.

36. A summary of a club premises certificate summary shall—
(a) include the identifier for the relevant licensing authority;
(b) include the certificate number referred to in regulation 35; and
(c) be in the form and shall contain the information set out in Part B of Schedule 13, printed on paper of a size equal to or larger than A4.

Review of premises licence following closure order

37. In the case of a review of a premises licence under section 167 (review of premises licence following a closure order), within the period of one working day starting on the day after the day on which the relevant licensing authority received the notice under section 165(4) from the magistrates’ court, the relevant licensing authority shall give to the holder of the premises licence and each responsible authority notice in writing of—
(a) the review;
(b) the dates between which interested parties and responsible authorities may make representations relating to the review to the relevant licensing authority;
(c) the closure order and any extension of it; and
(d) any order made in relation to it under section 165(2).
Advertisement of review by licensing authority

38.—(1) Subject to the provisions of this regulation and regulation 39, the relevant licensing authority shall advertise an application for the review of a premises licence under section 51(3), of a club premises certificate under section 87(3) or of a premises licence following a closure order under section 167—

(a) by displaying prominently a notice—

(i) which is—

(aa) of a size equal or larger than A4;

(bb) of a pale blue colour; and

(cc) printed legibly in black ink or typed in black in a font of a size equal to or larger than 16;

(ii) at, on or near the site of the premises to which the application relates where it can conveniently be read from the exterior of the premises by the public and in the case of a premises covering an area of more than fifty metres square, one further notice in the same form and subject to the same requirements shall be displayed every 50 metres along the external perimeter of the premises abutting any highway; and

(iii) at the offices, or the main offices, of the licensing authority in a central and conspicuous place; and

(b) in a case where the relevant licensing authority maintains a website for the purpose of advertisement of applications given to it, by publication of a notice on that website;

(2) the requirements set out in paragraph (1) shall be fulfilled—

(i) in the case of a review of a premises licence following a closure order under section 167, for a period of no less than seven consecutive days starting on the day after the day on which the relevant licensing authority received the notice under section 165(4); and

(ii) in all other cases, for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority.

39. All notices referred to in regulation 38 shall state—

(a) the address of the premises about which an application for a review has been made,

(b) the dates between which interested parties and responsible authorities may make representations to the relevant licensing authority,

(c) the grounds of the application for review,

(d) the postal address and, where relevant, the worldwide web address where the register of the relevant licensing authority is kept and where and when the grounds for the review may be inspected; and

(e) that it is an offence knowingly or recklessly to make a false statement in connection with an application and the maximum fine for which a person is liable on summary conviction for the offence.

Provision of forms, notices and applications

40. The relevant licensing authority—

(a) must provide on request the forms listed in the Schedules printed on paper; or

(b) in a case where the relevant licensing authority maintains a website, it may provide electronic copies of the forms listed in the Schedules on such a website.

Validity of forms, notices and application

41. A relevant licensing authority shall not reject any application or notice by reason only of the fact that it is given on a form provided otherwise than from the relevant licensing authority but which complies with the requirements of these Regulations.
Acknowledgement of notification of an interest

42. The relevant licensing authority shall as soon as reasonably practicable on receipt of a notification to it under section 178 acknowledge its receipt by returning a copy of the notification to the notifier duly endorsed.

Richard Caborn
Minister of State
Date 12th January 2005
Department for Culture, Media and Sport

EXPLANATORY NOTE
(This note is not part of the Regulations)

The Licensing Act 2003 (c.17) (the Act) provides for the licensing of premises for 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. These Regulations set out the detailed requirements relating to applications, notices and representations given or made under Parts 3 and 4 of the Act and reviews made under those Parts and Part 8 of the Act.

In particular, these Regulations, provide that weights and measures authorities are responsible authorities (regulation 7). Also, that persons with a prescribed interest in a premises include those with a legal interest as freeholder or leaseholder (regulation 8) and Schedule 1 sets out the form of the notice to be given by a person to notify a relevant licensing authority or his, her or its interest in a licensed premises (regulation 9).

Regulations 10 to 16 and Schedules 2 to 8 set out the form of applications and notices for the grant of a premises licence, the issue of a provisional statement, an application for variation of a premises licence, an application to vary a premises licence to specify the premises supervisor, an application to transfer a premises licence, the giving of an interim authority notice and an application for the review of a premises licence.

Regulations 17 to 20 and Schedules 9 and 10 set out the form of applications and declarations given by qualifying clubs. These include the form of the club declaration in which a club shows that it is a qualifying club, an application for a club premises certificate, and an application to vary a club premises certificate. Schedule 8 also sets out the form for an application to review a club premises certificate.

The Regulations provide that applications, notices and representations must be given or made in writing but includes a discretion for this requirement to be fulfilled by electronic means (regulation 21).

Regulation 22 sets out the time limits during which representations must be made. Regulation 23 sets out the detailed requirements for plans of premises and club premises to be submitted with applications.

Regulation 24 and Schedule 11 set out the form of consents to be given by the premises supervisor of a premises and the holder of the premises licence in certain circumstances.

Regulations 25, 26, 38 and 39 set out the requirements for the advertisement of applications and reviews by applicants and by relevant licensing authorities.

Regulation 27 requires that persons or clubs applying for a premises licence, club premises certificate, provisional statement, variation of a premises licence or club premises certificate, review of a premises licence or club premises certificate give notice of the application by giving each responsible authority a copy of the application together with its accompanying documents on the same day as the day on which that application is given to the relevant licensing authority. Further, regulations 28 and 29 set out the requirements for giving of notices to the chief officer of police, the premises supervisor, the responsible authorities, the holder of the premises licence...
and the club holding the club premises certificate in a number of circumstances where this is required by the Act.

Regulations 33 to 36 provide for the form of a premises licence and club premises certificate and regulation 30 states that they may not be granted to have effect until the second appointed day.

Regulations 31 and 32 provide that the notification from a licensing authority that any representations or a ground for review is frivolous, vexatious or repetitious must be given in writing and as soon as reasonably practicable.

Regulation 37 sets out the requirements for the notice given by the relevant licensing authority to the holder of the premises licence and responsible authorities in respect of the review of a premises licence following a closure order under Part 8 of the Act.

Regulations 40 and 41 provide that the relevant licensing authority must provide the forms listed in the Schedules to these Regulations on request and that a licensing authority cannot reject any application or notice by reason only that it is given on a form provided from another source other than that relevant licensing authority. Finally, regulation 42 requires the relevant licensing authority to acknowledge a notice received by it under section 178 of the Act.

A Regulatory Impact Assessment in relation to these Regulations has been placed in the libraries of both Houses of Parliament and copies may be obtained from the Alcohol and Entertainment Licensing Branch of the Department of Culture, Media and Sport, 3rd Floor, 2–4 Cockspur Street, London SW1Y 5DH or view on the Department’s website, www.culture.gov.uk.
APPENDIX 3: LICENSING ACT 2003
(PERSONAL LICENCES) REGULATIONS 2005

2005 No. 41

LICENCES AND LICENSING

The Licensing Act 2003 (Personal licences) Regulations 2005

Made -----------------------------12th January 2005
Laid before Parliament ------------------13th January 2005
Coming into force ------------------------7th February 2005

The Secretary of State, in exercise of the powers conferred upon her by sections 125(4) and 133(1)
of the Licensing Act 2003¹, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Licensing Act 2003 (Personal licences) Regulations 2005 and shall come into force on 7th February 2005.

Interpretation

2. — In these Regulations—
“the Act” means the Licensing Act 2003;
“legible in all material respects” means that the information contained in the application is available to the recipient to no lesser extent than it would be if it were given by means of a document in written form;
“person of standing in the community” includes a bank or building society official, a police officer, a civil servant or a minister of religion; and
“prescribed fee” in relation to an application, shall be the fee for such application calculated in accordance with the regulations made by the Secretary of State under Part 6 of the Act.

Scope

3. These Regulations apply to applications made under and in relation to Part 6 (personal licences) of the Act.

Person to whom a personal licence may be granted who does not possess a licensing qualification

4. —The following persons are prescribed for the purposes of section 120(2)(b) of the Act—
(a) a member of the company of the Master, Wardens, Freemen and Commonalty of the Mistery of the Vintners of the City of London;
(b) a person operating under a licence granted by the University of Cambridge; or
(c) a person operating premises under a licence granted by the Board of the Green Cloth.

Form of personal licence

5. A personal licence shall be in the form of a physical document in two separate parts and shall contain—
(a) in the first part, the matters referred to in section 125(2) of the Act, a photograph of the holder, a number allocated by the licensing authority that is unique to the licence, an identifier for the licensing authority granting the licence and the date of the expiry of the licence and this part shall be produced in durable form and shall be of a size no larger than 70mm x 100mm, and
(b) in the second part, the matters referred to in section 125(3) of the Act and the matters referred to in (a) except that the photograph of the holder shall be omitted.

Application for grant or renewal of a personal licence

6.—(1) Except in the case of an application for the grant of a personal licence by the holder of a justices' licence during the period commencing on 7th February 2005 and ending on 6th August 2005, in which case the provisions of regulation 8 shall apply, an application for the grant of a personal licence made under section 117 of the Act (application for grant or renewal of a personal licence) shall be in the form and shall contain the information set out in Schedule 1 to these Regulations and shall be accompanied by the prescribed fee.

(2) An application for the renewal of a personal licence made under section 117 of the Act (application for grant or renewal of a personal licence) shall be in the form and shall contain the information set out in Schedule 2 to these Regulations and shall be accompanied by the prescribed fee.

7.—(1) An application made under regulation 6(1) or 6(2) shall be accompanied by the following documents—

(a) two photographs of the applicant, which shall be—

(i) taken against a light background so that the applicant's features are distinguishable and contrast against the background,

(ii) 45 millimetres by 35 millimetres,

(iii) full face uncovered and without sunglasses and, unless the applicant wears a head covering due to his religious beliefs, without a head covering,

(iv) on photographic paper, and

(v) one of which is endorsed with a statement verifying the likeness of the photograph to the applicant by a solicitor, notary, a person of standing in the community or any individual with a professional qualification; and

(b) either—

(i) a criminal conviction certificate issued under section 112 of the Police Act 1997\(^2\),

(ii) a criminal record certificate issued under section 113A of the Police Act 1997 or

(iii) the results of a subject access search under the Data Protection Act 1998\(^3\) of the Police National Computer by the National Identification Service, and

in any case such certificate or search results shall be issued no earlier than one calendar month before the giving of the application to the relevant licensing authority, and

(c) a declaration by the applicant, in the form set out in Schedule 3, that either he has not been convicted of a relevant offence or a foreign offence or that he has been convicted of a relevant offence or a foreign offence accompanied by details of the nature and date of the conviction and any sentence imposed on him in respect of it.

(2) Except in the case of a person prescribed under regulation 4, an application under regulation 6(1) shall be accompanied by the licensing qualification of the applicant.

8.—(1) An application for the grant of a personal licence made under section 117 of the Act by a holder of a justices' licence during the period commencing on 7th February 2005 and ending on 6th August 2005 shall be in the form and contain the information set out in Schedule 3, insofar as the provisions are relevant to the application, and Schedule 4 and shall comply with the remaining provisions of this regulation.

(2) The application shall be accompanied by—

(a) the prescribed fee;

(b) in addition to the documents mentioned in paragraph 23(3) of Schedule 8 to the Act, by a second photograph of the applicant in identical form to the requirements in respect of a photograph of the applicant set out in article 10 of the Licensing Act

\(^2\) 1997 c.50

\(^3\) 1998 c.29
9.—(1) An application shall be given in writing.
(2) Notwithstanding the requirement in paragraph (1) and subject to paragraph (3), that requirement shall be satisfied in a case where—
   (a) The text of the application—
       (i) is transmitted by electronic means;
       (ii) is capable of being accessed by the recipient;
       (iii) is legible in all material respects; and
       (iv) is capable of being read and reproduced in legible written form and used for subsequent reference;
   (b) the person to whom the application is to be given has agreed in advance that an application may be given to them by those means; and
   (c) forthwith on sending the text of the application by electronic means, the application is given to the recipient in writing.
(3) Where the text of the application is transmitted by electronic means, the giving of the application shall be effected at the time the requirements of paragraph 2(a) are satisfied, provided that where any application is required to be accompanied by a fee, or any document that application shall not be treated as given until the fee or document has been received by the relevant licensing authority.

Provision of forms

10. The relevant licensing authority—
   (a) must provide on request the forms listed in the Schedules printed on paper; or
   (b) in a case where the relevant licensing authority maintains a website, it may provide electronic copies of the forms listed in the Schedules on such a website.

Validity of forms

11. A licensing authority shall not reject any application by reason only of the fact that it is given on a form provided otherwise than from the relevant licensing authority but which complies with the requirements of these Regulations.

Richard Caborn
Minister of State

Date 12th January 2005
Department for Culture, Media and Sport

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations make provision for the detailed requirements to be fulfilled by applicants for personal licences under Part 6 of the Licensing Act 2003 (c.17) (“the Act”). In addition the Regulations prescribe those persons to whom a licence may be granted who do not possess a licensing qualification (regulation 4). The form of the personal licence is prescribed in regulation 5.

The Regulations prescribe the application form to be used by the applicant, the information to be supplied and the documents to accompany the application for an application for the grant or renewal of a personal licence (regulations 6 and 7 and Schedules 1 to 3). In respect of an
application for a personal licence made by the holder of a justices’ licence during the period commencing on 7th February 2005 and ending on 6th August 2005 regulation 8 and Schedules 3 and 4 prescribe the application form to be used by the applicant, the information to be supplied and the documents to accompany the application. In the case of such applications reference should also be made to the Licensing Act 2003 (Transitional provisions) Order 2005 S.I. 2005/40.

The Regulations require the relevant licensing authority to provide the application forms for applicants on request and provides a discretion to provide these on its website.

A Regulatory Impact Assessment in relation to these Regulations has been placed in the libraries of both Houses of Parliament and copies may be obtained from the Alcohol and Entertainment Licensing Branch of the Department of Culture, Media and Sport, 3rd Floor, 2–4 Cockspur Street, London SW1Y 5DH or viewed on the Department’s website, www.culture.gov.uk.
APPENDIX 4: LICENSING ACT 2003  
(HEARINGS) REGULATIONS 2005

2005 No. 42

LICENCES AND LICENSING

The Licensing Act 2003 (Hearings) Regulations 2005*

Made ------------------------12th January 2005
Laid before Parliament ------------13th January 2005
Coming into force ---------------7th February 2005

The Secretary of State, in exercise of the powers conferred upon her by sections 9(2) and 183(1) of the Licensing Act 2003\(^1\) hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Licensing Act 2003 (Hearings) Regulations 2005 and shall come into force on 7th February 2005.

Interpretation

2.—(1) In these Regulations—
   “the Act” means the Licensing Act 2003;
   “authority” means, in relation to a hearing, the relevant licensing authority which has the duty under the Act to hold the hearing which expression includes the licensing committee or licensing sub-committee discharging the function of holding the hearing;
   “determination” is to be interpreted in accordance with Schedule 4;
   “hearing” means the hearing referred to in column 1 of the table in Schedule 1 as the case may require;
   “legible in all material respects” means that the information contained in the notice is available to the recipient to no lesser extent than it would be if given by means of a document in written form;
   “notice of hearing” means the notice given under regulation 6(1);
   “party to the hearing” means a person to whom the notice of hearing is to be given in accordance with regulation 6(1) and party and parties shall be construed accordingly.

   (2) In these Regulations, a reference to the application, representations or notice made by a party means the application, representations or notice referred to in relation to that party in column 2 of the table in Schedule 2.

   (3) In these Regulations, a reference to a section, or a paragraph of a Schedule is a reference to the section of, or the paragraph of the Schedule to, the Act.

Scope

3. These Regulations make provision for the procedure to be followed in relation to hearings held under the Act by an authority.

Period of time within which hearing to be held

4. The authority shall arrange for the date on which and time and place at which a hearing is to be held in accordance with regulation 5 and shall give a notice of hearing in accordance with regulations 6 and 7.

\(^{1}\) 2003 c.17.
5. Hearings to be held under the provisions listed in column 1 of the table in Schedule 1 must be commenced within the period of time specified in column 2 of the table and in a case where the hearing is to be held on more than one day, the hearing must be arranged to take place on consecutive working days.

Notice of hearing

6.—(1) In the case of hearings under the provisions listed in column 1 of the table in Schedule 2, the authority shall give to the persons listed in column 2 of the table a notice stating the date on which and time and place at which the hearing is to be held (the “notice of hearing”) in accordance with the following provisions of this regulation.

(2) In the case of a hearing under—
   - section 48(3)(a) (cancellation of interim authority notice following police objection), or
   - section 105(2)(a) (counter notice following police objection to temporary event notice),
the authority shall give the notice of hearing no later than two working days before the day or the first day on which the hearing is to be held.

(3) In the case of a hearing under—
   - section 167(5)(a) (review of premises licence following closure order),
   - paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence),
   - paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or
   - paragraph 26(3)(a) of Schedule 8 (determination of application by holder of justices’ licence for grant of personal licence),
the authority shall give the notice of hearing no later than five working days before the day or the first day on which the hearing is to be held.

(4) In any other case, the authority shall give notice of hearing no later than ten working days before the day of the first day on which the hearing is to be held.

Information to accompany notice of hearing

7.—(1) The notice of hearing shall be accompanied by information regarding the following—
   - the rights of a party provided for in regulations 15 and 16;
   - the consequences if a party does not attend or is not represented at the hearing;
   - the procedure to be followed at the hearing;
   - any particular points on which the authority considers that it will want clarification at the hearing from a party.

(2) In relation to hearings under the provisions listed in column 1 of the table in Schedule 3, the notice of hearing given to the persons listed in column 2 of the table shall also be accompanied by the documents listed in column 3 of the table.

Action following receipt of notice of hearing

8.—(1) A party shall give to the authority within the period of time provided for in the following provisions of this regulation a notice stating—
   - whether he intends to attend or be represented at the hearing;
   - whether he considers a hearing to be unnecessary.

(2) In a case where a party wishes any other person (other than the person he intends to represent him at the hearing) to appear at the hearing, the notice referred to in paragraph (1) shall contain a request for permission for such other person to appear at the hearing accompanied by details of the name of that person and a brief description of the point or points on which that person may be able to assist the authority in relation to the application, representations or notice of the party making the request.

(3) In the case of a hearing under—
   - section 48(3)(a) (cancellation of interim authority notice following police objection), or
the party shall give the notice no later than one working day before the day or the first day on which the hearing is to be held.

(4) In the case of a hearing under—

(a) section 167(5)(a) (review of premises licence following closure order),
(b) paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence),
(c) paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or
(d) paragraph 26(3)(a) of Schedule 8 (determination of application by holder of justices’ licence for grant of personal licence),

the party shall give the notice no later than two working days before the day or the first day on which the hearing is to be held.

(5) In any other case, the party shall give the notice no later than five working days before the day or the first day on which the hearing is to be held.

Right to dispense with hearing if all parties agree

9.—(1) An authority may dispense with holding a hearing if all persons required by the Act to agree that such a hearing is unnecessary, other than the authority itself, have done so by giving notice to the authority that they consider a hearing to be unnecessary.

(2) Where all the persons required by the Act to agree that a hearing is unnecessary have done so in accordance with paragraph (1), the authority, if it agrees that a hearing is unnecessary, must forthwith give notice to the parties that the hearing has been dispensed with.

Withdrawal of representations

10. A party who wishes to withdraw any representations they have made may do so—

(a) by giving notice to the authority no later than 24 hours before the day or the first day on which the hearing is to be held; or
(b) orally at the hearing.

Power to extend time etc.

11.—(1) Subject to regulation 13, an authority may extend a time limit provided for in these Regulations for a specified period where it considers this to be necessary in the public interest.

(2) Where the authority has extended a time limit it must forthwith give a notice to the parties stating the period of the extension and the reasons for it.

12.—(1) Subject to regulation 13, an authority may—

(a) adjourn a hearing to a specified date, or
(b) arrange for a hearing to be held on specified additional dates,

where it considers this to be necessary for its consideration of any representations or notice made by a party.

(2) Where an authority has adjourned a hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

(3) Where an authority has arranged for a hearing to be held on a specified additional date it must forthwith notify the parties of the additional date on which and time and place at which the hearing is to be held.

13. An authority may not exercise its powers under regulations 11 and 12 in such a way that the effect will be that—

(a) an application will be treated as granted or rejected under paragraph 4(4), 7(3), 16(4), 19(3) or 26(4) of Schedule 8 (transitional provision etc.); or
(b) it would fail to reach a determination on the review under section 167 (review of premises licence following closure order) within the period specified in subsection (3) of that section.

Hearing to be public

14.—(1) Subject to paragraph (2), the hearing shall take place in public.

(2) The licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

(3) For the purposes of paragraph (2), a party and any person assisting or representing a party may be treated as a member of the public.

Right of attendance, assistance and representation

15. Subject to regulations 14(2) and 25, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

Representations and supporting information

16. At the hearing a party shall be entitled to—

(a) in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d), give further information in support of their application, representations or notice (as applicable),

(b) if given permission by the authority, question any other party; and

(c) address the authority.

17. Members of the authority may ask any question of any party or other person appearing at the hearing.

18. In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing.

19. The authority shall disregard any information given by a party or any person to whom permission to appear at the hearing is given by the authority which is not relevant to—

(a) their application, representations or notice (as applicable) or in the case of another person, the application representations or notice of the party requesting their appearance, and

(b) the promotion of the licensing objectives or, in relation to a hearing to consider a notice given by a chief officer of police, the crime prevention objective.

Failure of parties to attend the hearing

20.—(1) If a party has informed the authority that he does not intend to attend or be represented at a hearing, the hearing may proceed in his absence.

(2) If a party who has not so indicated fails to attend or be represented at a hearing the authority may—

(a) where it considers it to be necessary in the public interest, adjourn the hearing to a specified date, or

(b) hold the hearing in the party’s absence.

(3) Where the authority holds the hearing in the absence of a party, the authority shall consider at the hearing the application, representations or notice made by that party.

(4) Where the authority adjourns the hearing to a specified date it must forthwith notify the parties of the date, time and place to which the hearing has been adjourned.

Procedure at hearing

21. Subject to the provisions of these Regulations, the authority shall determine the procedure to be followed at the hearing.
22. At the beginning of the hearing, the authority shall explain to the parties the procedure which it proposes to follow at the hearing and shall consider any request made by a party under regulation 8(2) for permission for another person to appear at the hearing, such permission shall not be unreasonably withheld.

23. A hearing shall take the form of a discussion led by the authority and cross-examination shall not be permitted unless the authority considers that cross-examination is required for it to consider the representations, application or notice as the case may require.

24. The authority must allow the parties an equal maximum period of time in which to exercise their rights provided for in regulation 16.

25. The authority may require any person attending the hearing who in their opinion is behaving in a disruptive manner to leave the hearing and may—
   (a) refuse to permit that person to return, or
   (b) permit him to return only on such conditions as the authority may specify,
but such a person may, before the end of the hearing, submit to the authority in writing any information which they would have been entitled to give orally had they not been required to leave.

Determination of applications

26.—(1) In the case of a hearing under—
   (a) section 35 or 39 which is in respect of an application made at the same time as an application for conversion of an existing licence under paragraph 2 of Schedule 8 (determination of application under section 34 or 37),
   (b) section 85 which is in respect of an application made at the same time as an application for conversion of an existing club certificate under paragraph 14 of Schedule 8 (determination of application under section 85),
   (c) section 105(2)(a) (counter notice following police objection to temporary event notice),
   (d) section 167(5)(a) (review of premises licence following closure order),
   (e) paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence),
   (f) paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate), or
   (g) paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices’ licence for grant of personal licence),
the authority must make its determination at the conclusion of the hearing.

   (2) In any other case the authority must make its determination within the period of five working days beginning with the day or the last day on which the hearing was held.

27. Where a hearing has been dispensed with in accordance with regulation 9, the authority must make its determination within the period of ten working days beginning with the day the authority gives notice to the parties under regulation 9(2).

Notification of determination

28.—(1) In a case where the Act does not make provision for the period within which the authority must notify a party of its determination, the authority must do so forthwith on making it determination.

   (2) In a case where—
      (a) the Act provides for a chief officer of police to be notified of the determination of an authority, and
      (b) that chief officer of police has not been a party to the hearing,
the authority shall notify that chief officer of police of its determination, forthwith on making its determination.

29. Where the authority notifies a party of its determination, the notice given (or, in the case of a hearing under section 31(3)(a) (determination of application for provisional statement), the
statement issued) to the party must be accompanied by information regarding the right of a party to appeal against the determination of the authority.

Record of proceedings

30. The authority shall provide for a record to be taken of the hearing in a permanent and intelligible form and kept for six years from the date of the determination or, where an appeal is brought against the determination of the authority, the disposal of the appeal.

Irregularities

31. Any irregularity resulting from any failure to comply with any provision of these Regulations before the authority has made a determination shall not of itself render the proceedings void.

32. In any case of such an irregularity, the authority shall, if it considers that any person may have been prejudiced as a result of the irregularity, take such steps as it thinks fit to cure the irregularity before reaching its determination.

33. Clerical mistakes in any document recording a determination of the authority or errors arising in such document from an accidental slip or omission may be corrected by the authority.

Notices

34.—(1) Any notices required to be given by these Regulations must be given in writing.

(2) Notwithstanding the requirement in paragraph (1) and subject to paragraph (3), that requirement shall be satisfied in a case where—

(a) the text of the notice—

(i) is transmitted by electronic means;

(ii) is capable of being accessed by the recipient;

(iii) is legible in all material respects; and

(iv) is capable of being reproduced in written form and used for subsequent reference;

(b) the person to whom the notice is to be given has agreed in advance that such a notice may be given to them by electronic means; and

(c) forthwith on sending the text of the notice by electronic means, the notice is given to the recipient in writing.

(3) Where the text of the notice is transmitted by electronic means, the giving of the notice shall be effected at the time the requirements of paragraph (2)(a) are satisfied.

Richard Caborn
Minister of State

Date 12th January 2005
Department for Culture, Media and Sport
<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
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<tbody>
<tr>
<td><strong>Provision under which hearing is held.</strong></td>
<td><strong>Period of time within which hearing must be commenced.</strong></td>
</tr>
<tr>
<td>1. Section 18(3)(a) (determination of application for premises licence).</td>
<td>20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c).</td>
</tr>
<tr>
<td>2. Section 31(3)(a) (determination of application for a provisional statement).</td>
<td>20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 30.</td>
</tr>
<tr>
<td>3. Section 35(3)(a) (determination of application to vary premises licence).</td>
<td>20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c).</td>
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<td>4. Section 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor).</td>
<td>20 working days beginning with the day after the end of the period during which a chief officer of police may give notice under section 37(5).</td>
</tr>
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<td>5. Section 44(5)(a) (determination of application for transfer of premises licence).</td>
<td>20 working days beginning with the day after the end of the period during which a chief officer of police may give notice under section 42(6).</td>
</tr>
<tr>
<td>6. Section 48(3)(a) (cancellation of interim authority notice following police objection).</td>
<td>5 working days beginning with the day after the end of the period during which a chief officer of police may give notice under section 48(2).</td>
</tr>
<tr>
<td>7. Section 52(2) (determination of application for review of premises licence).</td>
<td>20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c).</td>
</tr>
<tr>
<td>8. Section 72(3)(a) (determination of application for club premises certificate).</td>
<td>20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c).</td>
</tr>
<tr>
<td>9. Section 85(3) (determination of application to vary club premises certificate).</td>
<td>20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c) by virtue of section 84(4).</td>
</tr>
<tr>
<td>10. Section 88(2) (determination of application for review of club premises certificate).</td>
<td>20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 87(3)(c).</td>
</tr>
<tr>
<td>11. Section 105(2)(a) (counter notice following police objection to temporary event notice).</td>
<td>7 working days beginning with the day after the end of the period during which a chief officer of police may give a notice under section 104(2).</td>
</tr>
<tr>
<td>12. Section 120(7)(a) (determination of application for grant of personal licence).</td>
<td>20 working days beginning with the day after the end of the period during which the chief officer of police may give a notice under section 120(5).</td>
</tr>
</tbody>
</table>
13. Section 121(6)(a) (determination of application for the renewal of personal licence). 20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 121(3).

14. Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence). 20 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under section 124(3).

15. Section 167(5)(a) (review of premises licence following closure order). 10 working days beginning with the day after the day the relevant licensing authority receives the notice given under section 165(4).

16. Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence). 10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 3(2) or (3) of Schedule 8.

17. Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate). 10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 15(2) or (3) of Schedule 8.

18. Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices’ licence for grant of personal licence). 10 working days beginning with the day after the end of the period within which the chief officer of police may give a notice under paragraph 25(2) of Schedule 8.

**SCHEDULE 2**

<table>
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<td><strong>Persons to whom notice of hearing is to be given.</strong></td>
</tr>
<tr>
<td>1. Section 18(3)(a) (determination of application for premises licence).</td>
<td>(1) The person who has made the application under section 17(1); (2) persons who have made relevant representations as defined in section 18(6).</td>
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<td>2. Section 31(3)(a) (determination of application for provisional statement).</td>
<td>(1) The person who has made the application under section 29(2); (2) persons who have made relevant representations as defined in section 31(5).</td>
</tr>
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<td>3. Section 35(3)(a) (determination of application to vary premises licence).</td>
<td>(1) The holder of the premises licence who has made the application under section 34(1); (2) persons who have made relevant representations as defined in section 35(5).</td>
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<td>4. Section 39(3)(a) (determination of application to vary premises licence to specify individual as premises supervisor).</td>
<td>(1) The holder of the premises licence who has made the application under section 37(1); (2) each chief officer of police who has given notice under section 37(5); (3) the proposed individual as referred to in section 37(1).</td>
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<td>Appendix 4: LA 2003 (Hearings) Regs 2005</td>
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<td>5. Section 44(5)(a) (determination of application for transfer of premises licence).</td>
<td>(1) The person who has made the application under section 42(1); (2) the holder of the premises licence in respect of which the application has been made or, if the application is one to which section 43(1) applies, the holder of that licence immediately before the application was made.</td>
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<td>Section</td>
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<td>48(3)(a)</td>
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<td>52(2)</td>
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<td>124(4)(a)</td>
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<td>167(5)(a)</td>
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</table>
SCHEDULE 4

regulation 2

Meaning of “determination”

The determination of the authority is the outcome of its consideration, as applicable, of—

1. the relevant representations as defined in section 18(6), in accordance with section 18,
2. the relevant representations as defined in section 31(5), in accordance with section 31,
3. the relevant representations as defined in section 35(5), in accordance with section 35,
4. a notice given under section 37(5), in accordance with section 39,
5. a notice given under section 42(6), in accordance with section 44,
6. a notice given under section 48(2), in accordance with section 48,
7. an application made in accordance with section 51 and any relevant representations as defined in section 52(7), in accordance with section 52,
8. the relevant representations as defined in section 72(7), in accordance with section 72,
9. the relevant representations as defined in section 85(5), in accordance with section 85,
10. an application made in accordance with section 87 and any relevant representations as defined in section 88(7), in accordance with section 88,
11. a notice given under section 104(2), in accordance with section 105,
12. a notice given under section 120(5), in accordance with section 120,
13. a notice given under section 121(3), in accordance with section 121,
14. a notice given under section 124(3), in accordance with section 124,
15. the matters referred to in section 167(5)(a), in accordance with section 167,
16. the notice given under paragraph 3(2) or (3) of Schedule 8, in accordance with its paragraph 4,
17. the notice given under paragraph 15(2) or (3) of Schedule 8, in accordance with its paragraph 16, or
18. the notice given under paragraph 25(2) of Schedule 8, in accordance with its paragraph 26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the holding of hearings required to be held by licensing authorities under the Licensing Act 2003 (c.17) (“the Act”).

In particular, the Regulations provide for the timing of hearings and the notification requirements to parties to a hearing of the date, time and place of a hearing and information to accompany that notification (regulations 4, to 7 and Schedules 1, 2 and 3). In addition, provision is made for a party to a hearing to provide information to the licensing authority about attendance at a hearing, representations, the seeking of permission for another person to attend to assist the authority and whether the party believes a hearing to be necessary (regulation 8).

The Regulations provide for a range of procedural issues to govern the way in which preparations are made for a hearing, for the procedures to be followed, the rights of parties at a hearing, and various administrative matters, for example, the keeping of a record of the hearing and the manner of giving notices (regulations 9 to 33). The Regulations also make provision for the timing of the licensing authority’s determination following a hearing (Schedule 4).

Insofar as these Regulations do not make provision for procedures for and at hearings, section 9 of the Act provides that the authority can determine its own procedure.
A Regulatory Impact Assessment in relation to these Regulations has been placed in the libraries of both Houses of Parliament and copies may be obtained from the Alcohol and Entertainment Licensing Branch of the Department for Culture, Media and Sport, 3rd Floor, 2–4 Cockspur Street, London SW1Y 5DH or viewed on the Department’s website, www.culture.gov.uk.
APPENDIX 5: LICENSING ACT 2003
(LICENSES AND LICENSING)
THE LICENSING ACT 2003
(LICENSES AND LICENSING)
(LICENSES AND LICENSING)

The Secretary of State, in exercise of the powers conferred upon her by section 8(1)(d) of the Licensing Act 2003, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Licensing Act (Licensing authority’s register) (other information) Regulations 2005 and shall come into force on 7th February 2005.

(2) In these Regulations, “the Act” means the Licensing Act 2003.

Other information to be contained in the register

2.—(2) For the purposes of subsection (1)(d) of section 8 of the Act, in addition to the records referred to in sections 8(1)(a) and (b) of and the matters mentioned in Schedule 3 to the Act, the register kept by each licensing authority shall contain a record of the information set out in this regulation.

(a) section 17 (application for premises licence), the accompanying operating schedule (provided that the name and address of the premises supervisor, if any, shall be removed from the schedule before it is recorded) and plan of the premises to which the application relates;

(b) section 29 (application for a provisional statement where premises being built, etc.), the accompanying schedule of works and plans of the work being or about to be done at the premises;

(c) section 34 (application to vary premises licence), the accompanying revised operating schedule (provided that the name and address of the premises supervisor, if any, shall be removed from the schedule before it is recorded), if any;

(d) section 71 (application for club premises certificate), the accompanying club operating schedule and plan of the premises to which the application relates; and

(e) section 84 (application to vary club premises certificate), the accompanying revised club operating schedule, if any.

(3) In the case of an application for review under section 51 (application for review of premises licence) and 87 (application for review of club premises certificate) of the Act or a review under section 167 (review of premises licence following closure order) of the Act, the ground or grounds for the review.

(4) In the case of an application under paragraph 2 (application for conversion of existing licence) or 14 (application for conversion of existing club certificate) of Schedule 8 to the Act, the
existing licensable activities or existing qualifying club activities, as the case may require, and the accompanying plan of the premises to which the existing licence or licences or existing club certificate relates.

Richard Caborn
Minister of State

Date 12th January 2005
Department for Culture, Media and Sport

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations prescribe the further information each licensing authority is required to record in the register it is required to keep under section 8 of the Licensing Act 2003 (c.17) (the Act). In addition to the records identified in section 8(1) of and Schedule 3 to the Act, each licensing authority must record in its register operating schedules and club operating schedules, or revisions of these, and plans of premises which accompany applications for premises licences or club premises certificates, or variations of these and Schedules of works and plans of the work being or about to be done which accompany applications for provisional statements (regulation 2(2)). Further, each licensing authority must record in its register the ground or grounds for reviews set out in applications for a review of a premises licence or club premises certificate and the determination of the magistrates’ court on its consideration of a closure order (regulation 2(3)). Finally, a record must be kept of the existing licensable activities and existing qualifying club activities and plans of the premises which accompany applications (for conversion of existing licences and existing club certificates (regulation 2(4)).

A Regulatory Impact Assessment in relation to these Regulations has been placed in the libraries of both Houses of Parliament and copies may be obtained from the Alcohol and Entertainment Licensing Branch of the Department for Culture, Media and Sport, 3rd Floor, 2–4 Cockspur Street, London SW1Y 5DH or viewed on the Department’s website, www.culture.gov.uk.
APPENDIX 6: LICENSING ACT 2003 (FEES) REGULATIONS 2005

2005 No. 79

LICENCES AND LICENSING

The Licensing Act 2003 (Fees) Regulations 2005*

Made ------------------------------- 20th January 2005
Laid before Parliament --------------- 20th January 2005
Coming into force ------------------- 7th February 2005

The Secretary of State, in exercise of the powers conferred upon her by sections 55, 92, 100(7)(b), 110(3), 133(2) and 178(1)(b) of the Licensing Act 20031, hereby makes the following Regulations:

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Licensing Act 2003 (Fees) Regulations 2005 and shall come into force on 23rd February 2005.

Interpretation

2.—(1) In these Regulations—
   “the Act” means the Licensing Act 2003;
   “college” means a college or similar institution principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19;
   “rateable value” as regards a premises, is the value for the time being in force for the premises entered in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 19882; and
   “school” means a school within the meaning of section 4 of the Education Act 19963.

   (2) For the purposes of these Regulations, a reference to—
       (a) a paragraph in a regulation or Schedule, a Schedule or a Part is a reference to the paragraph in that regulation or Schedule, the Schedule or the Part in these Regulations; and
       (b) a section shall be construed as a reference to the section in the Act.

Bands for premises

3.—(1) In a case where a premises has a rateable value specified in column 1 of the table in Schedule 1, the premises shall be in the band specified for that rateable value in column 2 of that table.

   (2) Except in a case where a premises is in the course of construction, in which case the premises shall be in Band C, in all other cases, the premises shall be in Band A.

   (3) For the purposes of this regulation, in a case where the premises forms part only of a hereditament in the local non-domestic rating list for the purposes of Part III of the Local

* As amended by the Licensing Act 2003 (Fees) (Amendment) Regulations 2005, SI 2005/357.
1 2003 c.17. See section 193 for the definitions of “prescribed” and “regulations”.
2 1998 c.41.
3 1996 c.56.
Government Finance Act 1988, the premises shall be treated as having a rateable value equal to the rateable value for the hereditament of which it forms part.

(4) For the purposes of this regulation, in a case where the premises comprises two or more hereditaments in the local non-domestic rating list, the premises shall be treated as having a rateable value equal to the rateable value for the hereditament with the highest rateable value.

PART 2
PREMISES LICENCES

Fee to accompany application for grant or variation of premises licence

4.—(1) Subject to regulation 9, in respect of an application under section 17 (application for premises licence) or section 34 (application to vary premises licence), the fee to accompany the application shall be determined in accordance with the following provisions of this regulation.

(2) Subject to paragraphs (4) and, in the case of an application under section 34, (6) and (7), where the application under section 17 or section 34 relates to a premises in Band D or Band E and the premises is used exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises, the amount of the fee shall be—

(a) in the case of premises in Band D, two times the amount of the fee applicable for the Band appearing in column 1 of the table in Schedule 2 specified in column 2 of that table, and

(b) in the case of premises in Band E, three times the amount of the fee applicable for that Band appearing in column 1 of the table in Schedule 2 specified in column 2 of that table.

(3) Subject to paragraphs (4) and, in the case of an application under section 34, (6) and (7), in all other cases, the fee to accompany the application shall be the fee applicable to the band appearing in column 1 of the table in Schedule 2 for the premises to which the application relates, determined in accordance with regulation 3, specified in column 2 of that table.

(4) Subject to paragraph (5) and, in the case of an application under section 34, (8), where the maximum number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises at the same time is 5,000 or more, an application under paragraph (1) must be accompanied by a fee in addition to any fee determined under paragraphs (2) or (3), the amount of which shall be the fee applicable to the range of number of persons within which falls the maximum number of persons the applicant proposes to be so allowed on the premises in column 1 of the table in Schedule 3 specified in column 2 of that table.

(5) Paragraph (4) does not apply where the premises in respect of which the application has been made—

(a) is a structure which is not a vehicle, vessel or moveable structure; and

(b) has been constructed or structurally altered for the purpose, or for purposes which include the purpose, of enabling—

(i) the premises to be used for the licensable activities the applicant proposes the licence should authorise,

(ii) the premises to be modified temporarily from time to time, if relevant, for the premises to be used for the licensable activities referred to in the application;

(iii) at least the number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises, to be allowed on the premises at such times, and

(iv) the premises to be used in a manner which is not inconsistent with the operating schedule accompanying the application.

(6) In respect of an application under section 34 made at the same time as an application under paragraph 2 of Schedule 8 to the Act and which relates in any way or to any extent to the supply of alcohol for consumption on the premises to which the application relates, the fee to accompany the application under section 34 shall be the fee applicable to the band appearing in column 1 of the table in Schedule 4 for the premises to which the application relates, determined in accordance with regulation 3, specified in column 2 of that table.

(7) In respect of an application under section 34 made at the same time as an application...
under paragraph 2 of Schedule 8 to the Act and which does not relate in any way or to any extent to the supply of alcohol for consumption on the premises to which the application relates, the requirement under paragraph (1) for a fee determined in accordance with paragraphs (2) or (3) of this regulation, as applicable, to accompany the application under section 34 does not apply.

(8) Subject to paragraph (9), in respect of an application under section 34 made at the same time as an application under paragraph 2 of Schedule 8 to the Act, the requirement under paragraph (4) for a fee in addition to any fee determined under paragraphs (2) or (3) to accompany the application under section 34 does not apply.

(9) Paragraph (8) does not apply where the application to vary under section 34 is made in respect of a licence which at the time of the application does not authorise licensable activities to take place on the premises when the maximum number of people allowed on the premises at the same time is 5000 or more and the application seeks a variation of the licence to authorise licensable activities to take place on the premises when the maximum number of persons allowed on the premises at the same time is 5000 or more.

Annual fee for premises licence

5.—(1) Subject to regulation 10, the holder of a premises licence shall pay to the relevant licensing authority an annual fee, the amount of which shall be determined in accordance with the following provisions of this regulation.

(2) In the case of premises in Band D or Band E that are relevant premises, the amount of the annual fee shall be—

(a) in the case of premises in Band D, two times the amount of the fee applicable for that Band appearing in column 1 of the table in Part 1 of Schedule 5 specified in column 2 of that table; and

(b) in the case of premises in Band E, three times the amount of the fee applicable for that Band appearing in column 1 of the table in Part 1 of Schedule 5 specified in column 2 of that table.

(3) In all other cases, the amount of the fee shall be the fee applicable to the band appearing in column 1 of the table in Part 1 of Schedule 5 for the premises, determined in accordance with regulation 3, specified in column 2 of that table.

(4) Subject to paragraph (5), in the case of a premises licence authorising licensable activities to take place where the number of persons the holder of the licence may allow on the premises at the same time is 5,000 or more, the holder of the licence shall pay to the said authority an additional annual fee, the amount of which shall be the fee applicable to the range of number of persons within which falls the maximum number of persons the applicant so allows on the premises in column 1 of the table in Part 2 of Schedule 5 specified in column 2 of that table.

(5) Paragraph (4) does not apply where the premises in respect of which the premises licence has effect—

(a) is a structure which is not a vehicle, vessel or moveable structure; and

(b) has been constructed or structurally altered for the purpose, or for purposes which include the purpose, of enabling—

(i) the premises to be used for the licensable activities authorised by the licence,

(ii) the premises to be modified temporarily from time to time, if relevant, for the premises to be used for the licensable activities;

(iii) at least the number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises, to be allowed on the premises at such times, and

(iv) the premises to be used in a manner which is not inconsistent with the licence.

(6) The fee determined under paragraphs (2), (3) or (4) shall become due and payable each year on the anniversary of the date of the grant of the premises licence.

(7) In this regulation “relevant premises” are premises which are exclusively or primarily used for the supply of alcohol for consumption on the premises.
PART 3

CLUB PREMISES CERTIFICATES

Fee to accompany application for grant or variation of club premises certificate

6.—(1) Subject to regulation 9, in respect of an application under section 71 (application for club premises certificate) or, subject to paragraph (2), section 84 (application to vary club premises certificate), the fee to accompany the application shall be the fee applicable to the band appearing in column 1 of the table in Schedule 2 for the premises to which the application relates, determined in accordance with regulation 3, specified in column 2 of that table.

(2) In respect of an application under section 84 made at the same time as an application under paragraph 14 of Schedule 8 to the Act, the requirement under paragraph (1) for a fee to accompany the application under section 84 does not apply.

Annual fee for club premises certificate

7.—(1) Subject to regulation 10, the club holding a club premises certificate shall pay to the relevant licensing authority an annual fee, the amount of which shall be the fee applicable to the band appearing in column 1 of the table in Part 1 of Schedule 5 for the premises, determined in accordance with regulation 3, specified in column 2 of that table.

(2) It shall be the responsibility of the secretary of a club holding a club premises certificate to discharge the duty imposed on the club in paragraph (1).

(3) The fee determined under paragraph (1) shall become due and payable each year on the anniversary of the date of the grant of the club premises certificate.

PART 4

PERMITTED TEMPORARY ACTIVITIES, PERSONAL LICENCES ETC

Fees for other applications and notices

8. In the case of an application or a notice listed in column 1 of the table in Schedule 6, a person making that application or giving that notice shall accompany it with a fee, the amount of which is specified in column 2 of that table.

PART 5

MISCELLANEOUS EXEMPTIONS

9.—(1) In respect of an application under section 17, section 34, section 71 or section 84 which relates to the provision of regulated entertainment only, no fee shall be payable and accompany the application or notice if the conditions of this regulation are satisfied in respect of that application or notice.

(2) The conditions referred to in paragraph (1) are—

(a) in the case of an application by a proprietor of an educational institution in respect of premises that are or form part of an educational institution—

(i) that the educational institution is a school or a college; and

(ii) the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or

(b) that the application is in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building.

10.—(1) The requirement under regulation 5(1) or 7(1), as the case may require, to pay to the relevant licensing authority an annual fee does not apply in a circumstance where on the date the fee shall become due and payable the conditions of this regulation are satisfied.

(2) The conditions referred to in paragraph (1) are that—

4 See section 16(3) of 2003 c.17 for the definition of “proprietor”.
(a) the premises licence or club premises certificate, as the case may require, in respect of the premises to which it relates authorises the provision of regulated entertainment only; and

(b) either—

(i) the holder of the premises licence or club premises certificate referred to in paragraph (2)(a) is—

(aa) the proprietor of an educational institution which is a school or college; and

(bb) the licence or certificate has effect in respect of premises that are or form part of the educational institution; and

(cc) the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or

(ii) that the premises licence or club premises certificate has effect in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building.

Andrew McIntosh
Minister of State

Date 20th January 2005
Department for Culture, Media and Sport

SCHEDULE 1
regulation 3
RATEABLE VALUES AND BANDS

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<tr>
<th>Column 1</th>
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</tr>
<tr>
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<tr>
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<tr>
<td>£87,001 to £125,000</td>
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</tr>
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<td>£125,001 and above</td>
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SCHEDULE 2 regulations 4(2), (3) and 6(1)
PREMISES LICENCES AND CLUB PREMISES CERTIFICATES

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ADDITIONAL FEE

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**SCHEDULE 4**

VARIATION FEE IN TRANSITION

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**SCHEDULE 5**

ANNUAL FEE

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### SCHEDULE 6

#### regulation 8

**PERMITTED TEMPORARY ACTIVITIES, PERSONAL LICENCES AND MISCELLANEOUS**

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<td>section 29 (application for a provisional statement where premises being built, etc.)</td>
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<tr>
<td>section 37 (application to vary licence to specify individual as premises supervisor)</td>
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<td>section 42 (application for transfer of premises licence)</td>
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<td>section 47 (interim authority notice following death etc. of licence holder)</td>
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<tr>
<td>section 79 (theft, loss etc. of certificate or summary)</td>
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<tr>
<td>section 82 (notification of change of name or alteration of rules of club)</td>
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<tr>
<td>section 83(1) or (2) (change of relevant registered address of club)</td>
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<tr>
<td>section 100 (temporary event notice)</td>
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<td>section 110 (theft, loss etc. of temporary event notice)</td>
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<tr>
<td>section 117 (application for a grant or renewal of personal licence)</td>
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<td>section 126 (theft, loss etc. of personal licence)</td>
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<tr>
<td>section 127 (duty to notify change of name or address)</td>
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</tr>
<tr>
<td>section 178 (right of freeholder etc. to be notified of licensing matters)</td>
<td>£21</td>
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EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations provide for the determination of the fees to accompany the making of applications and the giving of notices under the Licensing Act 2003 (c.17) (the Act) and the payment of those fees. Further, they make provision for the payment of annual fees in respect of premises licences and club premises certificates granted under the Act.

In particular, these Regulations provide for the manner in which premises are allocated to specific bands for the purposes of determining the appropriate level of fee to be paid when applying for a premises licence or club premises certificate and for variations of the licences and certificates by reference mainly to the non-domestic value of the premises (regulation 3 and Schedule 1).

The Regulations make provision for the fee levels in respect of applications for premises licences and identify circumstances in which a particular application in respect of premises in the higher bands attract a multiplier in respect of the fee and when an additional fee needs to be paid in respect of events where 5,000 or more people may attend the premises concerned (regulation 4 and Schedules 2 and 3). However, the Regulations disapply the requirement to pay the additional fee in respect of premises that are buildings when certain conditions are met (regulation 4(5)). In respect of an application to vary which is made at the same time as an application to convert existing licences to new premises licences under paragraph 2 of Schedule 8 to the Act, the Regulations provide for a reduced fee to be paid for the application to vary (regulation 4(6) and Schedule 4).

Provision is made for the payment of an annual fee and the timing of that payment in respect of premises licences and provides for multipliers to be applied to the fee in relation to premises in higher bands and for the payment of an additional fee where the premises accommodate 5,000 or more people at the same time (regulation 5 and Schedule 5). The requirement to pay an additional annual fee is disapplied in relation to premises that comprise a building if certain conditions are met (regulation 5(5)).

Similar provision is made in respect of applications for club premises certificates and variations of these, except that such applications do not attract multiplier fees or additional fees (regulation 6 and Schedule 2). Also, provision is made for the payment of an annual fee in respect of club premises certificates and the timing of that payment. A duty is placed on the secretary of a club to pay the fee on behalf of the club (regulation 7 and Schedule 5).

A number of fixed fees in relation to other applications made or notices given under the Act are provided for, for example in respect of the giving of a temporary event notice under Part 5 of the Act (regulation 8 and Schedule 6).

Exemption from the payment of an application fee is provided in respect of applications relating only to regulated entertainment made in respect of certain premises where conditions are met, these being schools and colleges where the school or college premises are used for the entertainment by the school or college on behalf of the school or college or the use of church halls, village halls and the like for the provision of entertainment (regulation 9). A similar exemption is provided from the requirement to pay an annual fee in these circumstances provided conditions are met at the time an annual fee falls due to be paid (regulation 10).

Fees to be paid in respect of applications under paragraphs 2 or 14 of Schedule 8 to the Act are provided in the Licensing Act 2003 (Transitional conversions fees) Order 2005 (S.I. 2005/80).

A Regulatory Impact Assessment in relation to these Regulations has been placed in the libraries of both Houses of Parliament and copies may be obtained from Alcohol and Entertainment Licensing Branch of the Department for Culture, Media and Sport, 3rd Floor, 2–4 Cockspur Street, London, SW1Y 5DH or viewed on the Department’s website, www.culture.gov.uk.
2005 No. 80

LICENCES AND LICENSING

The Licensing Act 2003 (Transitional Conversion Fees) Order 2005

Made -------------------------------------------20th January 2005
Laid before Parliament -------------------------------20th January 2005
Coming into force -----------------------------7th February 2005

The Secretary of State, in exercise of the powers conferred upon her by paragraphs 2(5) and 14(4) of Schedule 8 to the Licensing Act 20031, hereby makes the following Order:

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Licensing Act 2003 (Transitional Conversion Fees) Order 2005 and shall come into force on 7th February 2005.

Interpretation

2.—(1) In this Order—

“the Act” means the Licensing Act 2003;
“college” means a college or similar institution principally concerned with the provision of full-time education suitable to the requirements of persons over compulsory school age who have not attained the age of 19;
“rateable value” as regards a premises, is the value for the time being in force for the premises entered in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 19882; and
“school” means a school within the meaning of section 4 of the Education Act 19963.

(2) For the purposes of this Order, a reference to—

(a) a paragraph in an article or Schedule, a Schedule or a Part is a reference to the paragraph in that article or Schedule, the Schedule or the Part in this Order; and

(b) a section shall be construed as a reference to the section in the Act.

Bands for premises

3.—(1) In a case where a premises has a rateable value specified in column 1 of the table in Schedule 1, the premises shall be in the band specified for that rateable value in column 2 of that table.

(2) In all other cases, the premises shall be in Band A.

(3) For the purposes of this article, in a case where the premises forms part only of a hereditament in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 1988, the premises shall be treated as having a rateable value equal to the rateable value for the hereditament of which it forms part.

(4) For the purposes of this article, in a case where the premises comprises two or more hereditaments in the local non-domestic rating list, the premises shall be treated as having a rateable value equal to the rateable value for the hereditament with the highest rateable value.

1 2003 c.17. See section 193 for the definitions of “prescribed” and “order”.
2 1998 c.41.
3 1996 c.56.
PART 2
PREMISES LICENCES

Fee to accompany application for conversion of existing licence

4.—(1) Subject to article 6, in respect of an application under paragraph 2 of Schedule 8 to the Act (application for conversion of existing licence), the fee to accompany the application shall be determined in accordance with the following provisions of this article.

(2) Subject to paragraph (4), in a case where the application under paragraph 2 of Schedule 8 to the Act relates to—

(i) a premises in Band D or Band E; and

(ii) the use of the premises exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises,

the amount of the fee shall be—

(i) in the case of premises in Band D, two times the amount of the fee applicable for that Band appearing in column 1 of the table in Schedule 2 specified in column 2 of that table; and

(ii) in the case of premises in Band E, three times the amount of the fee applicable for that Band appearing in column 1 of the table in Schedule 2 specified in column 2 of that table.

(3) Subject to paragraph (4), in all other cases, the fee to accompany the application shall be the fee applicable to the band appearing in column 1 of the table in Schedule 2 for the premises to which the application relates, determined in accordance with regulation 3, specified in column 2 of that table.

(4) Subject to paragraph (5), where the maximum number of persons the applicant, during the times when the existing licence authorises licensable activities to take place on the premises, may allow on the premises at the same time is 5,000 or more, an application under paragraph (1) must be accompanied by an additional fee, the amount of which shall be the fee corresponding to the range of number of persons within which falls the maximum number of persons so allowed in column 1 of the table in Schedule 3 specified in column 2 of that table.

(5) Paragraph (4) does not apply where the premises in respect of which the application has been made—

(a) is a structure which is not a vehicle, vessel or moveable structure; and

(b) has been constructed or structurally altered for the purpose, or for purposes which include the purpose, of enabling—

(i) the premises to be used for the existing licensable activities the existing licence or licences authorises or authorise,

(ii) the premises to be modified temporarily from time to time, if relevant, for the premises to be used for the existing licensable activities referred to in the existing licence or licences;

(iii) at least the number of persons the applicant proposes should, during the times when the licence authorises licensable activities to take place on the premises, be allowed on the premises, to be allowed on the premises at such times, and

(iv) the premises to be used in a manner which is not inconsistent with the existing licence or licences accompanying the application.

PART 3
CLUB PREMISES CERTIFICATES

Fee to accompany application for conversion of existing club certificate

5.—Subject to article 6, in respect of an application under paragraph 14 of Schedule 8 to the Act (application for conversion of existing club certificate), the fee to accompany the application shall be the fee applicable to the band appearing in column 1 of the table in Schedule 2 for the premises to which the application relates, determined in accordance with regulation 3, specified in column 2 of that table.
PART 4
MISCELLANEOUS EXEMPTIONS

6.—(1) In respect of an application under paragraph 2 or 14 of Schedule 8 to the Act which relates to the provision of regulated entertainment only, no fee shall be payable and accompany the application if the conditions of this article are satisfied in respect of that application.

(2) The conditions referred to in paragraph (1) are—

(a) in a case of an application by a proprietor\(^4\) of an educational institution in respect of premises that are or form part of the educational institution—

(i) that the educational institution is a school or a college; and

(ii) the provision of regulated entertainment on the premises is carried on by the educational institution for and on behalf of the purposes of the educational institution; or

(b) that the application is in respect of premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall or community hall or other similar building.

Andrew McIntosh
Minister of State
Date 20th January 2005
Department for Culture, Media and Sport

SCHEDULE 1
article 3
RATEABLE VALUES AND BANDS

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<th>Column 1</th>
<th>Column 2</th>
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<tr>
<td>RATEABLE VALUE</td>
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<td>No rateable value to £4,300</td>
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<td>£4,300 to £33,000</td>
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SCHEDULE 2
article 4(2), (3), 5
PREMISES LICENCES AND CLUB PREMISES CERTIFICATES

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<tr>
<td>BAND</td>
<td>FEE</td>
</tr>
<tr>
<td>A</td>
<td>£100</td>
</tr>
<tr>
<td>B</td>
<td>£190</td>
</tr>
<tr>
<td>C</td>
<td>£315</td>
</tr>
<tr>
<td>D</td>
<td>£450</td>
</tr>
<tr>
<td>E</td>
<td>£635</td>
</tr>
</tbody>
</table>

\(^4\) See section 16(3) of 2003 c.17 for the definition of “proprietor”.
SCHEDULE 3

ADDITIONAL FEE

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td>Additional fee</td>
</tr>
<tr>
<td>5,000 to 9,999</td>
<td>£1,000</td>
</tr>
<tr>
<td>10,000 to 14,999</td>
<td>£2,000</td>
</tr>
<tr>
<td>15,000 to 19,999</td>
<td>£4,000</td>
</tr>
<tr>
<td>20,000 to 29,999</td>
<td>£8,000</td>
</tr>
<tr>
<td>30,000 to 39,999</td>
<td>£16,000</td>
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<tr>
<td>40,000 to 49,999</td>
<td>£24,000</td>
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<td>50,000 to 59,999</td>
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<td>60,000 to 69,999</td>
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<td>70,000 to 79,999</td>
<td>£48,000</td>
</tr>
<tr>
<td>80,000 to 89,999</td>
<td>£56,000</td>
</tr>
<tr>
<td>90,000 and over</td>
<td>£64,000</td>
</tr>
</tbody>
</table>

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the determination of the fees to be paid in respect of premises for the conversion of existing licences and registered certificates to new premises licences and club premises certificates under paragraphs 2 or 14 of Schedule 8 to the Licensing Act 2003 (c.17) (the Act).

Article 3 and Schedule 1 allocate premises to bands by reference to the non-domestic rateable value of premises and make provision about the relevant band in circumstances where the premises does not have a non-domestic rateable value and in other circumstances.

Articles 4 and 5 and Schedule 2 make provision for the level of fee to be paid by reference to the band in which the premises is allocated and, for conversions to premises licences only, for a multiplier to be applied to the fee for higher banded premises. Article 4(4) and Schedule 3 make provision for an additional fee to be paid in respect of a conversion to a premises licence where the number of persons the applicant allows on the premises at any one time is 5,000 or more (article 4(5) sets out circumstances in which this additional fee is not payable in respect of premises which comprise a building).

Article 6 makes provision for exemption from paying the fee in respect of applications to convert which relate to the provision of regulated entertainment only in specified circumstances. These relate to schools and colleges (defined in article 2) and to church halls, village halls and the like.

This Order does not make provision for any other fees payable in respect of applications made or notices given under the Act. In particular it does not make provision for the fee in respect of applications to vary under sections 34, 37 or 84 of the Act made at the same time as the applications to convert covered by this Order. All other such fees are provided for in the Licensing Act 2003 (Fees) Regulations 2005 (S.I. 2005/79).

A Regulatory Impact Assessment in relation to this Order has been placed in the libraries of both Houses of Parliament and copies may be obtained from the Alcohol and Entertainment Licensing Branch of the Department for Culture, Media and Sport, 3rd Floor, 2–4 Cockspur Street, London, SW1Y 5DH or viewed on the Department’s website, www.culture.gov.uk.
The Licensing Act 2003 (Transitional Provisions) Order 2005

Made - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -12th January 2005
Laid before Parliament - - - - - - - - - - - - - - - - - - - - -13th January 2005
Coming into force - - - - - - - - - - - - - - - - - - - - - - -7th February 2005

The Secretary of State, in exercise of the powers conferred upon her by paragraphs 2(4), (6) and (7), 6(8), 11(1), 12(1), 14(3), (5) and (6), 18(5) and 23(3) and (4) of Schedule 8 to the Licensing Act 2003, hereby makes the following Order:

PART 1
GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Licensing Act 2003 (Transitional Provisions) Order 2005 and shall come into force on 7th February 2005.

(2) In this Order–

“the Act” means the Licensing Act 2003;
“alternative scale plan” means a plan in a scale other than the standard scale;
“fire and other safety equipment” includes fire extinguishers, fire doors, fire alarms and other similar equipment;
“person of standing in the community” includes a bank or building society official, a police officer, a civil servant or a minister of religion;
“Schedule 8” means Schedule 8 to the Act;
“specified fee” in relation to an application, shall be the fee for such application calculated in accordance with an order made by the Secretary of State under paragraph 2(5)(b) or 14(4)(b) of Schedule 8 as the case may require;
“standard scale” means that 1 millimetre represents 100 millimetres.

Application for conversion of existing licence in respect of premises under paragraph 2 of Schedule 8

2.—(1) An application under paragraph 2 of Schedule 8 shall be in the form and (in addition to the information specified in paragraph 2(4)(a) of Schedule 8) shall contain the information set out in Part A of Schedule 1 to this Order and shall be accompanied by the specified fee.

(2) Where a person making an application in accordance with paragraph (1) in pursuance of paragraph 7(1) of Schedule 8 at the same time makes an application under section 34 or 37 of the Act, Part B of Schedule 1 to this Order incorporates the form of application for such purposes.

(3) Where paragraph 2(4)(b) of Schedule 8 applies (any relevant existing licence authorises the supply of alcohol), the application must state the name and address of the person whom the applicant wishes to be the premises supervisor.

(4) The form of consent which, in accordance paragraphs 2(5)(a) and (6)(d) of Schedule 8, must (where applicable) accompany the application shall be in the form specified in Schedule 2 to this Order.

(5) The form of consent which, in accordance with paragraphs 2(5)(a) and (6)(e) of Schedule 8, must (where applicable) accompany the application shall be in the form specified in Schedule 3 to this Order.

APPENDIX 8: LICENSING ACT 2003
(TRANSITIONAL PROVISIONS) ORDER 2005

2005 No. 40

LICENCES AND LICENSING

The Licensing Act 2003 (Transitional Provisions) Order 2005

Made - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -12th January 2005
Laid before Parliament - - - - - - - - - - - - - - - - - - - - -13th January 2005
Coming into force - - - - - - - - - - - - - - - - - - - - - - -7th February 2005

The Secretary of State, in exercise of the powers conferred upon her by paragraphs 2(4), (6) and (7), 6(8), 11(1), 12(1), 14(3), (5) and (6), 18(5) and 23(3) and (4) of Schedule 8 to the Licensing Act 2003, hereby makes the following Order:

PART 1
GENERAL

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Licensing Act 2003 (Transitional Provisions) Order 2005 and shall come into force on 7th February 2005.

(2) In this Order–

“the Act” means the Licensing Act 2003;
“alternative scale plan” means a plan in a scale other than the standard scale;
“fire and other safety equipment” includes fire extinguishers, fire doors, fire alarms and other similar equipment;
“person of standing in the community” includes a bank or building society official, a police officer, a civil servant or a minister of religion;
“Schedule 8” means Schedule 8 to the Act;
“specified fee” in relation to an application, shall be the fee for such application calculated in accordance with an order made by the Secretary of State under paragraph 2(5)(b) or 14(4)(b) of Schedule 8 as the case may require;
“standard scale” means that 1 millimetre represents 100 millimetres.

Application for conversion of existing licence in respect of premises under paragraph 2 of Schedule 8

2.—(1) An application under paragraph 2 of Schedule 8 shall be in the form and (in addition to the information specified in paragraph 2(4)(a) of Schedule 8) shall contain the information set out in Part A of Schedule 1 to this Order and shall be accompanied by the specified fee.

(2) Where a person making an application in accordance with paragraph (1) in pursuance of paragraph 7(1) of Schedule 8 at the same time makes an application under section 34 or 37 of the Act, Part B of Schedule 1 to this Order incorporates the form of application for such purposes.

(3) Where paragraph 2(4)(b) of Schedule 8 applies (any relevant existing licence authorises the supply of alcohol), the application must state the name and address of the person whom the applicant wishes to be the premises supervisor.

(4) The form of consent which, in accordance paragraphs 2(5)(a) and (6)(d) of Schedule 8, must (where applicable) accompany the application shall be in the form specified in Schedule 2 to this Order.

(5) The form of consent which, in accordance with paragraphs 2(5)(a) and (6)(e) of Schedule 8, must (where applicable) accompany the application shall be in the form specified in Schedule 3 to this Order.

1 2003 c.17.
3.—(1) The plan of the premises which, in accordance with paragraphs 2(5)(a) and (6)(b) of Schedule 8, must accompany the application shall comply with the remaining paragraphs of this article.

(2) Unless the relevant licensing authority has previously agreed in writing with the applicant following request by the applicant that an alternative scale plan is acceptable to it, in which case the plan shall be drawn to that alternative scale, the plan shall be drawn in standard scale.

(3) The plan shall show—
   (a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
   (b) the location of points of access to and egress from the premises;
   (c) if different from paragraph (3)(b), the location of escape routes from the premises;
   (d) in a case where the premises is used for more than one existing licensable activity, the area within the premises used for each activity;
   (e) in a case where an existing licensable activity relates to the supply of alcohol, the location or locations on the premises which is or are used for consumption of alcohol;
   (f) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exits or escape routes without impediment;
   (g) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
   (h) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
   (i) in a case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
   (j) the location and type of any fire safety and any other safety equipment; and
   (k) the location of a kitchen, if any, on the premises.

(4) The plan may include a legend through which the matters mentioned or referred to in paragraph (3) are sufficiently illustrated by the use of symbols on the plan.

Enactments specified under paragraph 6(8) of Schedule 8

4. The following enactments are specified under paragraph 6(8) of Schedule 8 for the purposes of Part 1 of Schedule 8, namely—
   (a) Children and Young Persons Act 1933;
   (b) Cinematograph (Safety) Regulations 1955;
   (c) Licensing Act 1964;
   (d) Sporting Events (Control of Alcohol Etc) Act 1985.

Specified periods during which particular provisions apply to an application for the grant of a premises licence

5. The period specified for the purposes of paragraph 11(1)(a) of Schedule 8 (special provision about opening hours where the holder of a justices’ licence applies for the grant of a premises licence) shall be the period commencing on 7th February 2005 and ending on the second appointed day.

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2 1933 c.12.
3 S.I 1955/1129.
5 1985 c.57.
6 paragraph 1(1) of Schedule 8 to 2003 c.17 contains a definition of “second appointed day”.
6. The period specified for the purposes of paragraph 12(1)(a) of Schedule 8 (special provision about an application for the grant of a premises licence where a provisional grant of a justices’ licence has been made) shall be the period commencing on 7th February 2005 and ending on the day which is the first anniversary of the second appointed day.

Application for conversion of existing club certificate under paragraph 14 of Schedule 8

7.—(1) An application under paragraph 14 of Schedule 8 shall be in the form and (in addition to the information specified in paragraph 14(3) of Schedule 8) shall contain the information set out in Part A of Schedule 4 to this Order and shall be accompanied by the specified fee.

(2) Where a club making an application in accordance with paragraph (1) in pursuance of paragraph 19(1) of Schedule 8 at the same time makes an application under section 84 of the Act, Part B of Schedule 4 to this Order incorporates the form of application for such purposes.

(3) The other document which, in accordance with paragraph 14(4)(a) and (5)(c) of Schedule 8, must accompany the application is a copy of the rules of the club.

8.—(1) The plan of the premises which, in accordance with paragraphs 14(4)(a) and (5)(b) of Schedule 8, must accompany the application shall comply with the remaining paragraphs of this article.

(2) Unless the relevant licensing authority has previously agreed in writing with the club following a request by the club that an alternative scale plan is acceptable to it, in which case the plan shall be drawn to that alternative scale, the plan shall be drawn in standard scale.

(3) The plan shall show—
   (a) the extent of the boundary of the building, if relevant, and any external and internal walls of the building and, if different, the perimeter of the premises;
   (b) the location of points of access to and egress from the premises;
   (c) if different from paragraph (3)(b), the location of escape routes from the premises;
   (d) in a case where the premises is used for more than one existing qualifying club activity, the area within the premises used for each activity;
   (e) in a case where the existing qualifying club activity relates to the supply of alcohol, the location or locations on the premises which is or are used for consumption of alcohol;
   (f) fixed structures (including furniture) or similar objects temporarily in a fixed location (but not furniture) which may impact on the ability of individuals on the premises to use exit or escape routes without impediment;
   (g) in a case where the premises includes a stage or raised area, the location and height of each stage or area relative to the floor;
   (h) in a case where the premises includes any steps, stairs, elevators or lifts, the location of the steps, stairs, elevators or lifts;
   (i) in a case where the premises includes any room or rooms containing public conveniences, the location of the room or rooms;
   (j) the location and type of any fire safety and any other safety equipment; and
   (k) the location of a kitchen, if any, on the premises.

(4) The plan may include a legend through which the matters mentioned or referred to in paragraph (3) are sufficiently illustrated by the use of symbols on the plan.

Enactments specified under paragraph 18(5) of Schedule 8

9. The following enactments are specified under paragraph 18(5) of Schedule 8 for the purposes of Part 2 of Schedule 8, namely—
   (a) Children and Young Persons Act 1933;
   (b) Cinematograph (Safety) Regulations 1955;
   (c) Licensing Act 1964;
   (d) Sporting Events (Control of Alcohol Etc) Act 1985.
Photograph of the applicant accompanying the application for the grant of a personal licence

10. The photograph of the applicant which, in accordance with paragraphs 23(1)(b) and (3)(b) of Schedule 8, must accompany the application for the grant of a personal licence shall be—

(a) taken against a light background so that the applicant’s features are distinguishable and contrast against the background,
(b) 45 millimetres by 35 millimetres,
(c) full face uncovered and without sunglasses and, unless the applicant wears a head covering due to his religious beliefs, without a head covering,
(d) on photographic paper, and
(e) endorsed, as referred to in paragraph 23(3)(b) of Schedule 8, by—
   (i) the chief executive of the licensing justices for the relevant licensing authority,
   (ii) a solicitor or notary,
   (iii) a person of standing in the community; or
   (iv) an individual with a professional qualification.

Provision of forms etc.

11. The relevant licensing authority—

(a) must provide on request the forms listed in the Schedules printed on paper; or
(b) in a case where the relevant licensing authority maintains a website, it may provide electronic copies of the forms listed in the Schedules on its website.

Validity of forms etc.

12. A relevant licensing authority shall not reject any application or other document by reason only of the fact that it is given on a form provided otherwise than from the relevant licensing authority but which complies with the requirements of this Order.

Richard Caborn
Minister of State
Date 12th January 2005
Department for Culture, Media and Sport

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the detailed requirements to be fulfilled by applicants to convert existing authorisations to use premises for the sale and supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment to new premises licences under Schedule 8 to the Licensing Act 2003 (c.17) (the Act). Also, it makes provision for the detailed requirements to be fulfilled by a registered club under the Licensing Act 1964 (c.26) (the 1964 Act) to convert authorisations under its existing registration certificate to a new club premises certificate under Schedule 8 to the Act. In both cases the Order prescribes the application form to be used by the applicant or club, the information to be supplied and the plan to accompany the application. Further it prescribes the form to be used in relation to a simultaneous application to vary any existing authorisations (articles 2, 3, 7 and 8). The Order requires the relevant licensing authority to provide application forms etc. for applicants and clubs on request and provides a discretion to provide these on its website (article 11).

Further, for the purposes of paragraphs 6(8) and 18(5) of Schedule 8 to the Act, this Order specifies the Children and Young Persons Act 1933 (c.12), the Cinematograph (Safety) Regulations 1955 (S.I. 1955/1129), the Licensing Act 1964 (c.26) and the Sporting Events (Control of Alcohol Etc) Act 1985 (c.57) as enactments containing restrictions affecting existing authorisations which must be imposed as conditions on the new premises licence and the new club premises certificate (articles 4 and 9).
Further, for the purposes of paragraph 11 of Schedule 8 to the Act in respect of opening hours of premises, the Order specifies the period commencing on 7th February 2005 and ending on the second appointed day as the period during which a relevant licensing authority may not grant a premises licence subject to conditions which prevent the sale of alcohol on the premises during the permitted hours (subject to a minor disapplication); such hours being the hours during which the holder of a justices’ licence is permitted to sell alcohol on the premises under Part 3 of the 1964 Act (article 5). In addition, for the purposes of paragraph 12 of Schedule 8 to the Act in respect of a provisional grant of a justices’ licence under the 1964 Act, this Order specifies the period commencing on 7th February 2005 and ending on the first anniversary of the second appointed day as the period during which the relevant licensing authority must have regard to that provisional grant when determining an application for the grant of a premises licence under Part 3 of the Act (article 6).

Finally, for the purposes of an application for a personal licence under Part 6 of the Act made by the holder of a justices’ licence and for the purposes of paragraph 23 of Schedule 8 to the Act, the Order details the requirements in respect of a photograph to accompany the application (article 10).

A Regulatory Impact Assessment in relation to this Order has been placed in the libraries of both Houses of Parliament and copies may be obtained from the Alcohol and Entertainment Licensing Branch of the Department for Culture, Media and Sport, 3rd Floor, 2–4 Cockspur Street, London SW1Y 5DH or viewed on the Department’s website, www.culture.gov.uk.
# APPENDIX 9

## TABLE OF FEES

**PREMISES LICENCES AND CPC FEES**

Applications for grant and for variation (other than changes of name and address etc or changes of designated premises supervisor)

<table>
<thead>
<tr>
<th>Band</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D*</th>
<th>E**</th>
</tr>
</thead>
<tbody>
<tr>
<td>NDRV</td>
<td>£0–</td>
<td>£4,301–</td>
<td>£33,001–</td>
<td>£87,001–</td>
<td>£125,001</td>
</tr>
<tr>
<td></td>
<td>£4,300</td>
<td>£33,000</td>
<td>£87,000</td>
<td>£125,001 or over</td>
<td></td>
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<tr>
<td>Fee</td>
<td>£100</td>
<td>£190</td>
<td>£315</td>
<td>£450</td>
<td>£635</td>
</tr>
<tr>
<td>Annual charge</td>
<td>£70</td>
<td>£180</td>
<td>£295</td>
<td>£320</td>
<td>£350</td>
</tr>
</tbody>
</table>

* A multiplier of twice the fee and annual charge applies where use of the premises is exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises

** A multiplier of three times the fee and annual charge applies where use of the premises is exclusively or primarily for the carrying on on the premises of the supply of alcohol for consumption on the premises

(Premises with no NDRV = Band A; premises under construction = Band C)

### Additional fees for exceptionally large events of a temporary nature requiring premises licences

<table>
<thead>
<tr>
<th>Number of persons present</th>
<th>Additional fee</th>
<th>Annual fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>5,000–9,999</td>
<td>£1,000</td>
<td>£500</td>
</tr>
<tr>
<td>10,000–14,999</td>
<td>£2,000</td>
<td>£1,000</td>
</tr>
<tr>
<td>15,000–19,999</td>
<td>£4,000</td>
<td>£2,000</td>
</tr>
<tr>
<td>20,000–29,999</td>
<td>£8,000</td>
<td>£4,000</td>
</tr>
<tr>
<td>30,000–39,999</td>
<td>£16,000</td>
<td>£8,000</td>
</tr>
<tr>
<td>40,000–49,999</td>
<td>£24,000</td>
<td>£12,000</td>
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<tr>
<td>50,000–59,999</td>
<td>£32,000</td>
<td>£16,000</td>
</tr>
<tr>
<td>60,000–69,999</td>
<td>£40,000</td>
<td>£20,000</td>
</tr>
<tr>
<td>70,000–79,999</td>
<td>£48,000</td>
<td>£24,000</td>
</tr>
<tr>
<td>80,000–89,999</td>
<td>£56,000</td>
<td>£28,000</td>
</tr>
<tr>
<td>90,000 and over</td>
<td>£64,000</td>
<td>£32,000</td>
</tr>
</tbody>
</table>

Notification of change of name or address of premises licence holder or club | £10.50
Application to vary to specify individual as designated premises supervisor | £23
Notification of change of address of designated premises supervisor | £10.50
Notification of alteration of club rules | £10.50
Application to transfer premises licence | £23
Interim authority notice | £23
<table>
<thead>
<tr>
<th>Service</th>
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<tbody>
<tr>
<td>Application for copy or summary</td>
<td>£10.50</td>
</tr>
<tr>
<td>Application for making of a provisional statement</td>
<td>£315</td>
</tr>
<tr>
<td>Application for conversion and conversion/variation during transitional period</td>
<td>£105</td>
</tr>
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**PERSONAL LICENCES FEES**

<table>
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<th>Service</th>
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</thead>
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<tr>
<td>Application for grant</td>
<td>£37</td>
</tr>
<tr>
<td>Application for conversion during transitional period</td>
<td>£37</td>
</tr>
<tr>
<td>Application for copy</td>
<td>£10.50</td>
</tr>
<tr>
<td>Notification of change of name or address</td>
<td>£10.50</td>
</tr>
</tbody>
</table>

**TEMPORARY EVENT NOTICES FEES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification of a temporary event</td>
<td>£21</td>
</tr>
<tr>
<td>Application for copy</td>
<td>£10.50</td>
</tr>
</tbody>
</table>

**OTHER FEES**

<table>
<thead>
<tr>
<th>Service</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supply of copy of information contained in licensing register</td>
<td>£Variable</td>
</tr>
<tr>
<td>(fee determined by licensing authority based on costs)</td>
<td></td>
</tr>
<tr>
<td>Notification of an interest in any premises</td>
<td>£21</td>
</tr>
<tr>
<td>SECTION</td>
<td>OFFENCE</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
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<tr>
<td></td>
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<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Premises Licence Holders</td>
<td></td>
</tr>
<tr>
<td>33(6)</td>
<td>Failure to notify licensing authority of change in name or address</td>
</tr>
<tr>
<td>40(2)</td>
<td>Failure to notify existing designated premises supervisor that premises licence has been varied to replace them with another or that such application has been rejected</td>
</tr>
<tr>
<td>41(5)</td>
<td>Failure to provide premises licence (or statement of reasons for failure to do so) to licensing authority within 14 days of direction from the designated premises supervisor who has given notice of intention to cease</td>
</tr>
<tr>
<td>46(4)</td>
<td>Failure to notify designated premises supervisor of application for transfer with interim effect (applicant and premises supervisor not the same person)</td>
</tr>
<tr>
<td>49(5)</td>
<td>Failure to notify designated premises supervisor of interim authority notice</td>
</tr>
<tr>
<td>56(3)</td>
<td>Failure to produce premises licence at the request of the licensing authority so that it may be amended</td>
</tr>
<tr>
<td>57(4)</td>
<td>Failure to keep premises licence or certified copy at the premises</td>
</tr>
<tr>
<td>SECTION</td>
<td>OFFENCE</td>
</tr>
<tr>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>74(8)</td>
<td>Alcohol &amp; Entertainment Licensing Law</td>
</tr>
<tr>
<td>57(4)</td>
<td>Failure to display summary of premises licence or certified copy and notice specifying any nominated person</td>
</tr>
<tr>
<td>57(7)</td>
<td>Failure to produce premises licence or certified copy to authorised person for examination</td>
</tr>
<tr>
<td>59(5)</td>
<td>Intentional obstruction of authorised person exercising power of inspection prior to grant, variation or review of premises licence or issuing or provisional statement</td>
</tr>
<tr>
<td>82(6)</td>
<td>Failure to notify licensing authority of change of name or alteration of rules of the club</td>
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**Underage Offences**

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<td>Person under 18 or person purchasing on his behalf</td>
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<td>Delivering or allowing delivery to person under 18</td>
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**Closure Order Offences**

| 160(4) | Knowingly keeping premises open or allowing premises to be kept open in breach of closure order in identified area | Any manager, premises licence holder, designated premises supervisor or premises user for temporary event | Lack of knowledge | Level 3 fine |
| 161(6) | Permitting identified premises to be kept open in breach of closure order | Any person | Reasonable excuse | 3 months’ imprisonment and/or £20,000 fine |
| 165(7) | Permitting premises to be kept open in breach of magistrates’ court closure order | Any person | Reasonable excuse | 3 months’ imprisonment and/or £20,000 fine |
| 168(8) | Allowing premises to be kept open in breach of closure order pending appeal against revocation of premises licence | Any person | Reasonable excuse | 3 months’ imprisonment and/or £20,000 fine |

**Schedule 8 – Transitional Provisions**

<p>| para 10(1) | Knowingly or recklessly making a false statement in connection with application for conversion to premises licence under para 2 | Any person | Lack of knowledge or recklessness | Level 5 fine |
| para 22(1) | Knowingly or recklessly making a false statement in connection with application for conversion to club premises certificate under para 14 | Any person | Lack of knowledge or recklessness | Level 5 fine |</p>
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