

DERBY CITY COUNCIL LICENSING POLICY

1. INTRODUCTION

- 1.1 The Licensing Act 2003 (the Act) requires Derby City Council (the Council) to publish a Licensing Policy (the policy).
- 1.2 When writing the policy, the Council has had regard to the guidance issued by the Secretary of State for Culture Media and Sport, under Section 182 of the Act (the guidance).
- 1.3 The policy guides the elected members of the Licensing Committee on the boundaries and power of the Council and provides them with parameters, within which to make their decisions.
- 1.4 The policy informs the licence applicants, residents and business of the parameters within which the Council will make their decisions.
- 1.5 The Council (the licensing authority) may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives. In such cases, the Council will provide a full reason for departing from its licensing policy.

2. PURPOSE OF THE LICENSING POLICY

- 2.1 The aim of the policy is to:

- Secure the safety and amenity of our communities
- Help to promote safe and sustainable licensed trade that contributes to the economy and vibrancy of the City
- Reflect the needs of the City's community in relation to its cultural needs and diversity by supporting licensable activities, including live music, dancing, theatre and other cultural experiences for the wider benefit of the community

The Council in adopting the policy recognises both the needs of residents for a safe and healthy environment in which to live and move and the importance of safe and well-run premises to the local economy and vibrancy of the City.

- 2.2 To achieve this aim the Council is committed to partnership working with Derbyshire Constabulary, Derbyshire Fire & Rescue Service, commerce, including the licensed trade, residents and others towards the promotion of the 4 licensing objectives set out in the Act (See Section 8).

- 2.3 The policy came into effect on 7 February 2005.

- 2.4 The policy will be reviewed at least once every 3 years. In the preparation and publication of this policy, the Council will consult with:

- Derbyshire Constabulary
- Derbyshire Fire & Rescue Service
- Existing Licence holders and their representatives
- Existing holders of club premises certificates and their representatives
- Existing holders of personal licences
- Representatives of business and residents in the City
- Other relevant bodies, i.e. those involved with the reduction in crime, disorder and anti social behaviour, consumer protection, planning & development, tourism, child protection, transport, alcohol harm reduction, local performers etc.

2.5 The views of each of the consultees are given appropriate weight when deciding the policy.

3. SCOPE

3.1 The policy relates to all licensing activities and people identified as falling within the provisions of the Act. These include:

- public and private places of entertainment (providing live/recorded music and/or dancing)
- premises that supply or sell alcohol for consumption on or off the premises
- night cafes (premises that supply hot food and/or drink between 11pm and 5am)
- premises providing entertainment of a sexual nature
- indoor sports
- qualifying club premises
- cinemas
- theatre and amateur dramatic groups
- temporary events
- people licensed to manage premises

4. INTERPRETATION

4.1 Any words or expressions in the policy have the meanings assigned to them under the Act or in the guidance as issued by the Secretary of State.

5. FUNDAMENTAL PRINCIPLES

5.1 The Council will carry out its licensing functions with a view to promoting the four licensing objectives identified in the Act. The Council will also have regard to the guidance and its policy when considering licence applications.

5.2 The licensing policy promotes the four licensing objectives:

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

The four licensing objectives have equal importance.

- 5.3 The Council recognises that each licensing application must be dealt with on its own individual merits, and will be treated fairly and objectively in accordance with the licensing objectives. The policy will not prevent an applicant from applying for a variety of licences.
- 5.4 Applicants should set out their proposals for addressing the four licensing objectives in their operating schedules (as required in the Act). These proposals could reflect the conditions suggested in the guidance and should be capable of being attached to licences. These suggested conditions are attached at Appendices A – E.
- 5.5 Any terms or conditions attached to a licence will be focussed on matters which are within the control of the individual licence holder or others with relevant authorisations. These matters will centre on premises and places being used for licensable activities and in the vicinity of those premises and places.
- 5.6 When considering applications the Council will focus on the direct impact of the activities taking place at the licensed premises on members of the public living, working or engaged in normal activity in the area concerned.
- 5.7 The Council recognises the Act is not the primary mechanism for the general control of anti-social behaviour by individuals as soon as they are beyond the direct control of an individual, club or business holding the relevant licence.
- 5.8 When considering applications the Council will ensure that 'relevant representations' from all 'responsible authorities' are considered fully and fairly.

Responsible authorities are:

- Derbyshire Constabulary
- Derbyshire Fire & Rescue Service
- the Council's Department for Health & Safety
- the Council's Department for Trading Standards
- the Council's Department for Pollution Control
- the Council's Department for dealing with Safeguarding Children
- the Council's Department for Planning

- 5.9 When considering applications the Council will ensure that 'relevant representations' from all 'interested parties' are considered fully and fairly.

Interested parties are:

- people living in the vicinity of the premises

- bodies representing people living in that vicinity
- people involved in businesses in the vicinity of the premises
- bodies representing businesses in that vicinity

5.10 'Relevant representations' may only relate to:

- matters about the likely effect of the grant of the premises licence on the promotion of the licensing objectives, or
- a proposed designated premises supervisor if made by Derbyshire Constabulary

5.11 The Council will only consider those representations submitted within the prescribed time period in accordance with the Act.

5.12 Where the Council is of the opinion that representations are vexatious, frivolous or repetitious, the Act prohibits them being considered as relevant representations.

5.13 The policy does not prohibit an individual or relevant body from making a relevant representation on an application, or request a review into an existing licence or certificate, where it is permitted under the Act.

5.14 Petitions will be accepted only if:

- the instigator of the petition identifies themselves as the main contact and provides contact details;
- each page contains information as to the purpose of the petition so that each person understands what they are signing;
- full names and addresses are provided; and
- all signatories are made aware that a copy of the petition will be supplied to the applicant in the committee report, which means their details will be public knowledge.

The petition will act as one representation.

5.15 The Council may not impose conditions on or refuse to grant or vary a premises licence or club premises certificate unless it has received relevant representation from a responsible authority or an interested party. Where no relevant representations are received the application will be approved.

5.16 Applications for licences will not be valid unless properly made. A valid application will include:

- the required fee
- a plan of the premises
- an operating schedule that contains sufficient information to achieve the licensing objectives
- if the application is for the supply of alcohol, a consent form from the Designated Premises Supervisor

5.17 The application may also include such information as:

- the physical arrangement/layout and extent of the premises
- the nature and features of the premises throughout all its operating hours
- equipment/facilities provided or proposed at the premises
- number and competency of personnel to secure compliance with the Act and the likely licence conditions
- managerial systems and procedures to monitor and control the premises and its vicinity during its operating times
- any other matter that affects the licensing objectives

6. CUMULATIVE IMPACT

- 6.1 The Council will not consider commercial demand ('need') when considering an application. 'Need' is a matter for the planning committee and the market and not for the licensing authority or the licensing policy.
- 6.2 The Council does recognise that the 'cumulative impact' of the number, type and density of licensed/club premises may undermine the licensing objectives. However, the Council may not impose conditions on or refuse to grant or vary a premises licence or club premises certificate due to cumulative effect, unless it has received relevant representation from a responsible authority or an interested party. The policy addresses this by defining areas affected by 'cumulative impact' as 'saturated areas'. Where considered appropriate the Council may adopt a special saturation policy.
- 6.3 Saturated areas are, those which experience exceptional problems of disorder and nuisance over and above the impact of an individual premise.
- 6.4 Before being able to consider whether individual new applications relating to a potential saturated area should not be granted on grounds that they will have an adverse effect on the licensing objectives, the Council must adopt a special policy.
- 6.5 Where relevant representations are received from a responsible authority or an interested person asking for a specific area to be classed as saturated as described in the guidance, they would need to provide suitable evidence.
- 6.6 The Council will need to follow the necessary steps in considering whether to adopt a special policy. These are:
- Identification of serious concern from a responsible authority or interested party about crime and disorder or public nuisance
 - Assessment of the causes
 - Where it can be demonstrated that crime and disorder or nuisance is arising as a result of customers of licensed premises, identifying the area where problems are arising and the boundaries of that area
 - Consulting with responsible authorities and interested parties
 - Adopting and publishing of the special policy concerning saturation areas and any future licence applications from that area
- 6.7 A special policy must be reviewed regularly to assess whether it is needed or if any revisions are required.

- 6.8 A special policy would not prevent the Council considering future applications as each application is considered on its own merits. However, where a special policy has been agreed, applications for a licence will normally be refused where relevant representations have been made. The applicant will need to demonstrate how the premises would not add to the cumulative impact on the area concerned.
- 6.9 Special policies will be restricted to the impact of a concentration of licensed premises selling alcohol for consumption on the premises. A concentration of premises selling alcohol for consumption off the premises will not normally justify a special saturation policy.
- 6.10 The Council will not use a special policy as grounds for revoking an existing licence or certificate. A relevant complaint that could be linked to a particular premise from a responsible authority or interested party would allow a review of the licence or certificate to take place.
- 6.11 A special policy must not be used to impose a terminal hour (closing time) on licensed premises in a particular area. Dictated terminal hours have been abolished under the Act, to avoid problems arising with customers leaving premises simultaneously.
- 6.12 The Council regards the adoption of a special saturation policy as exceptional. Other mechanisms exist to address behaviour that causes a public nuisance or is unlawful, for example:
- planning controls
 - positive measures to create a safe and clean city centre environment in partnership with local businesses, transport operators and the Council
 - powers of the Council to designate parts of the City area as places where alcohol may not be consumed publicly
 - Derbyshire Constabulary's enforcement of the general law concerning disorder and anti-social behaviour, including fixed penalty notices;
 - anti-social behaviour orders
 - the prosecution of any personal licence holders or member of staff at each premises who is selling alcohol to people who are drunk
 - the confiscation of alcohol from adults and children in designated areas
 - Derbyshire Constabulary's powers to close down instantly for 24 hours any licensed/club premises or temporary events on grounds of disorder, the likelihood of disorder or excessive noise emanating from the premises
 - the power of Derbyshire Constabulary, other responsible authority or interested party to seek a review of the licence or certificate in question
- 6.13 Matters in 6.12 may be supplemented by local initiatives to address these problems.
- 6.14 Quotas which pre-determine the individual merits of any application, for example, restricting numbers of premises or their capacities, will not be used by the Council. This is because quotas have no regard to the individual characteristics of the premises concerned. Proper consideration must be given to the differences in contrasting styles and characteristics of premises and their differing impact they will have on the local community.

7. LICENSING HOURS

- 7.1 The Council will determine licensing hours on the individual merits of each application. The Council recognises that longer licensing hours for the sale of alcohol can avoid large numbers of people leaving premises at the same time. This in turn reduces the friction at late night fast food outlets, taxi ranks and other sources of transport, which can lead to disorder and disturbance. The Council wants to ensure licensing hours do not inhibit the development of thriving and safe evening and night-time economies, which are important for investment, employment, domestic and international tourism. Providing consumers with greater choice and flexibility is an important consideration.
- 7.2 The Council will not impose conditions that artificially fix opening hours on premises within areas of the City (often referred to as zoning). Such 'zoning' may lead to migration of customers from one area to another at particular times and may result in greater concentrations of noise and disturbance.
- 7.3 Stricter conditions may be imposed by the Council with regard to noise control in areas, which have a denser residential accommodation. Each application will be judged on its own merits.
- 7.4 With regard to shops, stores and supermarkets, the Council will allow the sale of alcohol for consumption off the premises at any time when the retail shop is open for trading, unless there are very good reasons for restricting those hours. For example, a limitation may be appropriate following representation from Derbyshire Constabulary in the case of some shops known to be a focus of disorder and disturbance because individuals gather there.
- 7.5 If specific hours of trading have been imposed by the planning authority, licensing hours will not be permitted beyond those times.

8. LICENSING OBJECTIVES

- 8.1 The Council will expect the applicant to provide information and details on how they propose to promote the four licensing objectives when preparing their operating schedules.
- 8.2 Whether or not a risk assessment shows the options outlined in Appendix 1 will depend on a range of factors, including nature and style of venue, the activities, location of the premises and the anticipated clientele.
- 8.3 The applicant is free to volunteer any measure they feel promotes the licensing objectives. Any measure outlined in the operating schedule may become a condition on the licence or certificate.
- 8.4 When incorporated into the licence or certificate as a condition, they become enforceable under the law and any breach of conditions could give rise to prosecution.
- 8.5 The pool of conditions outlined in Appendix 1 issued in the guidance should be considered as measures that would promote the licensing objectives. However the lists are not exhaustive and applicant may wish to include other measures, which they consider promote the licensing objectives. Responsible authorities when considering

applications, and the Council following receipt of relevant representations/complaints from responsible authorities or interested parties, should consider these options as ways of meeting the licensing objectives.

Prevention of Crime and Disorder

- 8.6 Licensees should provide information in their operating schedules that promotes prevention of crime and disorder. Appendix 1 Part 1 provides areas that should be considered by the applicant. The Council encourages applicants to seek advice and guidance from Derbyshire Constabulary on crime and disorder issues.

Public Safety

- 8.7 Licensees must ensure the physical safety of people using the relevant premises or place. Appendix 1 Part 2 outlines some areas that should be considered by the applicant.
- 8.8 The Council will only specify maximum occupancy limits in the premises licence in consultation with Derbyshire Fire & Rescue Service and the Council's Environment & Regulatory Services Department to ensure the safety of people at the premises and to ensure a safe means of escape.
Occupancy limits could be set for:
- nightclubs
 - cinemas
 - theatres
 - other premises where regulated entertainment is being provided
- 8.9 The applicant should consider the use of appropriate fire safety precautions to protect public safety. This may include fire fighting equipment, emergency lighting and an appropriate means of raising the alarm in the event of a fire.
- 8.10 Appendix 1 Part 3 outlines specific matters that require consideration under public safety for theatres and cinemas.
- 8.11 In relevant premises licence holders will be expected to incorporate the principles identified in the Guidance for Licensing Authorities, Club Managers and Promoters into their operating schedules. The guide can be viewed in full on www.homeoffice.gov.uk/drugs

Prevention of Public Nuisance

- 8.12 The applicant will only be expected to prevent public nuisance that is under their direct control. In order to achieve this the applicant could consider measures that:
- prevent noise and vibration escaping from the premises, such measures may include soundproofing, air conditioning, acoustic lobbies and sound limitation devices
 - prevent disturbance by customers arriving at, queuing and leaving the premises, which is usually of greater significance later in the evening or early morning
 - control nuisance associated with public disturbance

- control the generation of odour, for example from the preparation of food
- prevent potential litter problems in the vicinity of and caused by their activities, including, distribution of flyers, fly posting, food packaging left by customers from late night refreshment premises
- any other matters likely to cause public nuisance

Appendix 1 Part 4 outline some areas that should be considered by the applicant.

- 8.13 Case law identifies 'public nuisance' as affecting more than one person, however, each case will be considered on it's own merits.
- 8.14 The Council recognises the control of nuisance that is not within the vicinity of the premises or the responsibility of the licence holder, does not fall within the Act.
- 8.15 The rich cultural benefit of live music, dancing and theatre is recognised by the Council. Our cultural strategy promotes the enjoyment involvement and celebration of cultural experiences. The potential for limited disturbance in neighbourhoods will be balanced with these benefits, particularly for children.

Protection of Children from Harm

- 8.16 Appendix 1 Part 5 outlines some areas that should be considered by the applicant.
- 8.17 The Council will not impose conditions that restrict access to children to any type of premises unless it is considered necessary to protect them from physical, moral or psychological harm. Premises that would give rise for concern are:
- where entertainment or services of an adult or sexual nature are commonly provided
 - where there have been convictions of current members of staff at the premises for serving alcohol to minors, or where there is a reputation for underage drinking
 - where there is a known association with drug taking or dealing
 - where there is a strong element of gambling on the premises
 - where the supply of alcohol for consumption on the premises is the primary purpose of the premises
- 8.18 It would be unusual for the Council to completely prohibit access of children from the premises. The following options could be used in order to protect children from physical, moral or psychological harm:
- limitations on the hours when children may be present
 - age limitations
 - limitations or exclusions when certain activities are taking place
 - requirements for an accompanying adult
 - limitations on parts of the premises
 - full exclusion for those under 18 when certain licenses/activities are taking place
- 8.19 The Council will not impose any condition that requires admission of children to any premises.

- 8.20 Where the Council imposes no restriction on access by children, it is left to the discretion of the individual licensee or club to ensure the licensing objective is met.
- 8.21 The Council will liaise with Derbyshire Constabulary and the Council's Trading Standards Department about the extent of unlawful sale and consumption of alcohol to minors and, as appropriate, will be involved in the development of any strategies to control or prevent these unlawful activities and to pursue prosecutions.
- 8.22 The Council recognises the protection prioritised and given to children under the Children's Act 2004. This legislation puts obligations on childcare organisations. Other organisations are able to make use of the scheme set up to support the Children's Act 2004, and this includes use of the Criminal Records Bureau. The holders of the premises licence, club premises certificate and premises users have a duty/responsibility and must take appropriate steps, including, where necessary the use of these services to ensure protection of children from harm.
- 8.23 The Council is committed to accepting the Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks. This is to ensure drinks are packaged and promoted in a socially responsible manner to only those who are 18 or over. The Code is an important weapon in protecting children from harm.

Children and Cinemas

- 8.24 The Council expects licensees or clients to include in their operating schedules, arrangements for restricting children from viewing age-restricted films classified according to the recommendation of the British Board of Film Classification.
- 8.25 It is mandatory under the Act that a condition is imposed on all premises licences or club premises certificates authorising the exhibition of films for the admission of children to be restricted in accordance with the British Board of Film Classification.

9. INTEGRATING STRATEGY

- 9.1 The Council will ensure its licensing function promotes the licensing objectives through its decision making process, and by appropriate use of its powers and its responsibilities through liaison and partnership work. The Council will secure proper integration of the licensing policy with the Derby City Partnership Sustainable Community Strategy and it's 2020 Vision.
- 9.2 The Council recognises the importance of attaching relevant and enforceable licence conditions that reflect local strategies, in particular, crime prevention.
- 9.3 The Council will normally expect each applicant to have obtained the appropriate planning consent in respect of the premises/club premises applied for to avoid duplication and inefficiency. Application for licences should not be a re-run of the planning application and should not cut across decisions made by the planning committee.
- 9.4 To enable the planning committee to have regard to such matters when making decisions and avoid unnecessary overlap, the licensing committee will provide reports to the planning committee on the situation regarding licensed/club premises in the

area. This may include information concerning the general impact of alcohol related crime and disorder.

- 9.5 If the Council has concerns, or receives valid relevant representations from Derbyshire Constabulary, it will liaise with local Traffic and Transportation Managers and transport providers in relation to the swift dispersal of people to avoid concentrations which produce disorder and disturbances.

10. PROMOTING AND ACHIEVING EQUALITY

- 10.1 The Council takes it's legal responsibilities under the Race Relations Amendment Act, Disability Equality Positive Duty and Gender Equality Duty very seriously. The Council will make sure that any decisions made are fair, taking into account the need to eliminate unfair discrimination and also to promote equality and good race relations between different racial groups. The Council will consider whether the decisions made have a negative impact on any particular equality target group. This is highlighted in the Council's Equality and Diversity Policy, which covers equality in race, gender, disability, sexuality, religion and belief, and age.
- 10.2 The Council will encourage other agencies involved in the licensing process to follow the principles of the Equality and Diversity Policy. Advice and guidance will be made available to licensees on making their premises accessible for disabled people.
- 10.3 The Council will give consideration to any national guidance available on equality issues when considering applications for licences.
- 10.4 The Council will have due consideration to Human Rights legislation when determining licence applications.

11. DUPLICATION

- 11.1 The Council is committed to avoiding duplication with other regulatory agencies. Where there is primary legislation, such as health and safety, fire safety etc, the relevant enforcement agency must use its powers to secure compliance. 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. If already provided for in other legislation, they cannot be considered necessary in the context of licensing law.
- 11.2 Where separate primary legislation does not cover the unique circumstance of some licensable activities, the Council will consider attaching conditions to premises licences and club premises certificates where these are necessary for licensing law.

12. CONDITIONS

- 12.1 The Council will adopt the pool of conditions as suggested by the Secretary of State in the guidance, from which necessary and proportionate conditions may be drawn in particular circumstances. These are set out in Appendix 1.

- 12.2 Any condition attached to premises licences or club premises certificates will be tailored to the individual style and characteristics of the premises and events concerned. Such conditions will be proportionate to the circumstances to ensure the licensing objectives are promoted.
- 12.3 In certain circumstances the Council may impose mandatory conditions on the premises licence. These mandatory conditions relate to:
- premises where alcohol is sold
 - children and the exhibition of films
 - where there is a requirement for door supervisors

These mandatory conditions are found in Appendix 2.

13. LIVE MUSIC, DANCING AND THEATRE

- 13.1 The Council recognises the importance of live music, dancing and theatre performances have on the development of cultural diversity, promoting vibrant and exciting communities where artistic freedom of expression is a fundamental right and is greatly valued. Traditional music and dancing are parts of cultural heritage and help to unite communities, particularly in ethnically diverse communities.
- 13.2 To ensure cultural diversity thrives, the Council will encourage and promote a broad range of entertainment for the wider cultural benefit of communities. A natural concern to prevent disturbance in neighbourhoods should be balanced with these wider cultural benefits, particularly for children.
- 13.3 For the promotion of the licensing objectives and to avoid imposing indirect costs of a disproportionate nature the Council will consider any conditions imposed on licences carefully, appropriately and fairly.

14. ENFORCEMENT

- 14.1 In order to ensure compliance with the licensing conditions, premises will be inspected using a risk-based approach. This will allow resources to be more effectively targeted on high-risk or problematic premises and prevent over burdensome enforcement on well-managed premises or events.
- 14.2 Appropriate enforcement action will be taken in accordance with the Council's Environment & Regulatory Services Enforcement Policy, the government's Enforcement Concordat, the Derbyshire Licensing Protocol and any other enforcement protocols agreed with other agencies.
- 14.3 In determining the most appropriate course of action the Council will be mindful of the primary legislation and the regulatory power of other enforcement bodies. The Council will also have consideration of partnership working with other relevant bodies, and any enforcement protocols developed with these bodies, in particular Derbyshire Constabulary.

15. REVIEW

- 15.1 At any stage after the grant of a licence, a responsible authority or interested party may ask the Council to review the licence because of a matter arising at the premises concerning any of the licensing objectives.
- 15.2 Relevant representations must be in writing. Representations from interested parties, for example, local residents, residents associations, local businesses or trade associates must not be vexatious, frivolous or repetitious.
- 15.3 A review will also follow any action by Derbyshire Constabulary or the Council's Environmental Health Officers to close the premises for up to 24 hours on the grounds of disorder or noise nuisance. It will take place as soon as possible after the Magistrates' court's determination being received by the Council.

16. ADMINISTRATION, EXERCISE AND DELEGATION OF FUNCTIONS

- 16.1 The Council recognises many of the decisions and functions under the Act are purely administrative in nature. In the interests of speed, efficiency and cost-effectiveness the Council will implement the suggested delegation of functions as outlined in the guidance. These are reproduced in Table 1.
- 16.2 Where there are no relevant representations being made to application for the grant of a premises licence or club premises certificate or police objections to a personal licence, or to an activity taking place under a temporary event notice, these matters will be dealt with by the licensing officers. This is to ensure applications are dealt with speedily.
- 16.3 The Council's Licensing Committee will receive regular reports on decisions made by officers, so that they can maintain an overview of the licensing situation.
- 16.4 The points of contact for any licensing issues or enquiries is the Licensing Team, Environment & Regulatory Services, Derby City Council, Celtic House, Heritage Gate, Friary Street, Derby, DE1 1QX, or telephone Derby (01332) 641930, or e-mail at licensing@derby.gov.uk. A copy of this licensing policy is available at www.derby.gov.uk.

The Act and the guidance issued by the Department of Culture, Media and Sport are available on www.culture.gov.uk.

Table 1 - Delegation of Functions

| Matter to be dealt with | Licensing Committee* | Licensing Panel* | Officers* |
|-----------------------------------------------------------------------------------|-----------------------------|-----------------------------------|------------------------------------------------------------------------------------------------|
| Determination of policies & strategies | All cases | | |
| Application for personal licence | | If a Police objection | If no objection made |
| Application for personal licence with unspent convictions | | All cases | |
| Application for premises licence/club premises certificate | | If a relevant representation made | If no relevant representation made |
| Application for provisional statement | | If a relevant representation made | If no relevant representation made |
| Application to vary a premises licence/club premises certificate | | If a relevant representation made | If no relevant representation made |
| Application to vary designated personal licence holder | | If a Police objection | All other cases |
| Request to be removed as designated personal licence holder | | | All cases |
| Application for transfer of premises licence | | If a Police objection | All other cases |
| Applications for interim authorities | | If a Police objection | All other cases |
| Application to review premises license/club premises certificate | | All cases | |
| Decision on whether a complaint is irrelevant, vexatious etc. | | | All cases |
| Decision to object when local authority is a consultee and not the lead authority | | All cases | |
| Determination of a police representation to a temporary event notice | | All cases | |
| Application for minor variation for premises licence / club premises certificate | | | If no relevant representation made. If relevant representation made – full variation required. |

***Key:**

| | | |
|---------------------|---|---------------------------------------------------------------------------|
| Licensing Committee | - | at least 10 but less than 15 members from Licensing and Appeals Committee |
| Licensing Panel | - | 3 from Licensing Committee |
| Officers | - | Officers of the Licensing Team |

Annex D Pool of Conditions - taken from the Guidance Issued under Section 182 of the Licensing Act 2003

CORE PRINCIPLES

1. When applicants are preparing their operating schedules or club operating schedules, responsible authorities are considering applications and licensing authorities are considering applications following the receipt of relevant representations, they should consider whether the measures set out below are necessary to promote the licensing objectives.

2. Any risk assessment to identify necessary measures should consider the individual circumstances of the premises (including local knowledge) and take into account a range of factors including:

- the nature and style of the venue;
- the activities being conducted there;
- the location; and
- the anticipated clientele.

Under no circumstances should licensing authorities regard these conditions as standard conditions to be automatically imposed in all cases.

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

4. Licensing authorities should carefully consider conditions to ensure that they are not only necessary but realistic, practical and achievable, so that they are capable of being met. Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both. As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises.

It is also important that conditions which are imprecise or difficult to enforce should be avoided.

5. It should be borne in mind that club premises operate under codes of discipline to ensure the good order and behaviour of members and that conditions enforcing offences under the Act are unnecessary.

PART 1. CONDITIONS RELATING TO THE PREVENTION OF CRIME AND DISORDER

Text/Radio pagers

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

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

The Secretary of State recommends that text or radio pagers should be considered for public houses, bars and nightclubs operating in city and town centre leisure areas with a high density of licensed premises. These conditions may also be appropriate and necessary in other areas.

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

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

Door supervisors

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

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

Where the presence of door supervisors conducting security activities is to be a condition of a licence, which means that they would have to be registered with the Security Industry Authority, conditions may also need to deal with:

- the number of supervisors;
- the displaying of name badges;
- the carrying of proof of registration;
- where, and at what times, they should be stationed on the premises; and

- whether at least one female supervisor should be available (for example, if female customers are to be given body searches).

Door supervisors also have a role to play in ensuring public safety (see Part 2) and the prevention of public nuisance (see Part 4).

Bottle bans

Glass bottles may be used as weapons to inflict serious harm during incidents of disorder. A condition can prevent sales of drinks in glass bottles for consumption on the premises. This should be expressed in clear terms and include the following elements:

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

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

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

Bottle bans may also be a relevant necessary measure to promote public safety (see Part 2).

Plastic containers and toughened glass

Glasses containing drinks may be used as weapons and in untoughened form, can cause very serious injuries. Where necessary, consideration should therefore be given to conditions requiring the use of safer alternatives which inflict less severe injuries.

Location and style of the venue and the activities carried on there are particularly important in assessing whether a condition is necessary. For example, the use of glass containers on the terraces of some outdoor sports grounds may obviously be of concern, and similar concerns may also apply to indoor sports events such as boxing matches. Similarly, the use of plastic containers or toughened glass may be a necessary condition during the televising of live sporting events, such as international football matches, when there may be high states of excitement and emotion fuelled by alcohol.

The use of plastic or paper drinks containers and toughened glass may also be relevant as measures necessary to promote public safety (see Part 2).

Open containers not to be taken from the premises

Drinks purchased in licensed premises or clubs may be taken from those premises for consumption elsewhere. This is lawful where premises are licensed for the sale of alcohol for consumption off the premises. However, consideration should be given to a condition preventing customers from taking alcoholic and other drinks from the premises in open containers (eg glasses and opened bottles) for example, by requiring the use of bottle bins on the premises.

This may again be necessary to prevent the use of these containers as offensive weapons in surrounding streets after individuals have left the premises.

Restrictions on taking open containers from the premises may also be relevant necessary measures to prevent public nuisance (see Part 4).

CCTV

The presence of CCTV cameras can be an important means of deterring and detecting crime at and immediately outside licensed premises. Conditions should not just consider a requirement to have CCTV on the premises, but also the precise siting of each camera, the requirement to maintain cameras in working order, and to retain recordings for an appropriate period of time.

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

Restrictions on drinking areas

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

Restrictions on drinking areas may also be relevant necessary measures to prevent public nuisance (see Part 4).

Capacity limits

Capacity limits are most commonly made a condition of a licence on public safety grounds (see Part 2), but should also be considered for licensed premises or clubs where overcrowding may lead to disorder and violence. If such a condition is considered necessary, door supervisors may be needed to ensure that the numbers are appropriately controlled (see above).

Proof of age cards

It is unlawful for children under 18 to attempt to buy alcohol just as it is unlawful to sell or supply alcohol to them. To prevent the commission of these criminal offences, licensed premises should have in place an age verification policy. This requires the production of "proof of age" before sales are made. The Secretary of State strongly supports the PASS accreditation system which aims to approve and accredit various proof of age schemes that are in existence. This ensures that such schemes maintain high standards, particularly in the area of integrity and security. While age verification policies may refer directly to PASS accredited proof of age cards, they should also allow for the production of other proof which bears a photograph, the individual's date of birth and a holographic mark, such as photo-driving licences, National Identity Cards, some student cards and passports.

Since many adults in England and Wales do not currently carry any proof of age, the wording of any condition will require careful thought. For example, many premises have adopted the "Challenge 25", "Challenge 21" or other similar initiatives. Under these initiative those premises selling or supplying alcohol require sight of evidence of age from any person appearing to be under the specified age and who is attempting to buy alcohol.

Crime prevention notices

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

Drinks promotions

Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club premises certificates in an area as this is likely to breach competition law. It is also likely to be unlawful for licensing authorities or police officers to promote voluntary arrangements of this kind as this can risk creating cartels. Discounting at individual premises may be permissible provided it is consistent with the licensing objectives.

Irresponsible promotions are addressed through mandatory licensing conditions. Licensing authorities are reminded that there may be a judgement needed on whether a specific promotion is responsible or irresponsible. It is therefore vital that they consider these matters objectively in the context of the licensing objectives and before pursuing any form of restrictions at all, take their own legal advice.

Signage

It may be necessary for the normal hours at which licensable activities are permitted to take place under the terms of the premises licence or club premises certificate to be displayed on or immediately outside the premises so that it is clear if breaches of these terms are taking place.

Similarly, it may be necessary for any restrictions on the admission of children to be displayed on or immediately outside the premises to deter those who might seek admission in breach of those conditions.

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

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

Where necessary and appropriate, conditions can be attached to licences for these premises which require adherence to:

- a prescribed capacity;
- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of security staff holding the appropriate SIA licence or exemption (see paragraphs 10.58-10.64) to control entry for the purpose of compliance with the capacity limit.

PART 2. CONDITIONS RELATING TO PUBLIC SAFETY

The attachment of conditions to a premises licence or club premises certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work etc Act 1974, associated regulations and especially the requirements under the Management of Health and Safety at Work Regulations 1999, and the Regulatory Reform (Fire Safety) Order 2005 to undertake risk assessments. Employers should assess the risks, including risks from fire, and take measures necessary to avoid and control them. Conditions enforcing these requirements are therefore unnecessary.

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

General

Additional matters relating to cinemas and theatres are considered in Part 3. It should also be recognised that special issues may arise in connection with outdoor and large scale events.

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

- Model National and Standard Conditions for Places of Public Entertainment and Associated Guidance ISBN 1 904081 11 0 (Entertainment Technology Press – ABTT Publications)
- The Event Safety Guide – A guide to health, safety and welfare at music and similar events (HSE 1999) (“The Purple Book”) ISBN 0 7176 2453 6
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) (“The Green Guide”) ISBN 0 11 300095 2
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances published by the Independent Street Arts Network, copies of which may be obtained through: www.streetartsnetwork.org.uk/pages/publications.htm
- The London District Surveyors Association’s “Technical Standards for Places of Public Entertainment” ISBN 0 9531229 2 1

The following British Standards should also be considered:

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

In most premises existing legislation will provide adequately for the safety of the public or club members and guests. However, where this is not the case, consideration might be given to the following conditions.

Safety checks

- Safety checks are carried out before the admission of the public.
- Details of such checks are kept in a Log-book.

Escape routes

- Exits are kept unobstructed, with non-slippery and even surfaces, free of trip hazards and clearly identified.
- Where chairs and tables are provided in restaurants and other premises, internal gangways are kept unobstructed.
- All exits doors are easily openable without the use of a key, card, code or similar means.
- Doors at such exits are regularly checked to ensure that they function satisfactorily and a record of the check kept.
- Any removable security fastenings are removed whenever the premises are open to the public or occupied by staff.
- The edges of the treads of steps and stairways are maintained so as to be conspicuous.

Disabled people

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

Lighting

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

Curtains, hangings, decorations and upholstery

- Curtains, hangings and temporary decorations are arranged so as not to obstruct exits
- temporary decorations are not used without prior notification to the licensing authority/relevant responsible authority.

Capacity limits

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

Access for emergency vehicles

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

First aid

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

Temporary electrical installations

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

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

Indoor sports entertainments

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

Special effects

The use of special effects in venues of all kinds being used for regulated entertainment is increasingly common and can present significant risks. Any special effects or mechanical installation should be arranged and stored so as to minimise any risk to the safety of the audience, the performers and staff. Further details and guidance are given in Part 3.

Alterations to the premises

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

Other measures

Other measures previously mentioned in relation to the Prevention of Crime and Disorder may also be relevant as necessary to promote public safety.

These might include the provision of door supervisors, bottle bans, and requirements to use plastic or toughened glass containers (see Part 1 for further detail).

PART 3. THEATRES, CINEMAS, CONCERT HALLS AND SIMILAR PLACES (PROMOTION OF PUBLIC SAFETY)

In addition to the points in Part 2, there are particular public safety matters which should be considered in connection with theatres and cinemas.

PREMISES USED FOR CLOSELY SEATED AUDIENCES

Attendants

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

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

- (b) Attendants shall not be engaged in any duties that would prevent them from promptly discharging their duties in the event of an emergency or require their absence from that floor or auditorium where they are on duty.
- (c) Any attendant shall be readily identifiable to the audience (but this need not entail the wearing of a uniform).
- (d) The premises shall not be used for a closely seated audience except in accordance with seating plan(s), a copy of which is available at the premises and shall be shown to any authorised person on request.
- (e) No article shall be attached to the back of any seat which would reduce the clear width of seatways or cause a tripping hazard or obstruction.
- (f) A copy of any certificate relating to the design, construction and loading of any temporary seating shall be kept available at the premises and shall be shown to any authorised person on request.

Seating

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

Standing and sitting in gangways etc

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

- (b) Waiting or standing shall not be permitted except in areas designated in the premises licence or club premises certificate.
- (c) In no circumstances shall anyone be permitted to-
- (i) sit in any gangway;
 - (ii) stand or sit in front of any exit; or
 - (iii) -stand or sit on any staircase including any landings.

Drinks

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

Balcony Fronts

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

Special effects

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

Special effects include:

- dry ice machines and cryogenic fog;
- smoke machines and fog generators;
- pyrotechnics, including fireworks;
- real flame;
- firearms;
- motor vehicles;
- strobe lighting;
- lasers;
- explosives and highly flammable substances.

In certain circumstances, it may be necessary to require that certain special effects are only used with the prior notification of the licensing authority. In these cases, the licensing authority should notify the fire and rescue authority, who will exercise their inspection and enforcement powers under the Regulatory Reform (Fire Safety) Order 2005.

Further guidance can be found in the following publications:

- HSE Guide 'The radiation safety of lasers used for display purposes' (HS(G)95)
- 'Smoke and vapour effects used in entertainment' (HSE Entertainment Sheet No 3);
- 'Special or visual effects involving explosives or pyrotechnics used in film and television production' (HSE Entertainment Sheet No 16);
- 'Electrical safety for entertainers' (HSE INDG 247)
- 'Theatre Essentials' – Guidance booklet produced by the Association of British Theatre Technicians 8

Ceilings

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

PREMISES USED FOR FILM EXHIBITIONS

Attendants – premises without a staff alerting system

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

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

Attendants – premises with a staff alerting system

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

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

(b) Staff shall not be considered as being available to assist in the event of an emergency if they are:

- (i) -the holder of the premises licence or the manager on duty at the premises, or
- (ii) -a member of staff whose normal duties or responsibilities are likely to:
 - (iii) -significantly affect or delay their response in an emergency situation, or
 - (iii) - a member of staff whose usual location when on duty is more than 60 metres from the location to which they are required to go on being alerted to an emergency situation.

(c) Attendants shall as far as reasonably practicable be evenly distributed throughout all parts of the premises to which the public have access and keep under observation all parts of the premises to which the audience have access.

(d) The staff alerting system shall be maintained in working order.

Minimum lighting

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

PART 4. CONDITIONS RELATING TO THE PREVENTION OF PUBLIC NUISANCE

It should be noted that provisions of the Environmental Protection Act 1990, the Noise Act 1996 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from the effects of noise nuisance. In addition, the provisions in Part 8 of the Licensing Act 2003 enable a senior police officer to close down instantly for up to 24 hours licensed premises and premises carrying on temporary permitted activities that are causing nuisance resulting from noise emanating from the premises. These matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

Hours

The hours during which the premises are permitted to be open to the public or to members and their guests can be restricted by the conditions of a premises licence or a club premises certificate for the prevention of public nuisance. But this must be balanced by the potential impact on disorder which may result from arbitrarily fixed closing times. However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times.

Restrictions could be necessary on the times when certain licensable activities take place even though the premises may be open to the public at such times. For example, the playing of recorded music after a certain time might be prohibited, even though other licensable activities are permitted to continue. Or the playing of recorded music might only be permitted after a certain time where conditions have been attached to the licence or certificate to ensure that any potential nuisance is satisfactorily prevented.

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

In premises where existing legislation does not provide adequately for the prevention of public nuisance, consideration might be given to the following conditions.

Noise and vibration

In determining which conditions are necessary and appropriate, licensing authorities should be aware of the need to avoid unnecessary or disproportionate measures that could deter the holding of events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues. The following conditions may be considered:

- Noise or vibration does not emanate from the premises so as to cause a nuisance to nearby properties. This might be achieved by one or more of the following conditions:
 - a simple requirement to keep doors and windows at the premises closed;
 - limiting live music to a particular area of the building;
 - moving the location and direction of speakers away from external walls or walls that abut private premises;
 - installation of acoustic curtains;
 - fitting of rubber seals to doorways;

- installation of rubber speaker mounts;
- requiring the licensee to take measure to ensure that music will not be audible above background level at the nearest noise sensitive location;
- require licensee to undertake routine monitoring to ensure external levels of music are not excessive and take appropriate action where necessary;
- noise limiters on amplification equipment used at the premises (if other measures have been unsuccessful).
- Prominent, clear and legible notices are displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
- The use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas are restricted.
- The placing of refuse – such as bottles – into receptacles outside the premises takes place at times that will minimise the disturbance to nearby properties.

Noxious smells

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

Light pollution

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

Other measures

Other measures previously mentioned in relation to the Prevention of Crime and Disorder may also be relevant as necessary to prevent public nuisance. These might include the provision of door supervisors, open containers not to be taken from the premises, and restrictions on drinking areas (see Part 1 for further detail).

PART 5. CONDITIONS RELATING TO THE PROTECTION OF CHILDREN FROM HARM

An operating schedule or club operating schedule should indicate any decision for the premises to exclude children completely. This would mean there would be no need to detail in the operating schedule steps that the applicant proposes to take to promote the protection of children from harm. Otherwise, where entry is to be permitted, the operating schedule should outline the steps to be taken to promote the protection of children from harm while on the premises.

Access for children to licensed premises – in general

Restrictions on the access of children under 18 to premises where licensable activities are being carried on should be made where it is necessary to protect children from harm. Precise policy and details will be a matter for individual licensing authorities.

The Secretary of State recommends (unless there are circumstances justifying the contrary) that:

- for any premises with known associations (having been presented with evidence) with or likely to give rise to:
 - heavy or binge or underage drinking;
 - drugs;
 - significant gambling; or
 - any activity or entertainment (whether regulated entertainment or not) of a clearly adult or sexual nature,

there should be a strong presumption against permitting any access at all for children under 18 years.

- for any premises, not serving alcohol for consumption on the premises, but where the public are allowed on the premises after 11.00pm in the evening, there should be a presumption against the presence of children under the age of 12 unaccompanied by adults after that time.

Applicants wishing to allow access under the above circumstances, should when preparing new operating schedules or club operating schedules or variations of those schedules:

- explain their reasons; and
- outline in detail the steps that they intend to take to protect children from harm on such premises.

In any other case the Secretary of State recommends that, subject to the premises licence holder's or club's discretion, the expectation would be for unrestricted access for children subject to the terms of the 2003 Act

Age Restrictions – specific

Whilst it may be appropriate to allow children unrestricted access at particular times and when certain activities are not taking place, licensing authorities will need to consider:

- the hours of day during which age restrictions should and should not apply. For example, the fact that adult entertainment may be presented at premises after 8.00pm does not mean that it would be necessary to impose age restrictions for earlier parts of the day;
- types of event or activity that are unlikely to require age restrictions, for example:

- family entertainment; or
- non-alcohol events for young age groups, such as under 18s dances,
- types of event or activity which give rise to a more acute need for age restrictions than normal, for example:
 - during “Happy Hours” or on drinks promotion nights;
 - during activities outlined in the first bullet point in the first paragraph above.

Age restrictions – cinemas

The British Board of Film Classification classifies films in accordance with its published Guidelines which are based on extensive research into public opinion and professional advice. The Secretary of State therefore recommends that licensing authorities should not duplicate this effort by choosing to classify films themselves. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role. Licensing authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

Licensing authorities should be aware that the BBFC currently classifies films in the following way:

- U Universal – suitable for audiences aged four years and over
- PG – Parental Guidance. Some scenes may be unsuitable for young children.
- 12A – Passed only for viewing by persons aged 12 years or older or persons younger than 12 when accompanied by an adult.
- 15 – Passed only for viewing by persons aged 15 years and over.
- 18 – Passed only for viewing by persons aged 18 years and over.

Licensing authorities should note that these classifications may be subject to occasional change and consult the BBFC's website at www.bbfc.co.uk before applying relevant conditions.

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

- where the licensing authority itself is to make recommendations on the admission of children to films, the cinema or venue operator must submit any film to the authority that it intends to exhibit 28 days before it is proposed to show it. This is to allow the authority time to classify it so that the premises licence holder is able to adhere to any age restrictions then imposed;
- immediately before each exhibition at the premises of a film passed by the British Board of Film Classification there shall be exhibited on screen for at least five seconds in such a manner as to be easily read by all persons in the auditorium a reproduction of the certificate of the Board or, as regards a trailer advertising a film, of the statement approved by the Board indicating the classification of the film;
- when a licensing authority has made a recommendation on the restriction of admission of children to a film, notices are required to be displayed both inside and outside the premises so that persons entering can readily be made aware of the classification attached to any film or trailer. Such a condition might be expressed in the following terms:

“Where a programme includes a film recommended by the licensing authority as falling into an age restrictive category no person appearing to be under the age specified shall be admitted to any part of the programme; where a programme includes a film recommended by the licensing authority as falling into a category requiring any persons under a specified age to be accompanied by an adult no person appearing to be under the age specified shall be admitted to any part of the programme unaccompanied by an adult, and the licence holder shall display in a conspicuous position a notice clearly stating the relevant age restrictions and requirements. For example:

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

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

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

Theatres

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

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

Licensing authorities are also expected to consider whether a condition should be attached to a premises licence which requires the presence of a sufficient number of adult staff on the premises to ensure the wellbeing of children during any emergency (See Part 3).

Performances especially for children

Where performances are presented especially for unaccompanied children in theatres and cinemas, licensing authorities will also wish to consider conditions to specify that:

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

Licensing authorities should also consider whether or not standing should be allowed. For example, there may be reduced risk for children in the stalls than at other levels or areas in the building.

Children in performances

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

- Venue – the backstage facilities should be large enough to accommodate safely the number of children taking part in any performance.
- Special effects – it may be inappropriate to use certain special effects, including smoke, dry ice, rapid pulsating or flashing lights, which may trigger adverse reactions especially with regard to children.
- Care of children – theatres, concert halls and similar places are places of work and may contain a lot of potentially dangerous equipment. It is therefore important that children performing at such premises are kept under adult supervision at all times including transfer from stage to dressing room and anywhere else on the premises. It is also important that the children can be accounted for at all times in case of an evacuation or emergency.

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

The Portman Group operates, on behalf of the alcohol industry, a Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks.

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

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

Proof of Age cards

Proof of age cards are discussed under Part 1 in connection with the prevention of crime and disorder. However, a requirement for the production of proof of age cards before any sale or supply of alcohol is made could be attached to any premises licence or club premises certificate for the protection of children from harm.

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

Since many adults in England and Wales do not currently carry any proof of age, the wording of any condition will require careful thought. For example, many premises have adopted the “Challenge 25”, “Challenge 21” or other similar initiatives. Under the “Challenge 25” or “Challenge 21” initiatives those premises selling or supplying alcohol require sight of evidence of age from any person appearing to be under the age of 25 or 21 and who is attempting to buy alcohol. Making this a licensing condition would ensure that most minors – even those looking older – would need to produce appropriate proof of age before making such a purchase.

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MANDATORY CONDITIONS – Taken from Section 10 of the Section 182 Guidance

The 2003 Act provides for the following mandatory conditions to be included in every licence and/or club premises certificate.

Mandatory conditions in relation to the supply of alcohol**Designated Premises Supervisor**

1 Any premises at which alcohol is sold or supplied may employ one or more personal licence holders. 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. The requirements are set out below in relation to the designated premises supervisor and authorisation of alcohol sales by a personal licence holder do not apply to community premises in respect of which a successful application has been made to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act.

2. The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or their licence has been suspended.

3. The Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the Licensing Act and conditions attached to the premises licence to promote the licensing objectives.

Authorisation by personal licence holders

4. In addition, the licence must require that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence. This in most instances will be the designated premises supervisor who must hold a valid personal licence. This does not mean that the condition should require the presence of the designated premises supervisor or any other personal licence holder on the premises at all material times.

5. Similarly, the fact that every supply of alcohol must be made under the authority of a personal licence holder does not mean that only personal licence holders can make sales or that they must be personally present at every transaction. A personal licence holder may authorise members of staff to make sales of alcohol but may be absent at times from the premises when a transaction takes place. However, the responsible personal licence holder will not be able to escape responsibility for the actions of anyone authorised to make sales.

6. "Authorisation" does not imply direct supervision by a personal licence holder of each sale of alcohol. The question arises as to how sales can be authorised. Ultimately, whether an authorisation has been given is a question of fact that would have to be decided by the courts on the evidence before it in the course of a criminal prosecution.

7. Nevertheless, it is important that licensing authorities, the police, employers and employees in the alcohol retail industry are given advice which promotes greater clarity and consistency. The Secretary of State considers that the following factors should be relevant in considering whether or not an authorisation has been given:

- the person(s) authorised to sell alcohol at any particular premises should be clearly identified;
- the authorisation should have specified the acts which may be carried out by the person being authorised;
- there should be an overt act of authorisation, for example, a specific written statement given to the individual being authorised; and
- there should be in place sensible arrangements for the personal licence holder to monitor the activity that they have authorised on a reasonably regular basis.

8. The Secretary of State strongly recommends that personal licence holders give specific written authorisations to individuals that they are authorising to retail alcohol. A single written authorisation would be sufficient to cover multiple sales over an unlimited period. This would assist personal licence holders in demonstrating due diligence should issues arise with enforcement authorities; and would protect employees if they themselves are challenged in respect of their authority to sell alcohol. The form of written authorisation is a matter for the personal licence holder, but the Secretary of State recommends that it should satisfy the criteria listed in the paragraph above. Written authorisation is not a requirement of the Act and its absence alone could not give rise to enforcement action.

9. It must be remembered that whilst the designated premises supervisor or a personal licence holder may authorise other individuals to sell alcohol in their absence, they are responsible for any sales that may be made. Similarly, the premises licence holder remains responsible for ensuring that licensing law and licence conditions are observed at the premises, and is also responsible for alcohol sales at community premises where the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act relating to personal licence holders and Designated Premises Supervisors have been disapplied.

Transitional Arrangements for the new mandatory conditions

10. The new mandatory conditions introduced in section 19A of the 2003 Act (governing e.g. irresponsible promotions), unlike the existing mandatory conditions (e.g. the requirement for a Designated Premises Supervisor under section 19 of the 2003 Act), do not have to be physically included in the licence or certificate but nonetheless will apply to every licence and certificate authorising the sale and supply of alcohol for consumption on the premises. However, like the existing mandatory conditions, the new mandatory conditions do not apply to activities (including the supply of alcohol) authorised by a temporary event notice.

11. Whereas the existing mandatory conditions are set out in Annex A of the licence or certificate, the new mandatory conditions are treated as if they are included in existing licences and certificates on the date that they come into force. The new mandatory conditions prohibiting irresponsible promotions and alcohol from being dispensed directly by one person into the mouth of another, and the condition requiring tap water to be available, come into force on 6 April 2010. The new mandatory conditions imposing an age verification requirement and a requirement to make small alcohol measures available come into force on 1 October 2010.

12. The new mandatory conditions override any pre-existing conditions already included in a licence or certificate insofar as the new mandatory conditions are identical to, or inconsistent with and more onerous than, any pre-existing conditions. The new mandatory conditions take effect on this basis in relation to existing licences and certificates on the date that the new mandatory conditions come into force, and the impact this will have on pre-existing conditions written into existing licences and certificates will not be recorded on the face of those documents. Local Authorities may like to make licence and certificate holders aware that the new conditions apply, to enable them to check that they thereafter operate in accordance with any changes which have been made to their conditions.

Irresponsible promotions

13. Under this condition, the "responsible person" (defined in the 2003 Act as the holder of a premises licence, designated premises supervisor, a person aged 18 or over who is authorised to allow the sale or supply of alcohol by an under 18 or a member or officer of a club present on the club premises who can oversee the supply of alcohol) should be able to demonstrate that they have taken all reasonable steps to ensure that staff do not carry out, arrange or participate in any irresponsible promotions. An irresponsible promotion is one which encourages the sale or supply of alcohol for consumption on the premises and carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance or harm to children. The aim of the condition is to prohibit or restrict promotions which encourage people to drink more than they might ordinarily do and in a manner which does not promote the licensing objectives.

14. Irresponsible promotions take a number of forms. The following activities are set out under the 2003 Act and cover the specific activities described below or those that are substantially similar.

Drinking Games

15. Drinking games are those which may require or encourage individuals to drink a quantity of alcohol within a time limit, or drink as much alcohol as possible within a time limit or otherwise. For example, this may include organised 'drink downing' competitions if these carry a significant risk to any of the four licensing objectives. This would not prevent the responsible person (see paragraph 10.56) from requiring all drinks to be consumed or abandoned at, or before, the closing time of the premises. Nor does it necessarily prohibit 'happy hours' as long as these are not designed to encourage individuals to drink excessively or rapidly.

Large Quantities of Alcohol For Free or A Fixed Price

16. The sale, supply or provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted price to the public or to a group defined by a particular characteristic. This does not apply to a promotion or discount on alcohol for consumption with a table meal. However, it may apply specifically to promotions aimed at groups that are defined by a particular characteristic if there is a significant risk that this does not promote the licensing objectives. This restriction does not mean that promotions cannot be designed with a particular group in mind but a common sense approach is encouraged, for example, by specifying the quantity of alcohol included in the promotion and not targeting groups that may become more vulnerable, or present a greater risk of crime and disorder, as a result of excessive alcohol consumption. For example, this prohibition is likely to apply to deals such as "all you can drink for £10".

Prizes and Rewards

17. The sale, supply or provision of free or discounted alcohol or any other item as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less where there is a significant risk to any of the four licensing objectives.

Sporting Events

18. The sale, supply or provision of alcohol for free or for a discounted price in relation to a sporting event shown on the premises, where the sale etc. depends on the outcome of a race, match or other event. For example, this may include offering unlimited drinks based on the outcome of a sporting competition where there is a significant risk to any of the four licensing objectives. It also applies to events which are unpredictable, such as offering free double shots for every foul committed in a football match, or heavily reduced drinks for five minutes after a try is scored in a rugby match.

Posters and Flyers

19. The sale or supply of alcohol in association with promotional materials on display in or around the premises, which can either be reasonably considered to condone, encourage or glamorise anti social behaviour or refer to the effects of drunkenness in any favourable manner.

Dispensing alcohol directly into the mouth

20. The responsible person (see paragraph 10.56) must ensure that no alcohol is dispensed directly by one person into the mouth of another person. For example, this may include drinking games such as the 'dentist's chair' where a drink is poured continuously into the mouth of another individual and may also prevent a premises from allowing another body to promote its products by employing someone to dispense alcohol directly into customers' mouths. An exception to this condition would be when an individual is unable to drink without assistance due to a disability.

Free tap water

21. The responsible person (see paragraph 10.56) must ensure that free potable tap water is provided on request to customers where it is reasonably available on the premises. What is meant by reasonably available is a question of fact; for example, it would not be reasonable to expect free tap water to be available in premises for which the water supply had temporarily been lost because of a broken mains water supply.

Exhibition of films

19. The 2003 Act provides that where a premises licence or club premises certificate authorises the exhibition of a film, it must include a condition requiring the admission of children to films to be restricted in accordance with recommendations given either by a body designated under section 4 of the Video Recordings Act 1984 specified in the licence (currently only the British Board of Film Classification – BBFC) or by the licensing authority itself.

22. The BBFC classifies films in accordance with its published Guidelines which are based on extensive research into public opinion and professional advice. The Secretary of State therefore recommends that licensing authorities should not duplicate this effort by choosing to classify films themselves. The classifications recommended by the Board should be those normally applied unless there are very good local reasons for a licensing authority to adopt this role. Licensing authorities should note that the provisions of the 2003 Act enable them to specify the Board in the licence or certificate and, in relation to individual films, to notify the holder or club that it will make a recommendation for that particular film.

23. It should be noted that the effect of paragraph 5 of Schedule 1 of the Act is to exempt adverts from the definition of regulated entertainment, but not to exempt them from the definition of exhibition of a film. Since the above mandatory condition applies to 'any film' it is therefore applicable to the exhibition of adverts.

10.68 See Annex D, Part 5 for further Guidance on current BBFC classifications and other conditions relating to the exhibition of films.

Door supervision

24. Under section 21 of the 2003 Act when a condition is included in a premises licence that at specified times an individual must be present at the premises to carry out a security activity (as defined in section 21(3)(a) by reference to the Private Security Industry Act 2001 ("the 2001 Act")), the licence must include a condition requiring that individual to be licensed

by the Security Industry Authority ("the SIA") under that Act, or be entitled to carry out that activity by virtue of section 4 of that Act.

25. Section 21 of the 2003 Act has been amended by section 25 of the Violent Crime Reduction Act 2006 to remove an anomaly whereby premises licences could require persons to be licensed by the SIA in circumstances where they were not required to be licensed under the 2001 Act. In particular, the amendment ensures that a premises licence need not require a person to hold a Security Industry Authority licence if they benefit from an exemption under section 4 of the 2001 Act. By way of example, certain employees benefit from an exemption when carrying out conduct in connection with a certified sports grounds (s.4(6 to 12)). Furthermore, in certain circumstances persons benefit from an exemption where they operate under the SIA's Approved Contractor Scheme (s.4(4)).

26. Conditions under section 21 of the 2003 Act (as amended by the Violent Crime Reduction Act 2006) should only relate to individuals carrying out security activities defined by section 21(3)(a) of the 2003 Act. Therefore they should only relate to an activity to which paragraph 2(1)(a) of Schedule 2 to the 2001 Act applies (certain manned guarding activities) and which is licensable conduct within the meaning of section 3(2) of that Act. The requirement does not relate to individuals performing non-security related activities, and section 21 should not be used in relation to any such activities.

27. Section 21 of the 2003 Act continues to ensure that a premises licence need not impose such a requirement in relation to those licensed premises which the 2001 Act treats as unlicensed premises. Those are:

- premises staging plays or exhibiting films;
- casinos or bingo halls licensed under the Gaming Act 1968;
- premises where a club certificate is in force when activities are being carried on under the authority of that certificate.

See paragraph 8(3) of Schedule 2 to the 2001 Act for full details.

28. It should be noted, however, that the 2001 Act will require contractors and a small number of employees (those managing/supervising and those supplied under contract) to be licensed as manned guards (rather than door supervisors) when undertaking licensable conduct on premises to which paragraph 8(3) of Schedule 2 to the 2001 Act applies.

29. It is therefore important that if a licensing authority intends that individuals must be present to carry out security activities (as defined by section 21(3)(a) of the 2003 Act) this should be explicit, as should the mandatory condition for those individuals to hold an SIA licence or be entitled to carry out that activity by virtue of section 4 of that Act.

On the other hand, where a licensing authority intends that individuals must be present to carry out other activities (for example, activities related to safety or steward activities to organise, advise and direct members of the public) no mandatory condition should be imposed under section 21 of the 2003 Act.

In all cases it is important when determining whether or not a condition is to be imposed under section 21 of the 2003 Act to consider whether the activities of any individual working in licensed premises fall within the definition of security activities in section 21(3)(a) of the 2003 Act. (Regardless of whether a condition is imposed under section 21, under the 2001 Act the appropriate SIA licence must be held by any individual performing an activity for which they are licensable under that Act).

30. Holders of premises licences should note that the amendment under the Violent Crime Reduction Act 2006 will not affect the requirements in existing licences regarding security provision. Anyone wishing to deploy staff under the terms of the amended legislation and whose licence does not permit them to do so will need to apply to have their licence varied. The Government recommends that where an application is made to vary a licence solely in order to remove the anomaly referred to in paragraph 10.59 the licensing authority should treat the matter as expeditiously as possible, in recognition of the fact that the variation sought will almost always be purely technical in nature.