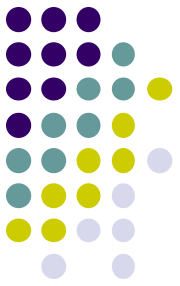


LICENSING COMMITTEE TRAINING LICENSING ACT 2003

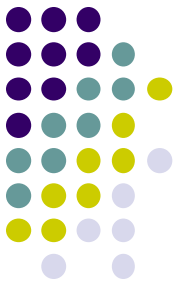
Jonathan Melnick
Principal Lawyer – Enforcement

Topics



- A. Introduction to licensing regimes
- B. The Licensing Act 2003 - A brief summary
- C. Alcohol licensing – a quick overview
- D. National guidance and local policy
- E. Premises licensing in action
- F. Best practice in licensing committee hearings
- G. Personal licences
- H. Club premises certificate
- I. Temporary events notice
- J. Brief overview of review powers

The Licensing Act 2003



Light touch

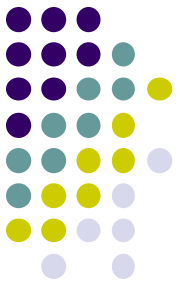
Avoidance of duplication

Encourage the creation of a café society

24-hour drinking

Staggered opening hours

Giving local communities greater say in
licensing decisions

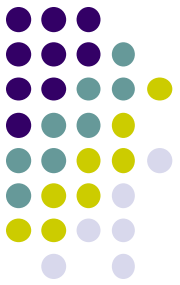


The language of licensing

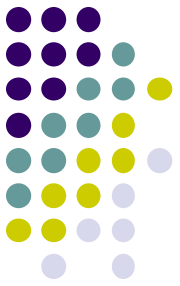
- Licensing objectives
- Licensing authority
- Licensable activities
- Authorisations:
 - Premises licence
 - Club premises certificate
 - Temporary event notice
- Operating schedule
- Designated premises supervisor (DPS)
- Personal licence
- Responsible authorities
- ‘Any other person’ – Residents; Members, anyone, anywhere!

Licensing Act 2003

- Licensable activities:
- Retail sale of alcohol
- Late night refreshment
- Regulated entertainment

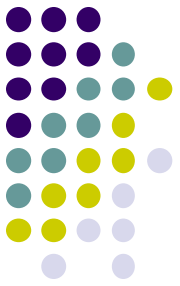


What kinds of authorisation are there?

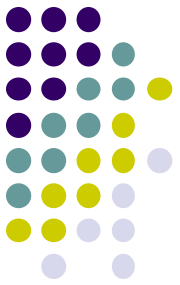


- Premises licence – the main form of licence under the Act. (Pubs, nightclubs, cinemas, theatres, indoor sporting arenas, restaurants, takeaways, off-licences etc.)
- Club premises certificate (for members' clubs)
- Temporary event notices (TENs) (for temporary events or extensions to existing authorisations)

Objectives of regime

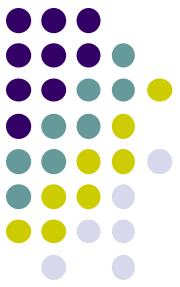


- Prevention of public nuisance
- Prevention of crime and disorder
- Protection of children from harm
- Public safety
- All are of equal importance.



The importance of the objectives

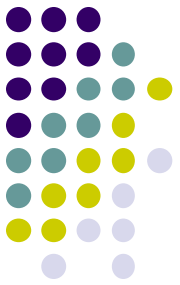
- A licensing authority must carry out its functions with a view to promoting the licensing objectives.
- If it acts for any other purposes, it acts unlawfully.



Licensing authority

- The licensing authority is the local authority
- The full Council sets the policy of the authority
- All other functions are dealt with by the:
 - Licensing Committee (Committee of 10-15 councillors)
 - Licensing Sub-Committees (who handle most of the contentious hearings)
 - Officers (who deal with administrative and non-contentious matters)

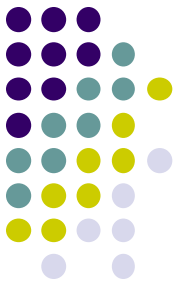
Regulated Entertainment



This includes:

- Live and recorded music
- Indoor sporting events
- Performance of plays
- Exhibition of films

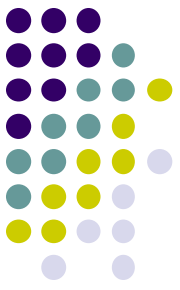
Deregulation of Regulated Entertainment



The Act has been substantially amended over the last fifteen years in respect of regulated entertainment.

Certain activities taking place between 8.00 a.m. and 11.00 p.m. on the same day (subject to audience limits) are no longer regulated.

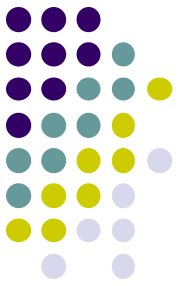
However, you will still need to consider conditions in appropriate cases e.g. an application for a licence that permits regulated entertainment to 2.00 a.m.



Live and recorded music

- Existing conditions attached to a premises licence or club premises certificate relating to music are suspended whilst unregulated music is taking place
- Complaints regarding music may result in a licence review. On such a review the authority has power to treat music as a licensable activity and impose conditions that apply at all times that activity is carried on.

The special treatment of alcohol



- For alcohol sales (e.g. in pubs and restaurants) there needs to be:
 - A premises licence
 - A designated premises supervisor who holds a personal licence named on the premises licence
 - Each sale must be made or authorised by a personal licence holder.

Lighter touch for low risk premises



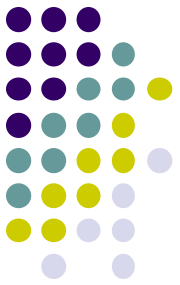
- Members' clubs receive “club premises certificates”. No personal licence holder or DPS is required.
- Non-alcohol premises, e.g. a takeaway providing late-night refreshment needs a premises licence. No personal licence holder or DPS is necessary.
- Community premises (e.g. church or village halls), selling alcohol. Premises licence is held by management committee. No personal licence or DPS is necessary.



A democratic process

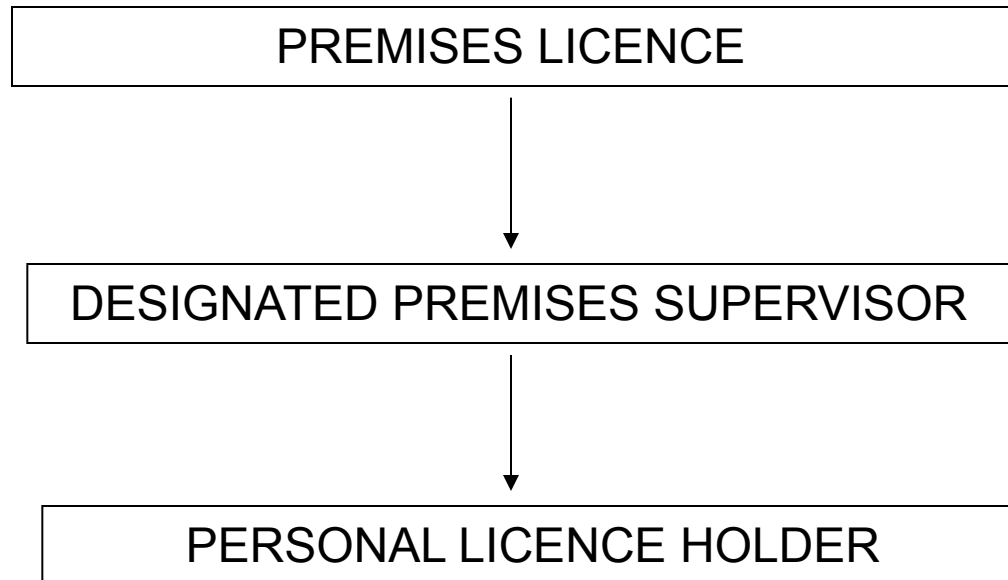
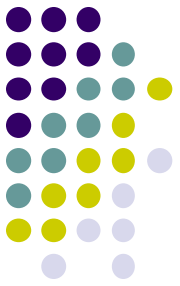
- The system is driven by representations made by:
 - Responsible authorities (statutory agencies, including the licensing authority and the health authority for the area)
 - Other Persons (Any individual, body or business)

WITHOUT THEIR INVOLVEMENT THE SYSTEM IS A RUBBER STAMP

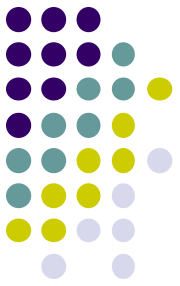


B. ALCOHOL LICENSING: A QUICK OVERVIEW

Alcohol retailers: licensing structure



Premises licensing: brief summary



Application with operating schedule

If no objections, grant on the terms in operating schedule

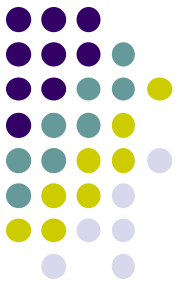
Objections (relevant representations) can be made by or
responsible authorities

Notice of hearing

Hearing

The authority must grant the application except to the extent
necessary to promote the licensing objectives

Personal licences: brief summary



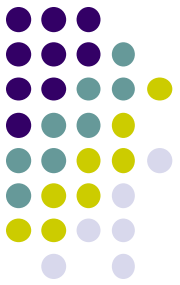
1. Mandatory condition on alcohol licences: every sale of alcohol is to be made or authorised by personal licensee.
2. Personal licence applicants must have a licensing qualification and provide DBS records check.
3. Where applicant has criminal record, authority must notify police.
4. Police may then object if satisfied that granting licence would undermine crime prevention objective.
5. Authority must then hold hearing and grant the licence unless satisfied that rejection is appropriate for promotion of crime prevention objective.

Designated premises supervisors: brief summary

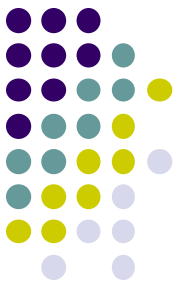


1. Mandatory condition on alcohol licences: no supply of alcohol where no DPS.
2. The DPS must hold a personal licence.
3. Premises licence applicant nominates proposed DPS.
4. Limited discretion to refuse to specify the DPS if appropriate to promote the licensing objectives.
5. The DPS is the single point of management focus at the premises. This does not require presence at all times.
6. DPS ought to be in day-to-day control.

The DPS may be varied at any time by application. Only the police can object and only on the basis that the transfer would undermine the crime prevention objective.

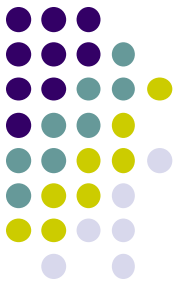


C. NATIONAL GUIDANCE AND LOCAL POLICY



- National Guidance is published by the Secretary of State under s 182 Licensing Act 2003.
- Licensing policies are published by the licensing authority under s 5 Licensing Act 2003. Our present policy was published in November 2018 and was amended in November 2021
- Licensing authorities must have regard to s 182 Guidance and local policy in making their decisions

Relationship of objectives, guidance and policy



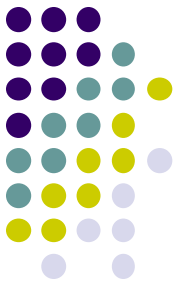
National
Guidance



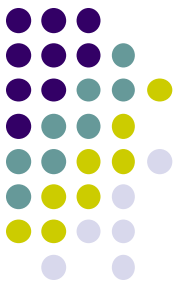
Local Policy



Licensing
objectives



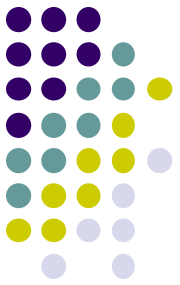
- National Guidance and local policy are the signposts
- The licensing objectives are the destination
- It is local policy which tells you how the objectives are to be achieved locally.
- Therefore, local policy can depart from national guidance for good reason



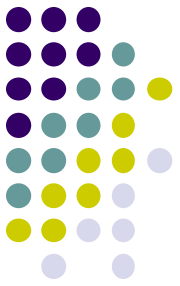
Strategies on policies

Councillors can play a strong role in formulation of licensing policy. E.g.

- What is the vision for the town centre?
- What approach is taken to hours?
- What management standards are required?
- What is the enforcement policy?
- Is a restraint policy appropriate (location, hours, stress)?

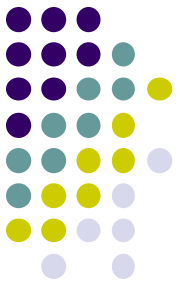


D. PREMISES LICENSING IN ACTION



The applicant

- Applicant may be a company or an individual
- More than one person may be the applicant



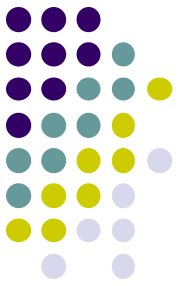
The application

Application form sets out:

- The relevant licensable activities (alcohol, music and dance, late night refreshment etc.)
- Hours
- Closing times
- Identity of DPS where alcohol is to be sold
- Steps proposed to promote the licensing objectives (the operating schedule).

THIS IS FUNDAMENTAL

Notice of application



Application is:

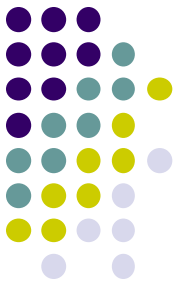
- Posted on premises
- Advertised in local press.

Where no relevant representations



Authority must grant licence subject only to:

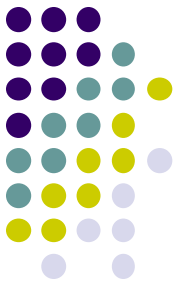
- Conditions consistent with operating schedule
- Mandatory conditions e.g.:
 - Every sale made or authorised by personal licensee
 - No DPS, no sale
 - Door supervisors to be registered
 - Admission to films in accordance with BBFC classification
 - Mandatory code of conduct



Relevant representations

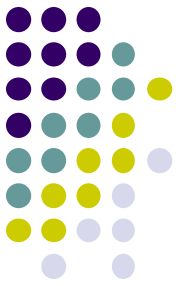
A relevant representation is one which is:

1. Made by
 - Responsible authorities or
 - Any other person
2. Made in time.
3. About the likely effect of the grant of the licence on the licensing objectives.
4. In case of “other person”, not frivolous, vexatious or repetitious.



Other Persons

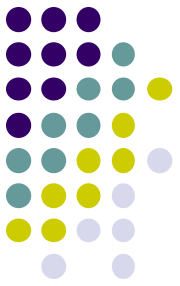
- Any individual
- Person involved in business
- Body representing either of above
- This would include:
 - Members of licensing authority
 - National bodies



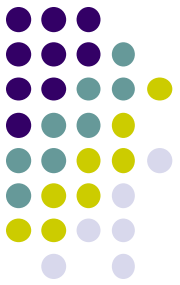
Responsible authorities

- The Licensing Authority (i.e. the Council)
- Police
- Fire and rescue
- Public Health
- Health and safety authority
- Planning authority
- Environmental health authority
- Child protection authority
- Weights and measures authority
- Primary Care Trust
- Canal and River Trust, Environment Agency, navigation authority

Time for making representations



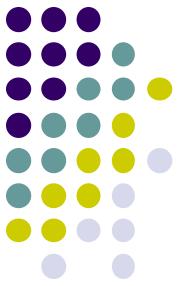
28 days – no exception!



Relevance

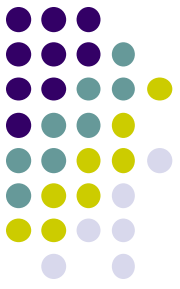
- The representation must be about the likely effect of the grant of the licence on the promotion of the licensing objectives.
- Therefore it must:
 - Relate to the licensing objectives.
 - Explain how this operation in this place at this time is likely to harm the licensing objectives.
- Otherwise it will be discounted.

The effect of relevant representations

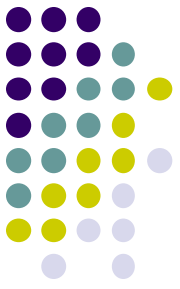


- A relevant representation triggers:
 - A hearing
 - Licensing authority discretion

The importance of representations

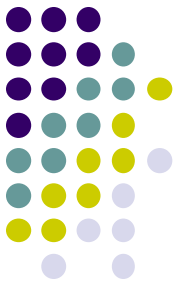


- If no representations are made:
 - The licensing authority has no discretion
 - The licensing authority must grant the licence as sought even if the applicant has suggested no conditions whatsoever.
- Therefore, it is crucial that responsible authorities and other persons trigger the discretion by making representations.



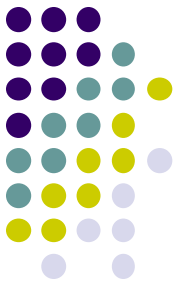
Pre-hearing procedures

- Hearing to be held within 20 days of last day for representations
- Notice of hearing will go out at least 10 days before hearing, including:
 - Procedure to be followed
 - Particular points on which authority wishes clarification
 - Consequences of non-attendance
 - Rights to be heard
- Authority may dispense with hearing if all parties agree.



Hearing procedures

- Hearing takes the form of a discussion led by the authority
- Cross-examination not allowed unless authority considers it necessary
- Parties to be given equal maximum time



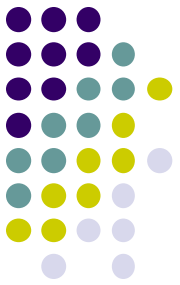
Evidence at hearing

Parties are entitled to:

- Address the authority
- Question other parties, with permission
- Give further information on points specified in notice of hearing

Parties are not entitled to give evidence which is irrelevant to:

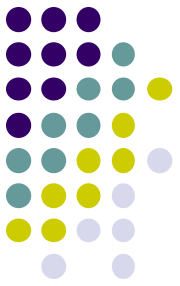
- the application or their representations
- the promotion of the licensing objectives.



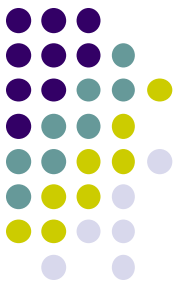
Timing of evidence

- Authority may take into account documentary or other information supplied **before** the hearing
- Authority may only take account of such information produced **at** the hearing with the consent of all other parties.

Decision making

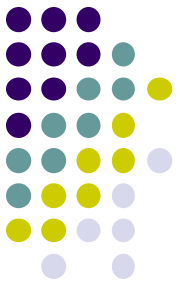


- Sub-Committee discharges an administrative function – IT IS NOT A COURT!
- Take into account that which is relevant and ignore that which is irrelevant.
- Relevance - relevant to the licensing objectives.
- Link to the application - if the application is to add an hour on the licence, the condition should not affect operations at some other hour.
- Rationality – it must not be perverse to rely on it.
- Fairness – if an authority intends to rely on material, it must give the parties an opportunity to deal with it.



Exercise of powers

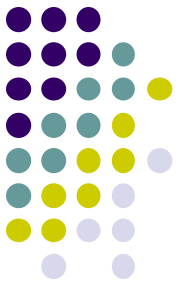
- The authority is required to take such action as it considers appropriate in order to promote the licensing objectives.
- If it does take action it must do so proportionately.
- In general, that means that:
 - Conditions should be tailored to the individual circumstances
 - Consideration given to the burdens/costs conditions impose.
 - If a lesser step can safely be taken, it should be. However, the job is preventive.



Powers

- Add to conditions proposed in operating schedule
- Amend such conditions
- Exclude a licensable activity
- Refuse to specify a person as DPS (where police have objected to that person)
- Reject the application

The LSC can combine one or more of these.



Notification of decision

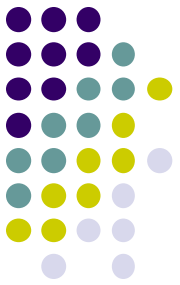
- The decision may be given immediately or within 5 working days.
- It must be accompanied by reasons.
- A decision can be made on the night with reasons to follow.

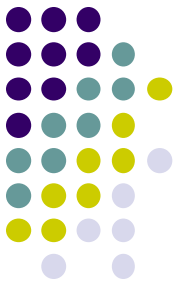
Conditions

- Conditions play a crucial role in setting management standards and operational limits for premises, so as to promote the licensing objectives.
- They can come onto licences in 3 ways:
 - They are included in the operating schedule.
 - Imposed by the authority.
 - Because they are mandatory conditions.

Early and persistent engagement is to be encouraged throughout the process.

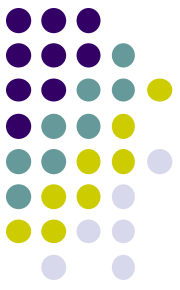
Your role is to ensure conditions are appropriate and proportionate and that they address concerns raised.





The mandatory conditions

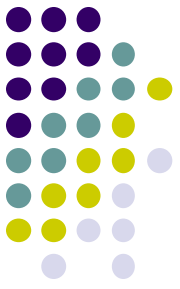
- Whether the licence is granted with or without objection, the authority must attach the mandatory conditions to the licence



Mandatory conditions

These include:

1. No sale where no DPS or where DPS does not hold personal licence.
2. Every sale of alcohol must be made or authorised by a personal licensee.
3. Admission to films in accordance with age classification of BBFC or licensing authority.
4. Where licence requires door supervision, supervisors to be SIA-licensed.



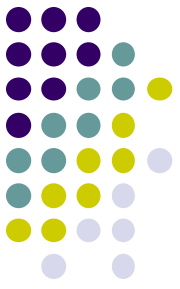
Mandatory conditions

1. No irresponsible promotions (e.g. drink all you can for £10, or drink all you can within limited time)
2. Dentist's chair
3. Free tap water
4. Age verification policy
5. Smaller measures (1/2 pint for beer, 25 or 35 ml for spirits and 125 ml for wine)

E. BEST PRACTICE IN LICENSING COMMITTEE HEARINGS

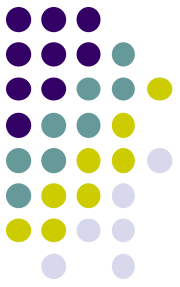
12 Principles

Principle 1: The Committee sets the procedure.



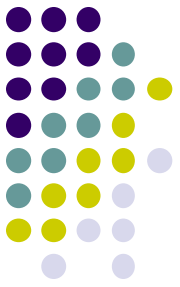
- Committee hearing, not a court of law.
- Within the scope of the regulations, Committee to set and control its own procedure.
- Proviso: procedure to be fair and offer an equal opportunity to all parties to present their case.

Principle 2: Remember the purpose of the procedure



- To enable those with a right to appear to advance their point of view and to test the case of their opponents; and
- To assist the Committee to gather evidence and understand the relevant issues.
- If procedural issue arises, basic purposes to be kept in mind.
- Within the boundaries of fairness, needless formality is to be avoided.

Principle 3: Establish the ground rules



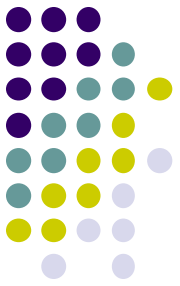
- Establish at outset, to:
 - Avoid conflict later.
 - Facilitate the smooth running of the hearing.
 - Tell parties what to expect.
- E.g.
 - Order of presentation and closing submissions.
 - Dealing with conditions proposed by the parties.
 - Maximum time for presentation.
- Chairman to indicate:
 - Members have read papers and understand issues.
 - Therefore points do not require repetition.
 - Where multiple parties, preferable for spokesman to be appointed: repetition to be avoided.

Principle 4: The Committee may accept hearsay evidence



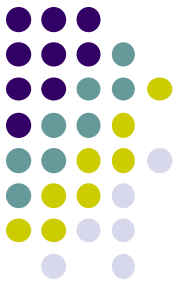
- Hearsay evidence is when a witness gives evidence of something they did not see or hear, but were only told about. For example:
 - My neighbour says they were kept up all night.
 - My son saw under-18s being served.
 - The newspaper reported there was a fight.
 - I got a letter from a local resident which said they could hear the bass beat from the amplifier.
- Hearsay is admissible. The Committee decides the weight to be attached to it.
- Petitions will rarely be given much weight as those signing are not expressing any individual view.

Principle 5: Late objections inadmissible.



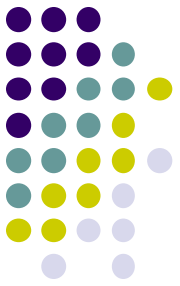
- This is the law.

Principle 6: The Committee should ensure fair treatment of witnesses



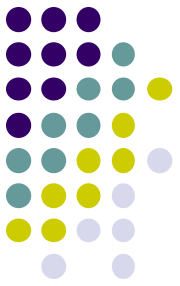
- Protect witnesses from being berated or interrupted.
- Require the witness to answer the actual question and prevent them from straying from the point.
- No leading questions on contentious matters, e.g. “The music kept you up all night, did it?”

Principle 7: The Committee should ensure a level playing field



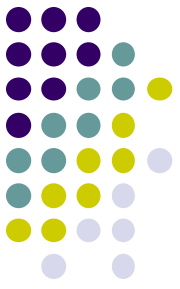
- Maximum times to be enforced.
- Party B entitled to reply to submission by Party A.
- If Committee questions a witness, other parties entitled to ask questions arising.

Principle 8: The Committee may oil the wheels



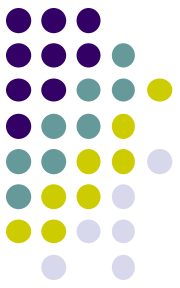
- Committee may cut through issues:
 - Is point x really contested?
 - Committee has heard and understood the point.
 - Point has been dealt with.
 - Would a condition not deal with this.
 - Do you want to add to what witness abc has said?

Principle 9: The Committee should be proactive with conditions



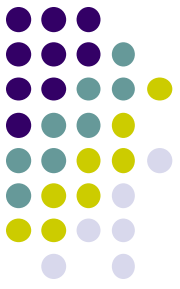
- Ask for draft conditions for use **if** the Committee is minded to grant the application.
- Check whether issue is over principle or wording or both.
- Make clear that this is to save time and narrow the issues: there has been no pre-judgment.
- Invite comment on proposed conditions before imposing them.
- Do not impose conditions unless it would be appropriate to refuse the application without them.
- Always consider whether objections may be overcome by conditions.

Principle 10: Do not express view on merits before giving decision



- Duty to behave impartially, i.e. quasi-judicially.
- Do not make up mind until end.
- Do not appear to do so.
- Do not discuss merits with press or residents.

Principle 11: The Committee should rely on its legal adviser as to matters of law



- Including:
 - Interpretation of the Licensing Act 2003.
 - Other statutory provisions creating legal duties and effect on the licensing regime.
 - Admissibility of evidence.
 - Rules of procedure, under Regulations / common law fairness.
- Advice to be given, or repeated, in open session and parties' comments invited.

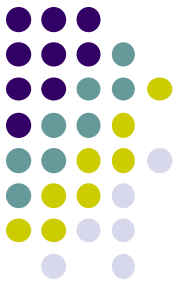
Principle 12: The Committee should draft thorough reasons



- Parties have a legal right to know why they have won or lost.
- Badly drafted reasons weaken case on appeal.
- Reasons should:
 - Refer to every relevant representation.
 - Start with the policy.
 - State the extent to which it has taken account of Guidance and policy. When refusing in whole or in part, or attaching further conditions, state both that it considered it appropriate to do so in order to promote one or more specified licensing objectives and why this was so.
 - Committee may use legal adviser in helping it to draft its reasons, but the reasons must be the Committee's.
- Do not invite licensing officers to retire with Committee.

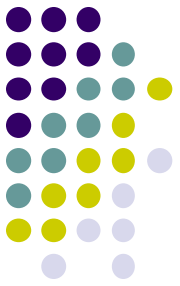
F. PERSONAL LICENCES

Personal Licences



- ❑ Personal licences authorise an individual to supply alcohol
- ❑ Premises licences will contain a mandatory condition that no alcohol is to be supplied on the premises without being authorised by a personal licence holder
- ❑ All DPSs must hold a personal licence

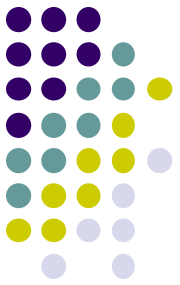
Personal Licences



The Licensing Authority **must grant** the licence if the applicant:

- is over 18
- possesses a relevant licensing qualification
- has not had a licence forfeited in the last five years; and
- has had no convictions for relevant offences including foreign offences

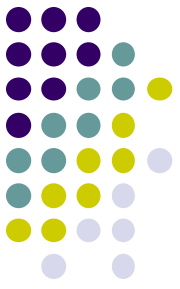
Licence lasts indefinitely unless surrendered, suspended or revoked/forfeited.



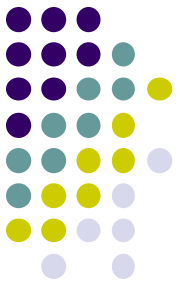
Discretion to refuse

- Where relevant offences, police may object on crime prevention grounds
- Licensing authority must then hold hearing and may then refuse issue of licence.

Personal Licences – Revocation/Suspension



- Where a personal licence holder is convicted of a relevant offence (listed in the 2003 Act):
 - the court may order the forfeiture of the licence or suspend the licence for a maximum period of six months.
 - Even if the court does not do so, the issuing authority may suspend the licence for a maximum period of six months or revoke it.
- Relevant offences include serious crime and dishonesty matters; those involving controlled drugs; certain sex offences and offences created by the 2003 Act.

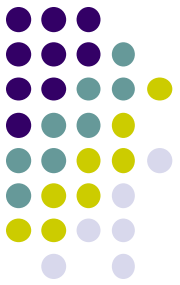


G. CLUB PREMISES CERTIFICATES



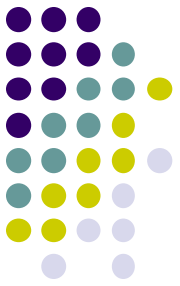
Club premises

- Qualifying members' clubs
- Lighter touch regulation
- No personal licence holder
- No designated premises supervisor



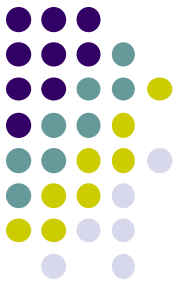
H. TEMPORARY EVENT NOTICES

Temporary event notices



- Permit alcohol sales, music, dancing, etc.
- Maximum annually:
 - 15 TENs per premises maximum (20 for 2022 & 2023)
 - 21 days per premises maximum (26 for 2022 & 2023)
 - 50 events per year for personal licence holder
 - 5 events for non-personal licence holders
 - Maximum 168 hours per event
 - Minimum of 24 hours between event periods
 - 499 people maximum at a time
- Service of TEN on Licensing Authority
- Standard TEN - Minimum 10 working days prior to event
- Late TEN – Between 9 and 5 working days before day of event
- Only police and EHO may object if satisfied any of the licensing objectives will be undermined
- Both authorities have 3 working days to respond
- Objection to Standard TEN leads to hearing
- Limited right of appeal to Magistrates' Court (standard TEN only)

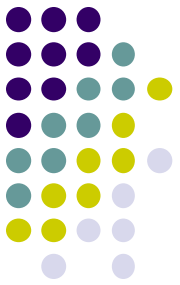
Using a temporary event notice



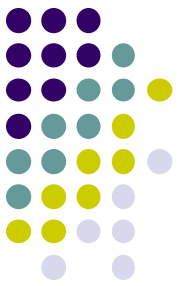
- An extra hour on the pub licence for a party
- An extra licensable activity, e.g. a disco in a bar
- An unlicensed venue, e.g. a beer tent at a fair

The Committee can:

- issue a counter-notice to prevent the event going ahead;
- refuse to issue a counter-notice;
- refuse to issue a counter-notice but impose any relevant conditions from the premises licence (assuming that the premises is already licensed)



J. BRIEF OVERVIEW OF REVIEW POWERS



Review

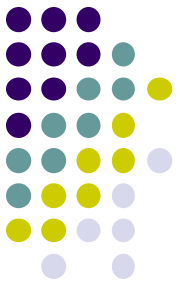
- A responsible authority or any other person may bring application for review
- Following application, notice is given to responsible authorities
- Application is advertised
- Representations can be made by anybody within 28 days



Striking out applications

Applications by non-responsible authority will be struck out if they are:

- Irrelevant to the licensing objectives
- Frivolous or vexatious
- Repetitious, in that they are identical or substantially similar to representation made on previous review or application and a reasonable period has not elapsed.

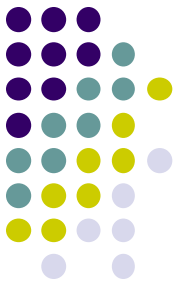


Pre-hearing procedures

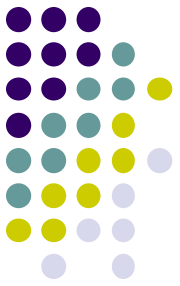
- Hearing to be held within 20 days of last date for representations
- Notice of hearing 10 working days before hearing

The hearing

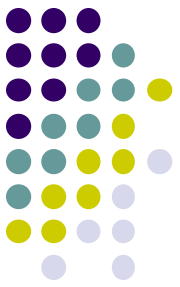
- Similar procedures to premises licence applications



Exercise of powers



- The authority may only interfere with the licence if it considers it appropriate in order to promote the licensing objectives.
- If it does interfere, then it must do so proportionately, i.e. to the minimum necessary to achieve the promotion of the objectives in the individual case.
- The LSC can act to deter others, but generally, the role is regulatory, i.e. to prevent recurrence.
- The review must be linked to the premises in question.



Powers

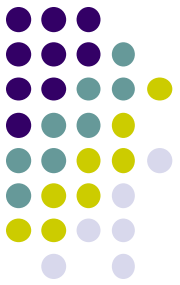
The authority can:

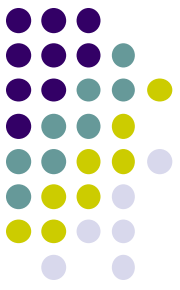
- Modify conditions of licence
- Exclude a licensable activity
- Remove DPS
- Suspend licence for up to 3 months
- Revoke licence

or any combination of the above.

The LSC could also do nothing or issue a warning.

Other review procedures





Summary review

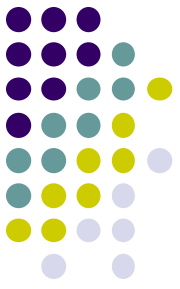
- Police may bring summary review of alcohol premises in case of serious crime and/or disorder
- Authority must consider interim measures within 48 hours: the modification of licence conditions, cessation of alcohol sales, removal of DPS, suspension of licence. (Licence holder has limited right to apply to vary interim measures)
- Review to be held within 28 days of application. Generally the process and options are then the same for 'standard' reviews except that the interim measures can take/continue to have immediate effect.



Review following closure

- Police or local authority may close premises immediately in the case of disorder or nuisance for up to 48 hours.
- Following that, the police or local authority can ask the magistrates' court for a closure order lasting up to three months.
- If granted, this triggers a review of the licence within 28 days of notification of magistrates' decision
- Any person or responsible authority may make representations
- Authority may take any steps available to it on review

Effect of decision and Appeals



- Virtually all decisions can be appealed by an applicant or interested party, usually within 21 days
- The general rule is that the grant of a licence is effective immediately.
- For reviews, the general rule is that the decision takes effect after the time limit for appealing has passed (if no appeal is made) or, if an appeal is lodged, when it is finally disposed of.
- Where applicant appeals, court has discretion to add interested party / responsible authority as a party to the appeal
- Case on appeal is heard afresh, but court will only interfere if it considers that authority's decision was **is wrong**.
- Court may make such costs order as it thinks fit.

QUESTIONS?

