

Appendix A

Guidance Issued by the Department for Culture Media and Sport under Section 182 of the Licensing Act 2003

POWERS OF A LICENSING AUTHORITY ON THE DETERMINATION OF A REVIEW

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

- 11.18 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.
- 11.19 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.20 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.
- 11.21 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives.

REVIEWS ARISING IN CONNECTION WITH CRIME

- 11.22 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.
- 11.23 Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licensee and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any necessary steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.
- 11.24 As explained above, it is not the role of a licensing authority to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. There is therefore no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. As stated above, at the conclusion of a review, it will be for the licensing authority to determine on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing objectives in respect of the licence in question, regardless of any subsequent judgment in the courts about the behaviour of individuals.

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

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

11.26 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered. We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

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

Appendix B

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Crime and Disorder Act 1998

- 1.28 All local authorities must fulfil their obligations under section 17 of the Crime and Disorder Act 1998 when carrying out their functions as licensing authorities under the 2003 Act.
- 1.29 Section 17 is aimed at giving the vital work of crime and disorder reduction a focus across the wide range of local services and putting it at the heart of local decision-making. It places a duty on certain key authorities, including local authorities and police and fire and rescue authorities to do all they reasonably can to prevent crime and disorder in their area.
- 1.30 The Government believes that licensing authorities should, as a matter of good practice, involve Crime and Disorder Reduction Partnerships (CDRPs) in decision-making in order to ensure that statements of licensing policy include effective strategies that take full account of crime and disorder implications.

Pool Conditions

Guidance Issued by the Department for Culture Media and Sport under Section 182 of the Licensing Act 2003

Annex D

Conditions relating to the prevention of crime and disorder

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

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

Conditions enforcing these arrangements are therefore unnecessary.

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.

1 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.

2 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.

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 these crimes, it may be necessary for certain licensed premises to require 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 conditions may refer directly to PASS accredited proof of age cards, they should also allow for the production of other proof, such as photo-driving licences, 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 21" or other similar initiatives. Under the "Challenge 21" initiative those premises selling or supplying alcohol require sight of evidence of age from any person appearing to be under the age of 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 a purchase.

Proof of age may also be relevant and necessary to protect children from harm (see Part 5).

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.

However, conditions specifically designed to address irresponsible drinks promotions or discounting at individual premises may be permissible provided they are necessary for the promotion of the licensing objectives. Licensing authorities should be aware that there may often be a very fine line between responsible and irresponsible promotions. 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.

Appendix C

Licensing Policy Adopted by the London Borough of Tower Hamlets

- 5.1 Licensed premises, especially those offering late night/early morning entertainment, alcohol and refreshment for large numbers of people, can be a source of crime and disorder problems.
- 5.4 In addition to the requirements for the Licensing Authority to promote the licensing objectives, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all it reasonable can to prevent crime and disorder in the Borough.

Appendix D

London Borough of Tower Hamlets Policy in relation to the prevention of Public Nuisance

Licensing Policy

The policy recognises that noise nuisance can be an issue, especially if a premises is open late at night. (**See Sections 8.1 of the Licensing Policy**).

While all applications will be considered on their merits, consideration will be given to imposing stricter conditions in respect of noise control where premises are situated close to local residents. (**See Section 12.11**).

The Licensing Authority expects the applicant to have addressed all nuisance issues relating to the premises in their operating schedule and to have sought appropriate advice from the Council's Environmental Health Officers. (**See Section 8.2 of the Licensing Policy**).

The Licensing Authority will consider attaching conditions to prevent nuisance and these may include Conditions drawn from the Model Poll of Conditions relating to Crime and Disorder. (**See Appendix 2 Annex D of the Licensing Policy**). In particular Members may wish to consider (this list is not exhaustive):

- hours of opening (this needs to be balanced against potential disorder caused by artificially early closing times)
- Whether certain parts should close earlier than the rest (for example a "beer garden", or restricted in their use)
- Whether or not certain activities should have to close at an early hour, for example live music
- Conditions controlling noise or vibration (for example, noise limiters, keeping doors and windows closed).
- Prominent clear and legible notices at all exits requesting the public to respect the needs of local residents and leave the premises and area quietly
- Conditions controlling the use of explosives, pyrotechnics and fireworks
- Conditions controlling the placing of refuse
- Conditions controlling noxious smells
- Conditions controlling lighting (this needs to be balanced against potential crime prevention benefits)

Police Powers

Part 8 of the Licensing Act 2003 enables a senior police officer to close down a premises for up to 24 hrs. A premises causing a nuisance resulting from noise emanating from the premises.

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The Licensing Policy has adopted the recommended Pool of Conditions as permitted (13.20 and Annex D).

The prevention of public nuisance could include low-level nuisance, perhaps affecting a few people living locally as well as major disturbance affecting the whole community (2.33).

Licence conditions should not duplicate other legislation (1.16).

Necessary and appropriate conditions should normally focus on the most sensitive periods (2.36) and may address disturbance as customers enter or leave the premises but it is essential that conditions are focused on measures within the direct control of the licence holder (2.38).

Other Legislation

The Environmental Protection Act 1990, Part 111 gives Environmental Health Officers the power to deal with statutory nuisances.

The Anti-social Behaviour Act 2003, Sections 40 and 41 give Environmental Health Officers the power of closure up to 24 hours in certain circumstances.