

HEARINGS

- 9.27 Regulations governing hearings may be found on the www.legislation.gov.uk website. If the licensing authority decides that representations are relevant, it must hold a hearing to consider them. The need for a hearing can only be avoided with the agreement of the licensing authority, the applicant and all of the persons who made relevant representations. In cases where only 'positive' representations are received, without qualifications, the licensing authority should consider whether a hearing is required. To this end, it may wish to notify the persons who made representations and give them the opportunity to withdraw those representations. This would need to be done in sufficient time before the hearing to ensure that parties were not put to unnecessary inconvenience.
- 9.28 Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving other persons time to address the revised application before the hearing commences.
- 9.29 Regulations made under the 2003 Act require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed and the representations may be withdrawn orally at that hearing. However, where discussions between an applicant and those making representations are taking place and it is likely that all parties are on the point of reaching agreement, the licensing authority may wish to use the power given within the hearings regulations to extend time limits, if it considers this to be in the public interest.
- 9.30 Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made under the 2003 Act. Where matters arise which are not covered by the regulations, licensing authorities may make arrangements as they see fit as long as they are lawful.
- 9.31 There is no requirement in the 2003 Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees in reaching more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree. This local authority officer representing other responsible authorities may be a licensing officer, but only if this licensing officer is acting as a responsible authority on behalf of the licensing authority and has had no role in the licensing determination process. This is to ensure that the responsible authorities are represented by an independent officer separate from the licensing determination process.
- 9.32 As noted in paragraphs 9.13 to 9.19 above, where the licensing officer is acting as a responsible authority the relevant steps should be followed to ensure that this individual has no role in the decision making process regarding the licensing determination.

- 9.33 As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation.
- 9.34 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:
- the steps that are appropriate to promote the licensing objectives;
 - the representations (including supporting information) presented by all the parties;
 - this Guidance;
 - its own statement of licensing policy.
- 9.35 The licensing authority should give its decision within 5 working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.
- 9.36 Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.
- 9.37 In the context of variations or minor variations, which may involve structural alteration to or change of use of a building, the decision of the licensing authority will not exempt an applicant from the need to apply for building control approval, planning permission or both of these where appropriate.

10. Conditions attached to premises licences and club premises certificates

GENERAL

- 10.1 This chapter provides advice and recommendations concerning best practice in relation to conditions attached to premises licences and club premises certificates.
- 10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions the holder of the premises licence or the club premises certificate will be required to take or refrain from taking at all times when licensable activities are taking place at the premises in question.
- 10.3 All interests – licensing authorities, licence and certificate holders, authorised persons, the police, other responsible authorities and local residents and businesses – should be working together in partnership to ensure collectively that the licensing objectives are promoted.
- 10.4 Under former licensing regimes, the courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided. 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.
- 10.5 Annex D provides pools of conditions (although not an exhaustive list) which relate to the four licensing objectives and could be used where necessary and appropriate to the particular circumstances of an individual licensed premises. It is important that they should not be applied universally and treated as standard conditions irrespective of circumstances.

- 10.6 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

PROPOSED CONDITIONS

- 10.7 The conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee's or certificate holder's risk assessment which applicants and clubs should carry out before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule which must also set out the proposed hours of opening.
- 10.8 In order to minimise problems and the necessity for hearings, it would be sensible for applicants and clubs to consult with responsible authorities when schedules are being prepared. This would allow for proper liaison before representations prove necessary.

CONSISTENCY WITH STEPS DESCRIBED IN OPERATING SCHEDULE

- 10.9 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or interested parties, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required by the Act itself.

10.10 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule or club operating schedule. Some applicants for licences or certificates supported by legal representatives or trade associations can be expected to express steps necessary to promote the licensing objectives in clear and readily translatable terms. However, some applicants will express the terms of their operating schedules less precisely or concisely. Ensuring that conditions are consistent with the operating schedule will then be more difficult. If conditions are broken this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. It must be clear to the holder of the licence or club, to enforcement officers and to the courts what duty has been placed on the holder or club in terms of compliance.

IMPOSED CONDITIONS

10.11 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

10.12 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

Proportionality

10.13 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues. For example, charities, community groups, voluntary groups, churches, schools and hospitals which host smaller events and festivals will not usually be pursuing these events commercially with a view to profit and will inevitably operate within limited resources.

10.14 While the Secretary of State has set fees centrally for licences and certificates, licensing authorities and responsible authorities should be alive to the indirect costs that can arise because of conditions attached to licences. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Such bodies may be loath to pursue appeals against any unnecessary conditions because of the costs involved. Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further

than what is needed for that purpose. Public safety concerns (and the concerns identified in the other objectives) should not of course be ignored and in considering a proportionate response to the licensing needs for such events, the physical safety of those attending such events should remain a primary objective.

Duplication with other statutory provisions

- 10.15 Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties. For example, employers and self-employed people are required by the Management of Health and Safety at Work Regulations 1999 (SI 1999/3242) to assess the risks to their workers and any others (including members of the public visiting the premises) who may be affected by their business and identify measures needed to avoid or control risks. Conditions enforcing these requirements are therefore unnecessary.
- 10.16 Similarly, licensing authorities should not seek to impose fire safety conditions that may duplicate any requirements or prohibitions that could be imposed under the Regulatory Reform (Fire Safety) Order 2005 (see paragraphs 2.20 – 2.29).
- 10.17 Further, the Act does not affect the continued use of inspection and enforcement powers conferred by other legislation; for example, the powers of an environmental health officer in relation to statutory nuisance under the Environmental Protection Act 1990.

- 10.18 However, these general duties will not always adequately address specific issues that arise on the premises in connection with, for example, certain types of entertainment. It is only where additional and supplementary measures are necessary to promote the licensing objectives that conditions will need to be attached to a licence.

Hours of trading

- 10.19 In some town and city centre areas where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises.
- 10.20 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.

10.21 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.

Workers rights

10.22 It is not for the licensing authority to consider such matters as the rights of the workers employed on the premises who may be asked to work longer hours. There are existing protections under the Working Time Regulations 1998 (SI 1998/1833), the Employment Rights Act 1996 (as amended) and under the general employment law and laws of contract.

Disabled people

10.23 It is important that proper steps should be taken to provide for the safety of people and performers with disabilities. However, licensing authorities and responsible authorities should avoid well meaning conditions which are intended to provide for the safety of people or performers with disabilities, but which may actively deter operators from admitting or employing them.

10.24 It is Government policy that facilities for people and performers with disabilities should be provided at places of entertainment. The Secretary of State encourages licence holders and clubs to provide facilities enabling their admission and reminds them of the duties imposed by the Disability Discrimination Act 1995. The law provides that any person providing a service to the public must make reasonable adjustments to enable disabled people to access the service. No licensing condition should therefore be attached to a licence or certificate which conflicts with or duplicates this requirement.

10.25 Service providers also have a duty to make reasonable adjustments to any physical features which make it impossible or unreasonably difficult for disabled persons to access a service, or they have to provide the service by a reasonable alternative means. Access to buildings and their facilities is also a matter addressed in Building Regulations and planned alterations affecting access may involve the need to apply for building control.

10.26 Licensing authorities should therefore be ready to offer advice to applicants for licences and certificates about how to achieve this. Conditions which state that "wheelchairs and similar equipment shall not be allowed on the premises except in accordance with the terms of any consent issued by the licensing authority" can be ambiguous and be used to justify exclusion and may be ultra vires. Conditions should be positively worded and assume the presence of people with disabilities on licensed premises.

10.27 In addition, Government guidelines exempting guide and assistance dogs from health and safety requirements have been in place since 1995. Any condition of a licence or certificate which states that "pets" may not be present on licensed premises for public safety reasons, must include a clear indication that the condition does not apply to guide or assistance dogs. Further advice can be obtained from the Disability Rights Commission's website www.drc-gb.org.

10.28 The Disability Discrimination Act 1995 does not apply to ships. However the European Council Directive 2003/24/EC requires appropriate measures to be taken for 'persons of reduced mobility' (this means anyone who has a particular difficulty when using public transport; including elderly persons, disabled persons, persons with sensory impairments and wheelchair users, pregnant women and persons accompanying small children) on certain passenger ships engaged on domestic voyages. Further advice and guidance is contained in Merchant Shipping Notice 1789 (M) and Marine Guidance Note 306 (M) both of which are available in the Guidance and Regulations section of the Maritime and Coastguard Agency's website www.mcga.gov.uk. These documents complement the existing guidance 'The design of large passenger ships and passenger infrastructure: Guidance on meeting the needs of disabled people' which is available on the website of the Disabled Persons Transport Advisory Committee at www.dptac.gov.uk in the maritime section.

Race equality

10.29 Licensing authorities should also avoid imposing any condition on a licence or certificate which appears to apply to a wide group of people, but in fact would have an indirect discriminatory impact on particular ethnic groups. For example, a representation requesting that "No Travellers" or "No Caravan-Dwellers" be displayed inside or on premises purportedly to prevent crime or disorder should not be accepted not least because it would conflict with the authority's race equality scheme.

The performance of plays

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

Censorship

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

Copyright and royalties

10.32 Copyright law is intended to safeguard the livelihood of authors, composers, arrangers, playwrights, film-makers, publishers and makers of recordings and is extremely important and offences relating to copyright are made "relevant offences" by the 2003 Act. Conditions attached to premises licences should not require adherence to requirements in the general law that the use of copyright material must be authorised. Licensing authorities should however strongly remind applicants of the need to obtain Performing Right Society (PRS) licences and Phonographic Performance Ltd (PPL) licences and to observe other copyright arrangements; and that failure to observe the law in this area could lead to an application for the review of the premises licence or the club premises certificate on grounds of the crime prevention objective.

Major art and pop festivals, carnivals, fairs and circuses

10.33 Licensing authorities should publicise the need for the organisers of major festivals and carnivals to approach them at the earliest opportunity to discuss arrangements for licensing activities falling under the 2003 Act. For some events, the organisers may seek a single premises licence to cover a wide range of activities at varied locations within the premises. This would involve the preparation of a substantial operating schedule, and licensing authorities should offer advice and assistance about its preparation. In particular, the licensing authority should act as a co-ordinating body for the input from the responsible authorities.

10.34 For other events, applications for many connected premises licences may be made which in combination will represent a single festival. It is important that licensing authorities should publicise the need for proper co-ordination of such arrangements and will need to ensure that responsible authorities are aware of the connected nature of the individual applications. Licensing authorities should encourage applicants to establish a co-ordinating committee to ensure a strategic approach to the development of operating schedules. The purpose would be to ensure that conditions are not included in licences which conflict with each other, make compliance uncertain or would be difficult to enforce.

10.35 In the case of circuses and fairgrounds, much will depend on the content of any entertainment presented. For example, at fairgrounds, a good deal of the musical entertainment may be incidental to the main attractions and rides at the fair which are not themselves regulated entertainment. However, in the case of a circus, music and dancing are likely to be main attractions themselves (and would be regulated entertainment) amidst a range of other activities which are not all regulated entertainment.

10.36 Particular regard should be paid to the relevant guidance provided in the publications listed at Annex E of this Guidance under 'Public Safety'.

10.37 In addition, in the context of festivals and carnivals, local authorities should bear in mind their ability to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas where festivals and carnivals might take place. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give performances in these places, although they would need the permission of the local authority to put on the event. Care should be exercised to ensure that there is no confusion between the role of enforcing licensing legislation, which falls to the licensing authority, and the role of providing advice and assistance to festival and carnival organisers from other parts of the local authority.

Fixed prices

10.38 Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club 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 the police to promote generalised voluntary schemes or codes of practice in relation to price discounts on alcoholic drinks, 'happy hours' or drinks promotions. However, it is important to note that the mandatory conditions made under section 19A of the 2003 Act prohibit a number of types of drinks promotions where they give rise to a significant risk of not promoting any one of the four licensing objectives. The Government recommends that licensing authorities, police, trading standards, local trade and other partners

should discuss and reach agreement as to how those mandatory conditions translate to actual promotions in the local area and, ideally, reach a common shared understanding of what types of promotion are likely to be considered irresponsible. Please refer to the Home Office Guidance on the mandatory conditions for further information

(<http://www.homeoffice.gov.uk/crime-victims/reducing-crime/alcohol-related-crime/>).

10.39 Where licensing authorities are asked by the police, other responsible authorities or interested parties to impose restrictions on promotions in addition to those restricted by the mandatory conditions, they should consider each application on its individual merits, tailoring any conditions carefully to cover only irresponsible promotions in the particular and individual circumstances of any premises where these are necessary for the promotion of the licensing objectives. In addition, when considering any relevant representations which demonstrate a clear causal link between sales promotions or price discounting and levels of crime and disorder on or in the vicinity of the premises, it would be appropriate for the licensing authority to consider the imposition of a new condition prohibiting irresponsible sales promotions or the discounting of prices of alcoholic beverages at those premises. However, before pursuing any form of restrictions at all, licensing authorities should take their own legal advice. There will often be very fine lines between what is and is not lawful within the scope of their power under the 2003 Act.

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

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

10.41 A comprehensive review of the research conducted in the last twenty-five years into alcohol and crime and its relationship to licensed premises, "Alcohol and Crime: Taking Stock" by Ann Deehan, Home Office Crime Reduction Research Series No.3 (1999) can be viewed on www.crimereduction.gov.uk/drugsalcohol8.htm. It shows that the environment within such establishments can have a significant bearing on the likelihood of crime and disorder arising on the premises. Key points on preventing crime and disorder include:

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

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

- a prescribed capacity;
- an appropriate ratio of tables and chairs to customers based on the capacity; and
- the presence of 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 and to deny entry to individuals who appear drunk or disorderly or both.

MANDATORY CONDITIONS

10.43 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

10.44 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 set out in paragraph 10.46 to 10.53 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 (see paragraphs 4.32 to 4.47 of this Guidance).

- 10.45 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.
- 10.46 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

- 10.47 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.
- 10.48 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.
- 10.49 "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.

10.50 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.

10.51 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.

10.52 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 (see paragraphs 4.32 to 4.47 of this Guidance).

Arrangements for the new mandatory conditions

10.53 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.

- 10.54 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 were included in existing licences and certificates on the date that they came into force.
- 10.55 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. Licensing Authorities may also wish to make license holders aware of Home Office Guidance on the new mandatory conditions (see 10.38 for weblink).

Irresponsible promotions

- 10.56 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.
- 10.57 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. Please refer to guidance issued by the Home Office for fuller understanding of irresponsible promotions (see 10.38 for weblink).

Drinking Games

10.58 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

10.59 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

10.60 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

10.61 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

10.62 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

10.63 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

10.64 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.

Age-verification

10.65 The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.56) to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and a holographic mark.

10.66 It should be noted that it is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if a premises has a policy that

requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.

10.67 The age-verification condition ordinarily only applies in situations where the sale takes place face to face. Companies that sell alcohol remotely (e.g. online or by mail order) should operate an age verification policy, but as the sale of alcohol does not ordinarily take place on delivery, the condition does not in such cases require photo ID to be shown at the point of delivery. As long as age verification has taken place already via another means, these transactions will meet the requirement of the condition.

10.68 The premises licence holder or club premises certificate holder must ensure that staff (in particular staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy applied by the premises.

Smaller Measures

10.69 The responsible person (see paragraph 10.56) shall ensure that the following drinks if sold or supplied on the premises are available in the following measures:

- Beer or cider – 1/2 pint
- Gin, rum, vodka or whisky – 25ml or 35ml
- Still wine in a glass: 125ml

10.70 As well as making the drinks available in the above measures, the responsible person must also make customers aware of the availability of these measures – for example, by making their availability clear on menus and price lists, and ensuring that these are displayed in a prominent place in the relevant premises (e.g. at the bar).

10.71 The above condition does not apply if the drinks in question are sold or supplied having been made up in advance ready for sale or supply in a securely closed container. For example, if beer is only available in pre-sealed bottles the condition to make it available in 1/2 pints does not apply.

10.72 The premises licence holder or club premises certificate holder must ensure that staff are made aware of the application of this condition.

Exhibition of films

10.73 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.

10.74 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.

10.75 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.

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

Door supervision

10.77 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.

10.78 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 (s4(4)).

10.79 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.

10.80 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.

10.81 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.

10.82 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).

10.83 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.