



# **The Licensing Act 2003**

## **Operating Schedule Guidelines**

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# Operating Schedule Guidelines

*(the following is an extract from guidance)*

The operating schedule will form part of the completed application form for a premises licence. An operating schedule should include information which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory. For example, it should include a description of the style and character of the business to be conducted on the premises (for example, a supermarket, or a cinema with six screens and a bar, or a restaurant, or a public house with two bars, a dining area and a garden open to customers). Where alcohol is being sold for consumption on the premises in public houses, bars and nightclubs, it would also be valuable to know the extent to which seating is to be provided because research has shown that the amount of seating can be relevant to the prevention of crime and disorder. It should also indicate the type of activities available on the premises, whether licensable under the 2003 Act or not. While "a performance of dance" with the exception of morris dancing is a licensable activity, the type of dancing, which is unaffected by the licensing requirement, may give rise to issues concerning the steps needed to protect children from harm and more generally conditions which would be appropriate. An operating schedule should therefore describe the type of dancing in broad terms and disclose if the dancing involves striptease or lap-dancing. Similarly, if dancing is to take place, it should be clear whether this would involve dancing by members of the public or by professional performers or both and in what setting. If music is to be provided, it is important that clear indication is given of the type of music to be provided. In the case of passenger vessels, it will also be valuable for the area within any vessel where licensable activities will be taking place to be described. This type of information is essential so that responsible authorities and interested parties can form a proper view as to what measures may be necessary to ensure public safety and prevent public nuisance.

## **An operating schedule must also set out the following details:**

- the relevant licensable activities to be conducted on the premises;
- the times during which it is proposed that the relevant licensable activities are to take place (including the times during each day of the week, during particular holiday periods and during particular seasons, if it is likely that the times would be different during different parts of the year);
- any other times when the premises are to be open to the public;
- where the licence is required only for a limited period, that period;
- where the licensable activities include the supply of alcohol, the name and address of the individual to be specified as the designated premises supervisor;

- where the licensable activities include the supply of alcohol, whether the alcohol will be supplied for consumption on or off the premises or both;
- the steps which the applicant proposes to take to promote the licensing objectives.

*Examples of specimen operating schedules may be viewed on the DCMS website. Other details to be included in the operating schedule will be set out in regulations made from time to time by the Secretary of State which may be viewed on the DCMS website.*

## Steps to promote the licensing objectives

In preparing an operating schedule, the Secretary of State recommends that applicants should be aware of the expectations of the licensing authority and the responsible authorities about the steps that are necessary for the promotion of the licensing objectives. This does not mean that applicants must check their operating schedules with responsible authorities before submitting them, but when uncertain, the responsible authorities can provide expert advice on matters relating to the licensing objectives. For example, the best source of advice on crime prevention is the local police. In preparing operating schedules, applicants should have regard to statements of licensing policy published by the licensing authority for their area. All parties are expected to work together in partnership to ensure that the licensing objectives are promoted collectively. Licensing authorities and responsible authorities are therefore expected so far as possible to publish material about the promotion of the licensing objectives and to ensure that applicants can readily access advice about these matters. **To minimise the burden on licensing authorities and applicants, it may be sensible for applicants to seek the views of the key responsible authorities before formally submitting applications** and having completed drafts of their own operating schedules (after considering the effect on the four licensing objectives). For example, on matters relating to crime and disorder, the police and local authority community safety officers, and local community groups, might be consulted and on matters relating to noise, local environmental health officers might be consulted. Such co-operative effort should minimise the number of disputes which arise in respect of operating schedules. Where there are no disputes, the steps that applicants propose to take to promote the licensing objectives that they have set out in the operating schedule will very often translate directly into conditions that will be attached to premises licences with the minimum of fuss.

**Where permission is to be sought for regulated entertainment involving the provision of live music or other cultural activity, applicants may wish to consider consulting the local authority arts officer or local representatives of the Musicians' Union before completing their operating schedule.**

The steps to be taken should be both realistic and within the control of the applicant and management of the premises. If a licence is granted with conditions attached requiring the implementation of such steps, the conditions will be enforceable in law and it will be a criminal offence to fail to comply with them (under section 136 of the 2003 Act). As such, it would be wholly inappropriate to impose conditions outside the control of those responsible for the running of the premises.

In respect of some premises, it is entirely possible that no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation. It is however important that all operating schedules should be precise and clear about the measures that it is proposed to take to promote each of the licensing objectives and in particular, the protection of children from harm.

## **Considering applications for new and major variations of premises licences**

A major variation is one that does not relate simply to a change of the name or address of someone named in the licence or an application to vary the licence to specify a new individual as the designated premises supervisor. The approach taken in the 2003 Act to applications for new and major variations is based on five main policy aims. These are that:

- the main purpose of the licensing regime is to promote the licensing objectives;
- applicants for premises licences or for major variations of such licences are expected to conduct a thorough risk assessment with regard to the licensing objectives when preparing their applications. This risk assessment will inform any necessary steps to be set out in an operating schedule to promote the four licensing objectives;
- operating schedules, which form part of an application, should be considered by professional experts in the areas concerned, such as the police and environmental health officers, when applications for premises licences and club premises certificates are copied to them by applicants;
- local residents and businesses are free to raise relevant representations, which relate to the promotion of the licensing objectives, about the proposals contained in an application; and
- the role of a licensing authority is primarily to regulate the carrying on of the licensable activity when there are differing specific interests in those activities to ensure that the licensing objectives are promoted in the wider interests of the community. When considering applications, it is expected that licensing authorities will seek to uphold these policy aims.

When a licensing authority receives an application for a new or a major variation of a premises licence, it must determine whether the application has been made properly in accordance with section 17 of the 2003 Act, and in accordance with regulations made by the Secretary of State under sections 17(4), 17(5), 54 and 55 of the Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with the regulations.

Where an application has been lawfully made and provided that no responsible authority (for example, the chief officer of police or an environmental health authority) makes a representation about an application and no interested party seeks to do so, then no hearing would be required and the application must be granted in the terms sought, subject only to conditions which are consistent with the operating schedule and relevant mandatory conditions in the Act. This should be undertaken as a simple administrative process by the licensing authority's officials by whom the proposals contained in the operating schedule to promote the licensing objectives should be translated into clear and understandable conditions consistent with the proposals in the operating schedule. In these circumstances, it is expected and particularly important that licensing authorities do not attempt to second-guess the views of the professional and expert consultees, for example, those of the police, the fire authority and environmental health authority. Accordingly, if operating schedules are prepared efficiently, often in consultation with responsible authorities, it is expected that the likelihood of hearings being necessary following relevant representations would be significantly reduced.

Where a representation concerning the licensing objectives is lodged by a responsible authority about a proposed operating schedule it is relevant and the licensing authority's discretion will be engaged. It will also be engaged if an interested party makes relevant representations to the licensing authority, i.e. those which are not frivolous or vexatious and which relate to the licensing objectives (see paragraphs 5.70 – 5.77 below). A hearing will be required for the licensing authority to consider the representations, at which the parties should be invited to comment upon the representations made and if necessary, to provide clarification of their own representations. The need for a hearing can only be dispensed with by the agreement of the licensing authority, the applicant and all of the parties who made relevant representations. The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website. As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation which gave rise to the hearing. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation.

**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 representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy; and
- the steps that are necessary to promote the licensing objectives.

The determination should be given forthwith and reasons provided to support the determination. This is important not least in anticipation of an appeal by any of the parties. After considering all the relevant issues, it is open to the licensing authority to grant the application subject to such conditions that are consistent with the operating schedule, and these can be modified to such an extent that the licensing authority considers necessary for the promotion of the licensing objectives. Any conditions so imposed must be necessary for the promotion of the licensing objectives. There is no power for the licensing authority to attach a condition which is merely aspirational: it must be necessary. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety. Alternatively, the licensing authority may refuse the application on the grounds that refusal is necessary 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.

With regard to applications to vary the hours during which alcohol may be sold in shops, stores and supermarkets, the Secretary of State recommends that the norm should be for such premises to be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are very good reasons for restricting those hours. Where representations are received from the police, for example, in the case of some shops known to be a focus of disorder and disturbance because youths gather there, a limitation may be necessary.

*(the above has been reproduced from the guidance issued by the secretary of State and has been approved by Parliament)*

In each section relating to the objectives a list of influencing factors on the achievement of that objective has been prepared for consideration. Due to the wide variety of premises and activities that are to be regulated the lists provided are not exhaustive. Applicants should know their premises best and will be expected to address all aspects relevant to the individual style and characteristics of their premises and events.

Further, in each section, a list of possible control measures is provided, to be of assistance to applicants, but again is not intended to be an exhaustive list. Many control measures achieve more than one objective but have not necessarily been listed under each objective. Similarly, applicants will not be required to mention a control measure more than once in their operating schedule.

The selection of control measures, referred to above, should be based upon a risk assessment of the premises, events, activities and the customers expected to attend (e.g. their age, number, etc.). Whilst the Council cannot require such risk assessments to be documented, (other than where required by other legislation), it considers such documentation to be good practice. It is also a useful tool in the instruction and training of staff, as well as a sound basis for review by the licence holder.

Additional measures may be necessary on an occasional or specific basis such as when a special event (e.g. popular live band) or promotion (e.g. during major sporting occasions) is planned. The event is likely to attract larger audiences and/or audiences of a different nature, and which can have a significant impact on the achievement of the licensing objectives. Reference must be made in an applicant's operating schedule, where applicable, to such occasions and the additional measures that are planned in order to achieve the licensing objectives.

The Council considers the effective and responsible management of the premises, instruction, training and supervision of staff and the adoption of best practice to be amongst the most essential control measures for the achievement of all the licensing objectives. For this reason, these elements should be specifically considered and addressed within an applicant's operating schedule.

In addition, the occupancy capacity for premises, and events as appropriate, is also considered to be an essential factor in the achievement of the four licensing objectives, (except in respect of premises licensed for the consumption of food and/or alcohol off the premises). The Council will expect the issue of occupancy capacity to be considered and addressed, where necessary, within an applicant's operating schedule and, in most instances, will agree a maximum occupancy capacity, based on the applicant's assessment within their operating schedule.

The design and layout of premises are important in determining capacity, as is the availability and size of exits within recommended travel distances. Other factors should also be considered when assessing the appropriate capacity for premises or events. These include:

- the nature of the premises or event
- the nature of the licensable activities being provided

- the provision or removal of such items as temporary structures, such as a stage, or furniture
- the number of staff available to supervise customers both ordinarily and in the event of an emergency
- the age of the customers
- the attendance by customers with disabilities, or whose first language is not English
- availability of suitable and sufficient sanitary accommodation
- nature and provision of facilities for ventilation

The agreement to a capacity for premises or events should not be interpreted as a requirement to also provide permanent monitoring arrangements such as door-staff, attendance clickers or maintenance of attendance records. The Council recognises that the person in charge at the premises can often readily assess the occupancy level of the premises without resort to such measures.

However, where the capacity is likely to be reached, (such as on known busy evenings) or where a special event or promotion is planned, the schedule should contain the additional arrangements that will be put in place to ensure that the capacity of the premises is not exceeded.

## 1. Prevention of Crime and Disorder

The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective.

Applicants will be expected to demonstrate, that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.

**When addressing the issue of crime and disorder, the applicant should demonstrate that those factors that impact on crime and disorder have been considered. These may include:**

- Underage drinking
- Drunkenness on premises
- Public drunkenness
- Drugs
- Violent behaviour
- Anti-social behaviour

**The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:**

- Effective and responsible management of premises
- Training and supervision of staff
- Adoption of best practice guidance (e.g. Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA)
- Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs
- Provision of effective CCTV in and around premises
- Employment of Security Industry Authority licensed Doorstaff
- Provision of toughened or plastic drinking vessels
- Provision of secure, deposit boxes for confiscated items ('sin bins')
- Provision of litterbins and other security measures, such as lighting, outside premises
- Membership of local 'Pubwatch' schemes or similar organisations

Within the operating schedule for premises from which alcohol will be sold, a Premises Supervisor must be designated ('Designated Premises Supervisor' DPS). The Council will normally expect the DPS to have been given the day to day responsibility for running the premises by the premises licence holder, and, as such, would normally be present on the licensed premises on a regular basis. In addition to the DPS holding a personal licence, the Council would strongly encourage the DPS to undergo additional training, and to have experience commensurate with the nature and style of entertainment provided and the capacity of the premises.

## **Conditions relating to the Prevention of Crime and Disorder**

### **1. Door Supervisors**

- Will be correctly registered with the SIA;
- Will display the correct name badge;
- Will carry proof of registration;

- Will be used at a ratio to be agreed by the Police and Local Authority, which is currently 1:75;
- A female supervisor will be available if searches are to be conducted on female customers;
- Where there are 5 or more door supervisors, at least one of these will be female;
- Will wear clothing that can be easily and clearly identifiable on CCTV – ie wear a reflective number between 1 and 99 (at least 100mm high) in a prominent position on the upper part of the body;
- Will be in attendance at the entrance of the premises from 9pm until the main exit doors to the premises are closed, and any time when patrons may be queuing for access

## **2. CCTV**

Example measures to meet the licensing Objectives

- Will be installed and working to the satisfaction of the Police and Local Authority;
- Recordings will be maintained for an appropriate period of time (generally one month – but to be agreed with Police and Local Authority);
- If the CCTV equipment is inoperative, the Police and Local Authority will be informed as soon as possible and immediate steps will be taken to put the equipment back into action;
- A notice will be displayed at the entrance to the premises advising that CCTV is in operation

## **3. Bottles and Glasses**

- Alcoholic and soft drinks will be served in plastic or toughened glasses;
- All bottles (other than those where it is not intended that the contents are consumed direct from the bottle) will be made of plastic;
- If glass bottles are used, the contents will be decanted into plastic or toughened glass;
- No customers carrying open or sealed bottles or glasses will be admitted to the premises at any time;
- No customers will be permitted to take open containers of alcoholic or soft drinks from the premises;
- All bottles and glasses will be removed from public areas as soon as they are finished with or empty

#### **4. Radios**

- Radios will be used in town centre licensed premises to provide two way communication between themselves, the police and other licensed premises;
- The equipment will be kept in working order at all times;
- The equipment will be on at all times the premises are open to the public, and will be monitored by the Designated Premises Supervisor or other responsible staff member;
- All instances of crime and disorder will be reported to the police via CCTV or the radio;
- Any police requirements will be complied with at all times

#### **5. Capacity Limits**

- Consideration will be given to setting capacity limits to prevent overcrowding which could lead to crime and disorder;
- This capacity figure will be based on advice from the Police, Fire or local authority;
- Door supervisors may be required to ensure the capacity limits are controlled

#### **6. Proof of Age Cards**

- A proof of age policy to the satisfaction of the police and the Local Authority will be in place

#### **7. Drinks Promotions**

- All-inclusive nights or other irresponsible drinks promotions will not be permitted

#### **8. Drugs**

- An anti drug policy agreed by the Police and local authority will be in force;
- A secure facility to store controlled drugs will be available

#### **9. Notices**

- Crime prevention notices will be displayed warning customers of the prevalence of crime which may target them, eg "bags should not be left unattended", "watch out for pickpockets";
- A detailed "customer code of conduct" poster will be displayed warning customers that if they act in an inappropriate manner, they could be barred from all licensed premises in the vicinity;
- Any restrictions on the admission of children to the premises will be displayed outside the premises

## 10. General

- The premises will be a member of Pubwatch and a representative will attend Pubwatch meetings and participate in all initiatives;
- A person holding the National Licensee's Certificate will be on the premises at all times when alcohol is being served or regulated entertainment provided;
- A policy will be in force for the management of large groups, ie hen and stag parties. The group will be required to nominate a responsible person to liaise with staff;
- A secure area for customer's personal belongings will be made available;
- Substantial and reasonably priced food will be available at all times the premises are open;
- If under 18s are allowed on the premises, alcohol will not be available to these customers;
- I will keep an incident book and record details of all instances of public disorder

## 2. Public Safety

The Council is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. To this end, applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and events.

**When addressing the issue of public safety, an applicant must demonstrate that those factors that impact on the standards of public safety have been considered. These may include:**

- the occupancy capacity of the premises
- the age, design and layout of the premises, including means of escape in the event of fire
- the nature of the licensable activities to be provided, in particular the sale or supply of alcohol, and/or the provision of music and dancing and including whether those activities are of a temporary or permanent nature
- the hours of operation (differentiating the hours of opening from the hours when licensable activities are provided, if different)
- customer profile (e.g. age, disability)
- the use of special effects such as lasers, pyrotechnics, smoke machines, foam machines, etc.

**The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:**

- Suitable and sufficient risk assessments
- Effective and responsible management of premises
- Provision of a sufficient number of people employed or engaged to secure the safety of the premises and patrons
- Appropriate instruction, training and supervision of those employed or engaged to secure the safety of the premises and patrons
- Adoption of best practice guidance (e.g. Guide to Fire Precautions in Existing Places of Entertainment and Like Premises, The Event Safety Guide, Safety in Pubs published by the BBPA))
- Provision of effective CCTV in and around premises
- Provision of toughened or plastic drinking vessels
- Implementation of crowd management measures
- Proof of regular testing (and certification where appropriate) of procedures, appliances, systems etc. pertinent to safety

## **Conditions relating to Public Safety**

As for Door Supervisors, CCTV ,Bottles and glasses, Capacity Limits, Drugs, Notices.

### **1. Fire Safety**

- All exit doors will be easily openable without the use of a key, card, code or similar means and will be available for egress while the public are on the premises;
- Means of escape will be maintained unobstructed, immediately available and clearly identifiable;
- Exit doors will be regularly checked to ensure they function satisfactorily. Records of these checks will be kept and produced on request;
- Any removable security fastenings will be removed whenever the premises are open to the public or staff;
- All fire doors will be maintained effectively self-closing and shall not be held open other than by approved devices;
- Fire resisting doors to service shafts, ducts and cupboards will be kept locked shut;

- Step and stair edges will be highlighted so as to be conspicuous;
- All gangways, exitways and treads of steps or stairways will be maintained with non-slippery and even surfaces;
- All floor coverings will be secured and maintained so that they will not ruck. Mats will be fitted into matwells so as to be flush with the floor surface;
- Hangings, curtains and temporary decorations will be maintained in a flame retardant condition;
- Upholstered seating will be fire retardant and compliant with current fire safety regulations;
- Curtains, hangings and temporary decorations will not obstruct exits, fire safety signs or fire-fighting equipment;
- Notices detailing the actions to be taken in the event of fire or other emergency will be prominently displayed and maintained in good condition;
- Access will be provided for emergency vehicles and this access will be kept clear and free from obstruction;
- Fire drill and emergency lighting tests will be conducted monthly. Records of these tests will be made available to the Licensing Authority upon request;
- All fire exits and means of escape will be signed in accordance with BS5499;
- An evacuation policy will be in place that is to the satisfaction of the Fire Authority. All staff members will be trained in the evacuation policy;
- The fire brigade will be called to any outbreak of fire, however slight;
- Wall and ceiling finishes will be fire resistant;
- Exit doors will open outwards (or will be secured in the open position)

## **2. First Aid**

- Adequate and appropriate supply of first aid equipment and materials will be available on the premises;
- At least one suitable trained first aider will be on duty when the public are present;
- If more than one first aider is present, their respective duties will be clearly defined;
- The first aider will be trained to deal with drug and alcohol related problems

### **3. Lighting**

- In the absence of adequate daylight, the lighting in any area accessible to the public will be fully operational;
- Fire safety signs will be adequately illuminated;
- Emergency lighting will not be altered;
- Emergency lighting batteries will be fully charged before the admission of the public;
- In the event of failure of normal lighting, where the emergency lighting battery has a capacity of one hour, evacuation of the premises will be possible within 20 minutes;
- Where the emergency lighting battery has a capacity of three hours, evacuation of the premises will be possible within one hour;
- Emergency lighting tests will be conducted monthly. Records of these tests will be made available to the Licensing Authority upon request

### **4. Safety Certificates**

The provision of certain documentation will assist in showing how you intend to meet the public safety licensing objective

- provide a satisfactory NICEIC or ECA periodic electrical installation report. The inspection will be carried out annually and I will provide a new report each year;
- provide a satisfactory NICEIC or ECA periodic emergency lighting report. The inspection will be carried out annually and I will provide a new report each year;
- provide a CORGI certificate of inspection in respect of any gas boiler, calorifier or appliance. The inspection will be carried out annually and I will provide a new report each year;
- provide an OFTEC certificate of inspection in respect of any oil-fired boiler or appliance. The inspection will be carried out annually and I will provide a new report each year;
- provide a certificate by a suitably qualified professional in respect of any suspended ceilings at the premises. I will provide this every five years;
- provide confirmation of public liability insurance in the minimum sum of £2 million. A new certificate will be provided each year;
- provide a certificate of inspection for portable fire fighting equipment. The inspection will be carried out annually and I will provide a new certificate each year;
- provide a certificate of inspection for any fire detection alarm at the premises. The inspection will be carried out annually and I will provide a new certificate each year;

- Where a temporary electrical installation is being used, a temporary electrical installation report by a NICEIC or ECA electrician or a certificate of compliance with BS7909 will be provided

## **5. Indoor Sports Entertainments**

- An appropriately qualified medical practitioner will be present throughout a sports entertainment involving boxing, wrestling, judo, karate or other sports entertainment of a similar nature;
- Where a ring is involved, it will be constructed and supported by a competent person and inspected by a competent authority. Any material used to form the skirt will be fire-retardant;
- At any wrestling or similar entertainment, members of the public will not occupy any seat within 2.5 metres of the ring;
- At water sports entertainments, staff trained in rescue and life saving procedures will be stationed within the vicinity of the water at all times

## **6. Special Effects**

- The use of special effects or mechanical installation will be arranged and stored so as to minimise any risk to the safety of the audience, performers and staff;
- Special effects including the following will only be used with prior notification to the Licensing and/or Fire authorities:-  
 Dry ice machines and cryogenic fog;  
 Smoke machines and fog generators;  
 Pyrotechnics, including fireworks;  
 Real flame;  
 Firearms;  
 Motor vehicles;  
 Strobe lighting;  
 Lasers;  
 Explosives and highly flammable substances
- Free drinking water will be made available at all times the premises is open to the public;
- A chill out area to the satisfaction of the Police and Licensing authority will be provided. This will be cooler and quieter than the dancing areas;
- A personal safety message will be displayed, eg "make mine a safe one" poster campaign. The message will include details of where personal attack alarms can be obtained;

- A “hot line” to a local taxi firm will be available;
- A policy will be in place for escorting all patrons from the premises to a licensed taxi or private hire vehicle;
- A “no smoking” area of such a size and design that it genuinely provides a suitable area for customers wishing to be separated from smoking areas will be available;
- Seats will be available to accommodate one third of the maximum capacity of the premises. (Nightclubs may by prior agreement reduce the seats available to one quarter of the maximum capacity of the venue);
- The Licensee will ensure that a constant and accurate record will be maintained of the number of patrons within the premises. These records will be made available upon request;
- Searching as a condition of entry will be considered at all times and will be mandatory when directed by police

### **3. Prevention of Public Nuisance**

Licensed premises have a significant potential to adversely impact on communities through public nuisances that arise from their operation. The Council wishes to maintain and protect the amenity of residents and other businesses from the potential consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

The Council intends to interpret “public nuisance” in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

Applicants need to be clear that the Council will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received. Conversely, premises for which it can be demonstrated have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening.

In the case of shops, stores and supermarkets selling alcohol, the Council will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are exceptional reasons relating to disturbance or disorder.

Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events.

**When addressing the issue of prevention of public nuisance, the applicant must demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include:**

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices and places of worship
- the hours of opening, particularly between 23.00 and 07.00
- the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises
- the design and layout of premises and in particular the presence of noise limiting features
- the occupancy capacity of the premises
- the availability of public transport
- 'wind down period' between the end of the licensable activities and closure of the premises
- last admission time

**The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:**

- Effective and responsible management of premises
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, e.g. to ensure customers leave quietly
- Control of operating hours for all or parts (e.g. garden areas) of premises, including such matters as deliveries
- Adoption of best practice guidance (e.g. Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics, Licensed Property: Noise, published by BBPA)
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises
- Liaison with public transport providers
- Siting of external lighting, including security lighting
- Management arrangements for collection and disposal of litter
- Effective ventilation systems to prevent nuisance from odour

## Conditions relating to the Prevention of Public Nuisance

- Noise or vibration will not be audible at the façade of any noise sensitive premises;
- Doors and windows will be kept closed whenever necessary;
- Noise limiters on amplification equipment will be used;
- Prominent, clear and legible notices will be displayed at all exits requesting patrons to respect the needs of local residents and to leave the premises and the area quietly;
- The use of explosives, pyrotechnics and fireworks of a similar nature which could cause disturbance in surrounding areas will be restricted;
- The placing of bottles into receptacles outside the premises will take place at times that will minimise disturbance to nearby properties;
- For the final hour of opening the music will be discernibly quieter;
- The playing of live or recorded music in garden areas of the premises will not be permitted after a specified time (please specify time)

### Noxious smells

- Noxious smells from licensed premises will not cause a nuisance to nearby properties;
- Premises will be adequately vented to prevent nuisance from noxious smells

## 4. Protection of Children from Harm

The protection of children from harm is a most important issue. It is hoped that family friendly premises will thrive, but the risk of harm to children remains a paramount consideration when determining applications.

The general relaxation in the Licensing Act giving accompanied children greater access to licensed premises is a positive step, aimed at bringing about a social change in family friendly leisure. Clearly this relaxation places additional responsibilities upon licence holders. However, it is also recognised that parents and others accompanying children also have responsibilities.

The protection of children from harm includes the protection of children from moral, psychological and physical harm and in relation to the exhibition of films, or transmission of programmes or videos, this includes the protection of children from exposure to strong language and sexual expletives. In certain circumstances children are more vulnerable and their needs will require special consideration. Examples would include topless bar staff, striptease, lap, table or pole dancing, performances involving feigned violence or horrific incidents, feigned or actual sexual acts or fetishism, or entertainment

involving strong and offensive language. This vulnerability includes their susceptibility to suggestion, peer group influences, inappropriate example the unpredictability of their age and the lack of understanding of danger.

The Council considers that, on the one hand, there should be no presumption of giving children access or, on the other hand, no presumption of preventing their access to licensed premises. The Council has no intention of imposing conditions requiring the admission of children and where no licensing restriction is necessary, admission of children will remain entirely a matter for the discretion of the individual licensee or club, or person who has given a temporary event notice.

Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to protect children from harm, relevant to the individual style and characteristics of their premises and events.

Whilst children may be adequately protected from harm by the action taken to protect adults, they may also need special consideration and no policy can anticipate every situation. When addressing the issue of protecting children from harm, the applicant must demonstrate that those factors that impact on harm to children have been considered.

**Areas that will give particular concern in respect of children include:**

- where entertainment or services of an adult or sexual nature are commonly provided
- where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking
- with a known association with drug taking or dealing
- where there is a strong element of gambling on the premises, and
- where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises.

**The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in their operating schedule, having regard to their particular type of premises and/or activities:**

- Effective and responsible management of premises
- Provision of a sufficient number of people employed or engaged to secure the protection of children from harm

- Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm to include Criminal Records Bureau check of such persons
- Adoption of best practice guidance (Public Places Charter, The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks)
- Limitations on the hours when children may be present, in all or parts of the premises
- Limitations or exclusions by age when certain activities are taking place
- Imposition of requirements for children to be accompanied by an adult
- Acceptance of accredited 'proof of age' cards and/or 'new type' driving licences with photographs
- Measures to ensure children do not purchase, acquire or consume alcohol
- Measures to ensure children are not exposed to incidences of violence or disorder

These examples can be adopted in any combination.

If considered appropriate, the licensing authority may require that adult supervisors be checked for suitability to work with children.

Checklist of phrases, items that could be included in the operating schedule.

## **Conditions relating to the protection of Children from Harm**

- For any premises with known associations with heavy or binge or underage drinking, drugs, significant gambling, or any activity or entertainment of a clearly adult or sexual nature, access will not be permitted for children under 18 years;
- Applicants wishing to allow access to under 18s to such premises will explain their reasons and outline in detail the steps they intend to take to protect children from harm;
- The hours of the day during which age restrictions will and will not apply will be detailed;
- If under 18s are allowed on the premises, alcohol will not be available to any customers;
- A "no smoking at the bar" rule will be enforced;
- A proof of age policy agreed by the police and local authority will be enforced;

- If children are allowed on the premises, a “no smoking” area of such a size and design that it genuinely provides a suitable, comfortable area for children and families wishing to be separated from smoking areas will be available;
- A crime prevention policy agreed by the police and local authority will be in place

### **Nudity and Striptease**

- Advertising of such events will be agreed with the Council in advance;
- No person under 18 will be permitted to enter the premises whilst nudity or striptease is taking place;
- Physical contact will not be permitted between performers, staff and customers

### **A Guide from Warwickshire Fire and Rescue Service**

Warwickshire Fire and Rescue Service are committed to the principles of good enforcement as set out in the Enforcement Concordat, which was formally signed on 5 March 1998 by Central Government (Cabinet Office) - and by the Local Government Association.

**Under the Licensing Act 2003 there is a clear focus on the promotion of four statutory objectives, which must now be addressed when licensing functions are undertaken. They are:**

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

The delivery of these objectives must involve working in partnership with licensing authorities, planning authorities, environmental health and safety authorities, the police, the fire authority, crime and disorder reduction partnerships, town centre managers, local businesses, performers and their representatives, local people, local transport authorities, transport operators and those involved in child protection, to work towards the promotion of the common objectives described. In particular, it is stressed that the private sector and local residents and community groups have an equally vital role to play in partnership with public bodies, to promote the licensing objectives.

The Secretary of State for Culture, Media and Sport (DCMS.), has issued guidance to secure the above objectives under Section 182 of the Licensing Act 2003 (July 2004).

Warwickshire Fire and Rescue Service embrace this document as best practice and will act as legislative consultees following its guidance.

**With respect to public safety, there are also a number of key safety publications in the context of regulated entertainment with which The Fire and Rescue Services will adhere to. They include:**

- The Event Safety Guide - A guide to health, safety and welfare at music and similar events (HSE 1999) ("The Purple Book") ISBN 0 7176 2453 6.
- Managing Crowds Safely (HSE 2000) ISBN 0 7176 1834 X.
- 5 Steps to Risk Assessment: Case Studies (HSE 1998) ISBN 07176 15804.
- The Guide to Safety at Sports Grounds (The Stationery Office, 1997) ("The Green Guide") ISBN 0 11 300095 2.

## **Enforcement**

Enforcement of the public safety within licensed premises by the Fire and Rescue Service will be by way of the Fire Precautions (Workplace) Regulations 1997 (as amended), however the protocol of consulting with the licensing authority where matters of public safety are involved will be followed.

In particular, the provision for the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run, will be established.

It is not the intention of the Fire and Rescue Service to carry out routine inspections of premises holding licenses under the 2003 Act, but to establish an inspection regime using the principle of risk assessment and targeting inspections when and if they are judged necessary.

Annexes E and F (pages 154 to 163) of the above mentioned DCMS published guidance relating to public safety, should be treated as a pool of conditions from which appropriate necessary conditions for premises licenses and club premises certificates may be drawn. It is important that they should not be treated as standard conditions and each premises needs to be considered individually.

Where notification of a new premises licence or club premises certificate application is received from the licencing authority, the Fire and Rescue Service will inspect the premises and make relevant representation in connection with any fire safety matters to the authority if required.

The Fire and Rescue Service will only recommend "Safe occupancy capacities" for the inclusion into a licence or club certificate where necessary, for the promotion of public safety.

The applicant should, however, conduct their own risk assessment as to the appropriate capacity of the premises using guidance supplied by the licensing authority as issued by the Fire and Rescue Service, to be included in their operating schedule (Appendix 1).

Where necessary, applicants may send their calculated occupancy capacity, together with relevant scale plans to the Fire and Rescue Service who will consider it and then give further guidance if Required.

Annexes E and F of the published guidance sets out example conditions, which should be considered as appropriate and necessary when preparing a risk assessment to ensure necessary public safety from fire.

Public safety includes the safety of performers appearing at any premises.

## APPENDIX 1

### PROCEDURE FOR CALCULATING THE MAXIMUM NUMBER OF PERSONS IT IS SAFE TO HAVE RESORTING TO A LICENSED PREMISES AT ANY GIVEN TIME

#### Introduction

The maximum number of persons it is safe to have within a licensed premises depends on a number of factors, these include:

- the total available floor area and the use of each part thereof;
- the number of available exit doorways;
- the actual distance people would need to travel to reach the nearest fire exit doorway;
- the width of exit doorways and escape routes;
- the method of opening exit doors and the direction in which they open; and
- the number of persons likely to use each exit doorway.

To determine the maximum safe occupancy figure for a particular premises, the following step by step method should be followed:

#### Step 1

Calculate the available licensed area in square metres. Areas occupied by fixed seating, pool tables, stages, bar serveries, etc. should be excluded from the calculation.

From this figure, an occupancy figure can be determined by allowing 1 m<sup>2</sup> per person for restaurant/dining areas and 0.5 m<sup>2</sup> per person for general drinking areas.

Add to this figure the number of fixed seats and the number of staff/performers who may be present behind bar serveries and on stage.

You now have the 'total potential occupancy'.

#### Step 2

Determine the number of exits required as follows:

- up to 60 persons: one exit with a minimum clear opening width of 750mm (the door may open inwards or outwards).

- 61 - 100 persons: at least two exits the narrower of which has a minimum clear opening width of 750mm (both exits to open outwards).
- 101 - 200 persons: at least two exits the narrower of which has a minimum clear opening width of 1050mm (both exits to open outwards).

An alternative to having 2 x 1050 mm exits for 200 persons would be the provision of 3 x 750 mm exits.

- more than 200 persons: the Fire Service should be consulted.

### **Step 3**

Check that each of the following conditions apply:

- Where there is only one exit available, no person should have to walk more than 18m to reach it;
- Where there are two exits available, but there is a portion of the licensed area from which one exit has to be passed to reach the alternative (dead end), no person should have to walk more than 18 m to reach the nearest exit;
- Where there are two or more exits, they should be sited far enough apart to ensure that if one is unavailable due to fire, the other remains available. Generally speaking, this means that where there are two exits, there should be one each end of the licensed area and where there are three exits, there should be one at each end and one in the middle;
- For occupancies up to 60 persons, exit doors should be either free swing or be fitted with a single simple opening mechanism which does not require the use of a key, e.g. normal door handle or push pad device.
- Exit doors for occupancies exceeding 60 persons should be either free swing or be fitted with panic furniture which has an operating mechanism over at least 60% of the door width;
- Where an exit doorway serves two adjacent licensed areas, e.g. bar and snug both of which discharge via a draft lobby or corridor to the final exit doorway, the width of the door and corridor should be adequate for the combined occupancy of both areas;
- Where an escape route passes through corridors, alleyways or past obstructions, the narrowest part of the route should be at least equal to the required door width for the number of persons using it;
- Where seating at tables is provided, clear gangways, minimum 750mm wide, should be maintained to facilitate evacuation.

## Step 4

The Fire Service should be consulted if:

- The total potential occupancy calculated under **Step 1** exceeds 200 persons;
- The total potential occupancy calculated under **Step 1** exceeds the number and width of exits determined under **Step 2**;
- Any of the conditions under **Step 3** cannot be met.

## A Guide from Warwickshire Trading Standards Service

The new regime relating to the licensing of premises that sell alcohol is a good opportunity to try and tackle the issues surrounding the illegal supply to persons under 18 years of age. Warwickshire Trading Standards would like the Borough and District Licensing Policies to make specific reference to steps that prospective licensees should be taking to avoid illegal sales taking place and a suggested text is outlined below. Obviously, the wording may need to be amended so that it can be easily incorporated into the proposed licensing policy format.

If you have any queries or observations then please contact Martin Wragg at Warwickshire Trading Standards Service on **01926 414080**.

### **Illegal sales of age restricted goods**

Warwickshire County Council Trading Standards Service and the Police take a very serious view on the illegal sale of alcohol and other age-restricted goods. The Trading Standards Service will continue to seek to ensure that there are no illegal sales of alcohol and other age-restricted goods and they see the new licensing regime as potentially, an effective way of tackling this issue.

The sale of alcohol to minors is a criminal offence and Warwickshire Trading Standards Service have, over time, worked to advise the off-licensed trade in particular about how to set up systems to avoid sales taking place. Trading Standards will continue to regularly conduct covert test purchasing exercises with volunteers in response to complaints and local intelligence. Trading Standards have been successful in bringing a number of prosecutions in recent times, having particular regard to the link between alcohol and a range of crime and disorder issues, and this continues to be a concern of the Council under the new Licensing Act 2003.

The Authority will expect applicants for licences to demonstrate that they have ensured that all their frontline staff have received adequate training on the law with regard to age restricted sales and that this has been properly documented and training records kept. Ideally, suitable training material should be issued to all staff and their understanding of the material checked through appraisals and by means of a short written test. Group training sessions amongst all staff are to be encouraged in order to discuss compliance with the legislation. Records of the material issued, appraisal meetings and any tests taken must be kept on the premises in the employees personnel file and must be made available for inspection by the Licensing Officer, Trading Standards or the Police if requested. Training will need to be refreshed periodically.

The Trading Standards Service will provide an information pack to support training and all licensees must sign to acknowledge receipt of the training pack.

The Authority will expect staff training to include a basic understanding of the law and must include a requirement of checking identification (ID) for proof of age through a secure system. Ideally, ID should be a photo driving licence or passport, but other 'proof of age' cards are available – the most secure are Connexions Cards, Citizencard, Validate and The Portman card. The cards should all bear the P.A.S.S. hologram (Proof of Age Standards Scheme). Other cards must be treated with caution because some have been shown to be insecure. The Authority will expect that training for staff will also need to ensure that they are capable of challenging purchasers. Trading Standards regularly find that some employees engaged in selling alcohol are incapable of confronting and challenging the under-18s because they lack the confidence to do so and are concerned at the prospect of a dispute. Employees who are not prepared to challenge in this way are unsuitable and should not be given responsibility for selling alcohol.

Employees themselves must be over 18 years of age to sell alcohol, unless the sale is authorised by someone who is over 18. If a sale is authorised in this way, the person making the authorisation is also responsible for ensuring that the purchaser is over 18.

Licencees or employees actually engaged in selling alcohol will need to have a reasonable understanding of English in order that they are able to effectively question purchasers so that they are satisfied that they are over 18 years of age.

The Authority will actively encourage licensees to keep registers of refused sales (refusals books) where sales of alcohol and any other age-restricted goods have been refused for any reason. Keeping such records will help to demonstrate that responsibilities for checking ages of purchasers are being taken seriously. Refusals books should be kept on the licenced premises and be made available for inspection by the Licensing Officer, Trading Standards or the Police.

Particularly in premises where alcohol is not the main product sold – for example, food retailers and corner shops - the Authority will actively encourage the use of warning messages where an EPOS (electronic point of sale) system is in use. Such a warning system is of help to employees and it will prompt them to check the age of purchasers of alcohol or other age restricted products that are presented at the check out.

In relation to pubs, restaurants and clubs, the Authority will actively encourage licencees to have due regard to the guidelines issued by the National Association of Cigarette Machine Operators (NACMO). Cigarette machines should be sited in a position where they are clearly visible to members of staff so that attempted purchases by young people can be challenged.

The work of Warwickshire Trading Standards Service will continue to take place under the new Licensing regime. The Licensing Officer will take a very serious view of any transgression reported to it, whether or not a successful prosecution results, under the provisions of the Licensing Act 2003 or any other Trading Standards legislation.

If you need advice on how to avoid selling age restricted goods, Warwickshire Trading Standards Service provide a free advice service and can be contacted on **01926 414044**.

**If you find the text in this document difficult to read, we can supply it in a format better suited to your needs.**



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