

Extracts from the Revised guidance made under Section 182 of the Licensing Act 2003; January 2007.

Incidental music

3.21 In the first instance, the operator of the premises concerned must decide whether or not he considers that he needs a premises licence. In considering whether or not music is incidental, one factor may be whether or not, against a background of the other activities already taking place, the addition of music will create the potential to undermine the four licensing objectives of the Act. Other factors might include some or all of the following:

Is the music the main reason for people attending the premises?

Is the music advertised as the main attraction?

Does the volume of the music disrupt or predominate over other activities?

Conversely, factors which would not normally be relevant include:

Number of musicians, e.g. an orchestra may provide incidental music at a large exhibition.

Whether musicians are paid.

Whether the performance is pre-arranged.

Whether a charge is made for admission to a premises.

Role of Councillors in the licensing process

8.8 Ward councillors play an important role in their local communities. In addition to making representations on an interested party's behalf if specifically requested to do so, a ward councillor can make representations as an interested party in their own right. However, there are rules relating to prejudicial interests in the code of conduct for members which require that a member with a prejudicial interest in a matter (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public good) should withdraw from a meeting of the authority at which the matter is discussed. An individual councillor's decision would be subject to these provisions of the code. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.

8.9 These rules would apply to any member whether or not they were a member of the licensing committee. A member representing others or acting in their own right, who is also a member of the licensing committee, would be expected to disqualify themselves from any involvement in the decision-making process affecting the premises licence.

8.10 In addition, ward councillors that are not themselves an interested party or representing one may wish to be kept informed of licensing related matters within the area, such as applications and reviews. The Act does not prevent licensing authorities from providing this information to councillors, for instance by way of regular updates, as long as it is done in a neutral way that could not be seen as 'soliciting' representations. It should be remembered that the 'licensing authority' in most cases is the full council, including all ward councillors, and each is therefore entitled to information required to inform that role.

Role of the Designated Premises Supervisor and Personal Licence Holder

10.45 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

10.46 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.

10.47 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 during the course of an evening, 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.

10.48 “Authorisation” does not imply direct supervision of each sale of alcohol by a personal licence holder. The question arises as to how sales can be authorised. In the Government’s view it is not possible to state categorically how the requirement of authorisation is satisfied, as the facts and circumstances in each case will differ. Whether or not an authorisation has been given within the meaning of Act would, ultimately, be a matter for a court to determine on the evidence before it when the issue arose.

10.49 Nevertheless, the Secretary of State considers that where an issue comes before a court, the court could be expected to require the authorisation to have been meaningfully and properly carried out and not to have involved any abdication of responsibility. The Secretary of State considers the following factors should be relevant in considering whether there was real authorisation:

- the person(s) authorised to sell alcohol 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 oral or written statement given to the individual(s) being authorised; and
- there should be in place sensible arrangements for monitoring by the personal licence holder of the activity authorised by him or her on a reasonably regular basis.

10.50 The Government considers that, whilst not a requirement of the Act, it may be preferable for personal licence holders to consider giving specific written authorisations to individuals, as in doing so they are more likely to be able to clearly demonstrate due diligence to the enforcement authorities. However, 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.

Representations; Discourse of identity

9.13 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide to the applicant with the notice and copies of the relevant representations that have been made.

9.14 In some exceptional and isolated circumstances interested parties may be reluctant to make representations because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.

9.15 Where licensing authorities consider that the interested party has a genuine and well-founded fear of intimidation and may be deterred from making a representation because of this, they may wish to consider alternative approaches.

9.16 For instance, they could advise interested parties to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.

9.17 The licensing authority may also decide to withhold some or all of the interested party's personal details from the applicant, giving only enough details (such as street name or general location within a street) which would allow an applicant to be satisfied that the interested party is within the vicinity of the premises. However, withholding such detail should only be considered where the circumstances justify such action.

Control of nuisance/crime and disorder

1.23 The Licensing Act is part of a wider Government strategy to tackle crime, disorder and anti-social behaviour and reduce alcohol harm. Licensing authorities should develop effective strategies with the police for the management of the night-time economy. Central to this would be the enforcement of the law relating to the sales of alcohol to drunk and underage people and drunkenness or disorder on the premises. Targeted enforcement of this kind should have a positive impact on the immediate vicinity of the licensed premises concerned. In addition, following reviews that have identified problems with a particular premises, licensing authorities may consider imposing conditions as appropriate, such as preventing customers from taking open containers outside the premises.

Presumption re Longer hours

Hours of opening

1.17 The Government strongly believes that, prior to the introduction of the Licensing Act 2003, fixed and artificially early closing times (established under the Licensing Act 1964) were one of the key causes of rapid binge drinking prior to closing times; and one of the causes of disorder and disturbance when large numbers of customers were required to leave the premises simultaneously.

1.18 The aim through the promotion of the licensing objectives should be to reduce the potential for concentrations and achieve a slower dispersal of people from licensed premises through flexible opening times. Arbitrary restrictions that would undermine the principle of flexibility should therefore be avoided.

1.19 The four licensing objectives should be paramount considerations at all times and licensing authorities should always consider the individual merits of a case.

Hours of trading

10.18 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, longer licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises.

10.19 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.

10.20 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.

Licensing hours

13.34 With regard to licensing hours, the statement of policy should generally emphasise the consideration which will be given to the individual merits of an application. The Government recommends that statements of policy should recognise that, in some circumstances, longer licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided.

13.35 This can help to reduce the friction at late night fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance. The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists. Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.

13.36 Statements of licensing policy should indicate that shops, stores and supermarkets, are 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. Statements of licensing policy should therefore reflect this general approach.