

GUIDANCE NOTES FOR THE LICENSING ACT 2003

What's it all about?

In April 2000, the Government issued a consultation paper that outlined proposals for the modernisation of our current licensing laws.

The Licensing Bill was subsequently introduced in Parliament on 14 November 2003 and on 10 July 2003 the Bill received Royal Assent and became the Licensing Act 2003 ("the Act").

This new legislation, when in force, will create a single integrated scheme for the licensing of premises which are used for:

- The supply of alcohol
- Providing regulated entertainment
- Providing late night refreshment

Permission to carry on some or all of these licensable activities will now be contained in a single licence - **the premises licence** -

The Act will see an end to existing outdated licensing regimes and seeks to reflect that the licensable activities it covers are to be carried on in a modern, vibrant society and a more streamlined and unified licensing system is required to enable this.

What are the key measures?

They include:

- Flexible opening hours for premises, with the potential for up to 24 hour opening, seven days a week, subject to any representations that may be received and the impact upon the licensing objectives.
- A single premises licence which can permit premises to be used to supply alcohol, to provide regulated entertainment and to provide late night refreshment. This premises licence will bring together the six existing licensing regimes (alcohol, public entertainment, cinemas, theatres, late night refreshments and night cafes) which should cut down on the current red tape and bureaucracy that operators currently have to face.
- A new system of personal licences relating to sale of alcohol which will allow holders of the licence to move more freely between premises where a licence is in force.
- Premises licences to be issued by licensing authorities (the Local Authority) subject to notifying responsible authorities and having regard to representations received.
- Personal licences to be issued by licensing authorities after having regard to the comments of the Police when an applicant has been convicted of certain offences.

What are the Licensing Objectives?

Licensing Authorities must perform their duties according to the four “licensing objectives” contained in the Act (Section 4). They are:

- The prevention of crime and disorder
- Public Safety
- The protection of children from harm
- The prevention of public nuisance

NB: The licensing objectives are of equal importance

What are the licensable activities?

There are four licensable activities contained within the Act (Section 1).

- The sale of alcohol by retail
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of a club
- The provision of regulated entertainment
- The provision of late night refreshment

What is regulated entertainment?

Subject to conditions and exemptions, the definitions of regulated entertainment are contained within Schedule 1 of the Act and are:

- A performance of a play
- An exhibition of a film
- An indoor sporting event
- A boxing or wrestling entertainment (indoors or outdoors)
- A performance of live music
- Any playing of recorded music
- A performance of a dance
- Entertainment of a similar description to that falling within the performance of live music, any playing of recorded music and the performance of dance

Providing that the entertainment takes place in the presence of an audience and is provided for the purpose, or for purposes which include the purpose of entertaining that audience. Reference to an audience will also include “spectators”.

Regulated entertainment will also include the provision of “entertainment facilities” to enable persons to take part in entertainment outlined above for the purpose, or for purposes which include the purpose, of being entertained. The descriptions of entertainment are:

- Making music
- Dancing
- Entertainment of a similar description to making music or dancing

What is late night refreshment?

Late night refreshment, subject to certain exemptions, is defined in Schedule 2 of the Act and is broadly the supply of hot food or hot drink to members of the public for consumption on or off the premises between the hours of 11 pm and 5 am.

What is the Statement of Licensing Policy?

The Licensing Authority is required to prepare and publish a statement of licensing policy every three years in accordance with Section 5 of the Act. This policy must be published before the authority can carry out any of its functions in terms of determining individual applications. During the three year period the policy must be kept under review and revisions made as and when appropriate.

When determining applications, the licensing authority must have regard to its policy together with the guidance issued by the Secretary of State.

How is the Statement of Licensing Policy formulated?

Before determining its policy, the Licensing Authority must consult the persons listed in Section 5 of the Act. These are:

- The chief officer of Police
- the Fire authority
- persons/bodies representative of local holders of premises licences
- persons/bodies representative of local holders of club premises certificates
- persons/bodies representative of local holders of personal licences
- persons/bodies representative of businesses and residents in its area

NB: When determining their first statement of licensing policy, the licensing authority must consult with persons/bodies representative of current licence holders.

Beyond the above statutory requirements, it is for each statutory authority to decide whether to consult with any other representative bodies.

What types of Licences are there?

- **Personal Licences (Part 6 of the Act)**

These licences are granted to an individual for the purposes of the sale or supply of alcohol at a premises. The licensing authority grant them for a period of 10 years unless surrendered, revoked or declared forfeit. The Licence is “portable” and holders may move to other areas without the need to apply for another licence. The

applicant will also be required to submit at least one recent passport-size photograph for inclusion on the licence.

It is important to note that the “fit and proper” test for applicants will be abolished and the tests established by the Act are the only ones that will be allowed to be applied.

Requirements

- Must be aged 18 or over
- Possess a licensing qualification accredited by the Secretary of State
- Must not have had forfeited a personal licence within 5 years of the application
- Police have not given an objection notice following notification of any unspent relevant offence or foreign offence or,
- Police have given an objection notice because of a relevant unspent conviction or foreign offence, but the licensing authority has not considered it necessary to reject the application on crime prevention grounds
- The applicant has paid the appropriate fee

Changes in name or address

The personal licence holder is required by the Act to notify the licensing authority of any changes of name or address. These changes are to be recorded by the licensing authority. The holder is also under a duty to notify the licensing authority of any convictions for relevant offences. These measures should ensure that a single record would be held of the holder’s licence in terms of licensing matters. The Licensing Authority shall maintain easily accessible records and maintain a service enabling the Police in any area together with other licensing authorities to be promptly advised of any details they require about the holder of a personal licence which relates to their licensing functions. The Act authorises the provision and receipt of such personal information to such agencies for the purposes of the Act.

Convictions and liaison with the Courts

Where a personal licence holder is convicted by a Court for a relevant offence, the Court is under a duty to notify the relevant licensing authority of the conviction and of any decision to order that the personal licence be suspended or declared forfeit. The sentence of the Court has immediate effect despite the fact that an appeal may be lodged against conviction or sentence (the Court, however, can suspend the forfeiture or suspension of the licence pending the outcome of the appeal).

On receipt of such a notification, the licensing authority should contact the holder and request his licence so that the necessary action can be taken.

Relevant offences are set out in Schedule 4 to the Act.

- **Premises Licences (Part 3 of the Act)**

Any person aged 18 or over who wishes to provide licensable activities at a premises may apply for a premises licence either on a permanent basis or for a time-limited period. Premises will include a vehicle, vessel or moveable structure or any place (including in the open air) or a part of a premises. "Any person" in this context will also include a business or a partnership.

An application for the grant or variation of a premises licence must be made in the prescribed form to the relevant licensing authority and copied to each of the appropriate responsible authorities. The application must be accompanied by:

- The required fee
- An operating schedule
- A plan of the premises in a prescribed form to which the application relates and
- If the application involves the supply of alcohol, a form of consent from the individual who is to be specified as the designated premises supervisor

The Operating Schedule

An operating schedule will be required to include any relevant information that is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote the licensing objectives are satisfactory. It should include a description of the style and character of the business to be conducted (i.e. a supermarket, cinema with 6 screens and a bar, a restaurant or a pub with 2 bars, dining area and a garden open to customers). It should also indicate what types of activities would be available on the premises. The schedule needs to clear as to the nature of the business in order that a proper view can be formed and what measures may be necessary to promote the licensing objectives. It must also set out the following details:

- The relevant licensable activities
- The times during which they are to take place including days of the week, particular holiday periods or times 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 required
- Where the licensable activities involve the supply of alcohol, the name and address of the designated premises supervisor
- Where the licensable activities include the supply of alcohol, whether that will be for supplied for consumption on or off or both
- The steps which the applicant proposes to take to promote the licensing objectives

Appropriate responsible authorities for the grant, variation or review of Premises Licences

Applicants will be required to copy applications to the responsible authorities and the licensing authority will be required to have regard to any representations made by them. These are:

- Chief Officer of Police
- Fire Authority
- Local Enforcement Agency for the Health & Safety at Work etc Act 1974 (either the local authority in some cases or Health and Safety Executive for others)
- Environmental Health
- Planning authority
- Body which represents those who are responsible for, or interested in, matters relating to the protection of children from harm and is recognised by the licensing authority for that area as being competent to advise it on such matters. (Subject to further consultation and consideration this body will either be the local authority social services department or the Area Child Protection Committee).

Note: In relation to a vessel only, responsible authorities will include navigation authorities within the meaning of Section 221(1) of the Water Resources Act 1991 which are:

- The Environmental Agency, the British Waterways Board, and the Maritime and Coastguard Agency

Other interested parties

“Interested parties” are the bodies or individuals who are entitled to make representations to the licensing authority on applications for the grant, variation or review of a premises licence. In addition, an interested party may themselves seek a review of a premises licence. This group includes:

- a person living in the vicinity of the premises in question
- a body representing persons living in that vicinity, e.g. a residents association
- a person involved in a business in the vicinity of the premises in question
- a body representing persons involved in such businesses, e.g. a trade association
- a member of a relevant licensing authority (this means an elected ward councillor) (with effect from 29 January 2010)

Advertising applications

Regulations governing the advertising of applications for the grant, variation or review of premises licences will be contained in secondary legislation made by the Secretary of State.

They will include the requirement that a brief summary of the application setting out matters such as the proposed licensable activities and the proposed hours of operation should be clearly displayed on A3 notices immediately on or outside the premises for a period of time during which representations may be made, together with details of where the full application may be viewed.

As well as keeping a public register of applications received, it is also recommended that the licensing authority should also include such details on their websites.

Transfers of premises licences

The Act provides for any person who may apply for a premises licence, which includes a business, to also have similar provision for the transfer of a premises licence. Notice of the application has to be given to the Police. A transfer of a premises licence will ordinarily apply when a business involving licensable activities is sold to a new owner. A transfer of the licence only changes the identity of the licence holder and does not alter the licence in any other way.

In the vast majority of cases this will be a very simple administrative process and section 43 of the Act provides a mechanism whereby the transfer can be given immediate effect on the receipt of an application by the licensing authority until it is formally determined or withdrawn. If the Police raise no objection about the application, the licensing authority must transfer the licence in accordance with the application, amend the licence and return it to the new holder.

It will only be in exceptional circumstances when the Police believe the transfer may undermine the crime prevention objective and make objections.

Designated Premises Supervisors

As mentioned previously, individuals who may be engaged in making and authorising the sale or supply of alcohol require a personal licence. Not every person retailing alcohol at licensed premises needs to hold a personal licence but every sale or supply needs to be at least authorised by such a personal licence holder. At some premises there may be more than one personal licence holder i.e., the owner of the premises or manager together with several junior managers who also hold a personal licence.

The main purpose of a designated premises supervisor (DPS) as defined in the Act is to ensure that there is always one specified individual among these personal licence holders, who can readily be identified at the premises. That person will normally have been given day to day responsibility for running the premises.

The Government considers that it is very important that Police Officers, Fire Officers or Officers from the licensing authority can identify immediately the DPS as a person in a position of authority at that particular premises. Officers will be able to do this because a copy of the premises licence must be held at the premises and a summary of the licence displayed in a suitable position. The premises licence will specify the name of the DPS and should ensure that any problems can be dealt with swiftly by engaging with this key person.

Note: Only one DPS may be specified in a single premises licence.

Any application to specify a new DPS will constitute a variation of the premises licence but will not be required to be advertised.

Provisional Statements

Where premises are being or are about to be constructed for the purpose of being used for one or more licensable activities, or are being or about to be extended or otherwise altered for that purpose, Section 16 of the Act allows an application to be made for a provisional statement of a premises licence.

This allows an applicant a certain assurance that a premises licence covering the licensable activities would be granted for the premises when the building work is complete.

However, a provisional statement may not be given for a vessel, a vehicle or a moveable structure as set out in Section 189 of the Act.

Interim Authorities

The Act provides special arrangements for the continuation of permissions under a premises licence when the holder of a licence dies suddenly or becomes bankrupt or mentally incapable, rather than lapsing in the normal course of events.

In the above circumstances and “interim authority” notice may be given to the licensing authority within 7 days beginning the day after the licence lapsed. It shall also be copied to the Police. As soon as an interim authority notice is given within the 7 day period, the business may continue to carry on any licensable activities permitted by the premises licence as the effect of giving the notice is to reinstate the premises licence pending a formal application for transfer of the premises licence. The maximum period for which an interim authority notice may have effect is two months.

- **Club Premises Certificates (Part 4 of the Act)**

The Act recognises that premises to which the public has restricted access and where alcohol is supplied other than for profit, give rise to different issues for licensing law than those who sell alcohol to the public. It is for this reason that the new Act preserves aspects of earlier alcohol licensing law as it applied to “registered members clubs”.

These clubs are organised where members have joined together for particular social, sporting or political purposes and then combined to buy alcohol in bulk as members of the organisation for supply in that context. They commonly include, Labour, Conservative and Liberal Clubs, the Royal British Legion, other ex-services clubs, working men’s clubs, miners welfare institutions and social and sports clubs.

There are technically no sales by retail of alcohol by the club at such premises except to guests when they make a purchase. Where members are involved there is no sale at that point (as the member owns part of the alcohol stock) and the money passing across the bar when there is a supply of alcohol to a member is merely a mechanism to preserve equity between members where one may consume more than another.

This explains why the Act often refers to the supply of alcohol in the context of clubs and not just to the sale by retail.

Clubs have traditionally not been “licensed” because “sales” do not take place there. They have registered with the magistrates’ courts having established that they qualify to be treated exceptionally. The Act preserves this special treatment and requires the club to “qualify” to be outside of the normal premises licence arrangements. Therefore, the grant of a club premises certificate means that a qualifying club is entitled to certain benefits which include:

- The authority to supply alcohol to members and sell it to guests on the premises to which the certificate relates without the need for any member or employee to hold a personal licence
- The absence of a requirement to specify a designated premises supervisor (DPS)
- More limited rights of entry for the Police and authorised officers/persons because the premises are considered to be private and generally not open to the public
- Club premises not being subject to Police powers of instant closure on grounds of disorder and noise nuisance (except when being used under the authority of a temporary event notice) because they operate under their codes of discipline and rules which are rigorously enforced
- Not being subject to potential orders of the magistrates’ court for the closure of all licensed premises in an area where disorder is happening or expected.

Such qualifying clubs should not be confused with proprietary clubs, which are clubs run commercially by individuals, partnerships or businesses for the purposes of profit and which require a premises licence and are not eligible to be qualifying clubs.

In order to be a qualifying club, Section 62 of the Act sets out five general conditions which a relevant club must meet to be a qualifying club. Section 63 sets out specified matters for licensing authorities to enable them to determine whether a club is established and conducted in good faith. Section 64 sets out additional conditions which only need to be met by clubs that intend to supply alcohol to members and guests.

Any qualifying club may choose to obtain a premises licence if it decides that it wishes to offer its facilities commercially for use by the general public including the sale of alcohol to them. However it should be noted that an individual, on behalf of a qualifying club, may give temporary event notices on up to 12 occasions each calendar year so long as no more than 500 people attend the event and subject to an overall maximum duration in the year of 15 days and on these occasions can sell alcohol to the public or hire out their premises for use by members of the public without the need for a premises licence.

Note: Previously, registered members clubs also enjoyed another privilege of being outside the normal licensing regime, the freedom to sell alcohol to minors and allow them to consume it on the club premises. Whilst in recent years, clubs have operated voluntary rules which prohibit sales and supply of alcohol to those persons under 18, the Act has removed this privilege and the sale or supply of alcohol to children in such clubs is now unlawful.

- **Permitted Temporary Activities (Temporary Event Notices)(Part 5 of the Act)**

The most important aspect of the system of permitted temporary activities is that no permission is required for these events from the licensing authority. Generally, only the Police may intervene to prevent such an event taking place or to require modifications of the arrangements for such an event. The licensing authority may only ever intervene of its own volition if the limits set out in the Act on the number of temporary event notices (TEN's) that may be given in various circumstances would be exceeded. Otherwise the licensing authority is only required to issue a timely acknowledgement.

Such a "light touch" and lack of bureaucracy is possible because of the limitations directly imposed on the use of the system by the Act itself. The limitations apply to:

- The number of times a person (the "premises user") may give a temporary event notice
 - **50 times per year for a personal licence holder and 5 times per year for other people**
- The number of times a TEN may be given in respect of any particular premises
 - **12 times in a calendar year**
- The length of time a temporary event may last for these purposes
 - **96 hours**
- The maximum aggregate duration of the periods covered by TEN's at any individual premises
 - **15 days**
- The scale of the event in terms of the maximum number of people attending at any one time
 - **Less than 500 persons**

In any other circumstances other than those referred to above, a full premises licence or club premises certificate will be required. Because many people taking advantage of such TEN's may not have the relevant licensing knowledge or access to legal advice, the licensing authority will ensure that local publicity about the system of permitted temporary activities is clear and understandable and will strive to keep the arrangements manageable and user-friendly for these groups.

How long does a premises licence or club premises certificate remain in force?

A premises licence or club premises certificate remains in force until such time as it is surrendered or withdrawn following a review.

What is a Review?

Under Section 51 of Part 3 of the Act an interested party or a responsible authority may apply to the licensing authority for a review of the premises licence. Similar provision is made under Section 87 of Part 4 of the Act in respect of club premises certificates.

These proceedings represent a key protection for the community where problems associated with crime and disorder, public safety, protection of children from harm or public nuisance are occurring. It is because of these procedures that in general, allow the licensing authority to apply a light touch bureaucracy when considering applications as it allows the licensing authority to deal with concerns relating to the licensing objectives that may arise later in respect of individual premises.

At any stage, following the grant of a premises licence or club premises certificate, a responsible authority such as the Police, Fire or an interested party such as a resident living in the vicinity of the premises, may ask the licensing authority to review the licence. However, licensing authorities cannot initiate their own reviews of premises licences or club premises certificates.

The Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers it necessary to do so in order to promote the licensing objectives. It may:

- Decide that no further action is necessary or may issue a an informal warning to the licence holder and/or to recommend improvement within a particular period of time
- To modify the conditions of the premises licence (which could include adding new conditions or any alteration or omission of an existing condition) e.g. by reducing the hours of operation or requiring door supervisors at particular times
- To exclude a licensable activity from the scope of the licence, e.g. to exclude the performance of live music or playing of pre-recorded music
- To remove the designated premises supervisor (DPS) e.g., because they consider that the problems are the result of poor management
- To suspend the licence for a period not exceeding three months
- To revoke the licence

What are the appeal provisions?

The various entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the Act.

Other than in the case of personal licences, an appeal has to be made to the magistrates' court for the petty sessions area in which the premises concerned are situated. In the case of personal licences, the appeal must be made to the magistrates' court for the petty sessions area in which the licensing authority which made the decision is situated.

An appeal has to be commenced by the giving of a notice of appeal by the appellant to the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision to be appealed against.

The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant against representations of a responsible authority or an interested party or the Police, the holder of the premises licence or club premises certificate or the person who gave an interim authority notice

will also be respondent to the appeal and the person who made the relevant representation or the Police will be the appellants.

On determining an appeal, the court may:

- dismiss the appeal
- substitute for the decision appealed against, any other decision which could have been made by the licensing authority
- remit the case to the licensing authority to dispose of it in accordance with the direction of the court

The court may make such order as to costs as it thinks fit. The court, on hearing any appeal, may therefore review the merits of the decision on the facts and consider points of law or address both.

What happens during the transition period?

The transitional period between the current system of licensing and the new system under the Act is taken to be the period between the first appointed day and the second appointed day. A period of at least six months is necessary between the publication of the Guidance issued by the Secretary of State under Section 182 of the Act and the first appointed date.

This is to allow the licensing authority to prepare the draft of the Statement of Licensing Policy, to consult with the groups specified in the Act, to analyse the results of the consultation, and to publish the statement prior to the first appointed day.

From the first appointed day applications will be submitted to the licensing authority for personal licences, premises licences and club premises certificates. However these new licences will not come into effect until the second appointed date so existing licences will still be current and in the meantime applications for "old" licences will still continue with the relevant licensing authority.

The transitional period will be a difficult and demanding period for licensing authorities, responsible authorities and for applicants alike. It is therefore important that, so far as possible, licensing authorities, responsible authorities and representatives of the holders of existing licences and club registration certificates should work together to ensure a smooth transition both before and from the first appointed date.

Certain "grandfather rights" have been conferred on holders of existing licence holders. However, this is subject to the carrying over of current conditions and restrictions through the transition to the new system. Any variations to existing conditions and restrictions will not be subject to any "grandfather rights".

In respect of current holders of justices licences, those individuals will be entitled to apply for a personal licence without the need to provide evidence of a Criminal Records Bureau check or of a licensing qualification. However, those rights are subject to the possibility of Police intervention in certain circumstances.

In respect of premises licences and club premises certificates, from the first appointed day applications may be made in respect of all existing alcohol, public entertainment, theatre, cinema, late night refreshment house and night cafe licences to convert these licences subject to the conditions and restrictions to which they are currently subject, into premises licences.

For example, all justices licences are currently subject to permitted hours under the Licensing Act 1964 and conversion would mean that sales of alcohol would continue to be permitted only during those hours or any extension of them which has been granted by the licensing justices.

For example, certain special hours certificates may only have effect if the premises provide public entertainment and substantial refreshment.

Applications for conversion during the transition period may be accompanied - on the same form - by an application to vary the hours, terms, conditions and restrictions of the existing licences and permissions.

Therefore, on the relevant form, an applicant would have to detail the existing permissions currently in force together with any conditions and restrictions and provide a copy of the relevant licences and if they want to apply for any variations to the existing permissions.

For those applicants who only wish to convert existing permissions onto the new premises licence, these notified details will be converted by the licensing authority into a new premises licence, which would only have effect from the second appointed date. There would be exceptions to this process concerning only the intervention of the Police in connection with the prevention of crime and disorder.

For those applicants who wish to vary any of the existing terms, conditions or restrictions then they will be required to follow the procedures for variation of premises licences as set out in Section 34, Part 3 of the Act.

It should be noted that until the second appointed date, the existing licensing regimes will continue to govern existing licences. These licences will continue to be in force until then and all related offences will apply. Where licences fall for renewal during this period, they will need to be renewed in accordance with that existing law.

What about assurances/undertakings on existing justices licences?

It has long been an established practice for justices licences to be limited in some cases by an undertaking or an assurance given to the licensing justices by the holder when the licence was granted. These undertakings or assurances have no legal weight and accordingly, upon transition, those matters will not be transferred to converted premises licences as new conditions. However, any conditions on the licence will be transferred over.

What procedures will be involved with the conversion to new Premises Licences?

The application for conversion of the licence must be accompanied by:

- Existing licences or certified copies
- A plan of the premises
- Any relevant certificates (e.g. extensions of permitted hours or children's certificate)
- If the application is not by the holder of the existing licence, a form of consent given by that person
- Where the Licence will concern the sale of alcohol - the applicant must provide details of the individual to be specified in the new licence as the designated premises supervisor (DPS) and a form given of that person's consent
- Other information or documentation that the Secretary of State may require
- The relevant fee

The applicant must also provide a copy of the application and accompanying documents to the Police within 48 hours of the application being submitted to the licensing authority.

In circumstances where an appeal is pending against a decision to revoke or reject an application for the renewal of an existing licence and the Police are satisfied that the conversion of the existing licence would undermine the crime prevention objective or where they are satisfied that there has been a material change in the circumstances since the grant of the existing licence or its last renewal such that the conversion of the existing licence would undermine the crime prevention objective, he must give notice within 28 days to that effect to both the applicant and the licensing authority and a hearing of the matter would subsequently take place by the Licensing Committee.

Note: If the licensing authority fails to determine the application for conversion of the existing licence within 2 months of the receipt of the application, the application will be treated as GRANTED, so long as the existing licence has not lapsed.

What happens in respect of variations of new Premises Licences?

A person, which includes a business, that makes an application for the conversion of an existing licence may at the same time apply for a variation of the newly converted premises licence under sections 34 and 37 of the Act as if that converted licence is in force.

Section 37 concerns applications to vary a licence to specify an individual as a DPS and section 34 concerns applications to otherwise vary premises licences. When such applications are made, the licensing authority may discharge its functions in relation to them once the application to convert the existing licence has been granted and the relevant provisions in Part 3 of the Act will apply.

Where this part of the application concerns a major variation (i.e. in connection with hours of trading) the application will need to include:

- An operating schedule (copied to responsible authorities and advertised for the benefit of interested parties)

If no relevant representations are received by either a responsible authority or an interested party, the application must be granted and there should be no hearing. If a relevant representation is made, there must be a hearing (unless all parties have agreed this is not necessary) when the Licensing Committee will consider the representations made. However it must be noted that it cannot do anything to reduce the effect of the “grandfather rights” afforded in the transition process. For example, it could not reduce the hours of trading to less than the permitted hours under the Licensing Act 1964.

Note: If the licensing authority fails to determine the application to vary a premises licence that has been converted from an existing licence under the “grandfather rights” arrangements within 2 months from the receipt of the application by the licensing authority, the application will have been deemed to have been REFUSED.

A right of appeal is provided for the “applicant” against a decision by the licensing authority not to vary the new licence and such a deemed refusal.

When considering an application for the variation of a premises licence held by a casino or bingo club, it should be recognised that hours during which gambling may take place on such premises is prescribed by the Gaming Act 1968 and regulations made under it. The hours during which alcohol may be sold should normally be restricted to lesser hours only where that is necessary for the promotion of the licensing objectives.

It should also be noted that for premises where a justices on-licence granted under the Licensing Act 1964 is in force and who have previously benefited from the exemption relating to the “two in a bar” exemption as regards public entertainment, this exemption will no longer apply under the new licensing regime and premises which do not hold existing public entertainment licences will need to apply to vary their newly converted premises licences if they wish to continue providing such performances.

However, the above statement should also be read in conjunction with the exemptions provided in section 177 of the new Act in respect of small premises providing dancing and live entertainment.

What happens if an existing licence is revoked prior to the second appointed date?

If an existing justices, public entertainment, theatre, cinema, late night refreshment or night cafe is revoked or declared forfeit before the second appointed day, the new licence granted in respect of the licensable activities affected will lapse. Where the new licence relates to more than one existing licence, the licensing authority will be obliged to amend the new premises licence to remove such activity or activities as one covered by the affected licence or licences from it.

What about transition for qualifying clubs (Club premises certificates)?

The Act makes similar transitional provisions to those for conversion to new premises licences both in respect of the conversion of existing registration certificates and for the variation of the existing permissions.

What about transition for Personal Licences?

Personal licences concern only the sale of or supply of alcohol on premises under the authorisation of a premises licence. The Act makes transitional provisions in respect of personal licences for those holding current justices licences. From the first appointed date, the holder of an existing justices licence (granted under the Licensing Act 1964) is entitled to apply for the grant of a personal licence with certain "grandfather rights", provided that certain requirements are met.

These are:

- Production of the current justices licence or a certified copy of it
- A photograph (in a form prescribed by statutory instrument)
- A statement (if appropriate) relating to convictions for relevant offences or foreign offences since the justices licence was granted, last renewed or, if transferred and not subsequently renewed or transferred.
- The applicant must give a copy of his application to the Police within 48 hours of making the application

Such applicants are not required to produce Criminal Record Bureau (CRB) certificates

In exceptional circumstances, the Police may object on the grounds that granting the application would, in his opinion, undermine the crime prevention objective. The Licensing Committee would then be required to hear the application.

Note: If the licensing authority fails to determine an application for a personal licence within 3 months of its receipt, the application will be treated as GRANTED.

What will happen to AWP's (Amusement with Prize Machines) at premises licensed for the sale of alcohol for consumption on the premises?

Schedule 6 of the Act amends the Gaming Act 1968 in respect of the grant of "Section 34 permits" for AWP machines in premises licensed for the sale of alcohol for consumption on the premises. When this amendment is brought into force, responsibility for the grant of these permits will transfer from the licensing justices to the licensing authority.

It should be recognised that this is not a "licensing function" under the Act and the legal authority for the grant or refusal of these permits will continue to be derived from Schedule 9 of the Gaming Act 1968. Local authorities already have responsibility for the grant of permits for AWP machines at other premises and therefore are already aware of the issues that surround them.

Permits last for a minimum period of 3 years but may be issued for longer periods. The current fee for the grant or renewal of a permit under section 34 of the 1968 Act is £32.

The Secretary of State has recommended that applicants for permits be advised that they make applications by post and that provided the fee has been paid, they need not attend a hearing unless notified to do so. Applicants for the permits must be holders of premises licences authorising the sale of alcohol for consumption on the premises.

Licensing authorities are not permitted to attach conditions on the grant of a section 34 permit other than a condition limiting the number of machines authorised under it. It is also recommended that licensing authorities should not require applicants to provide a plan of the premises indicating where the machines are to be sited.

It is also recommended that licensing authorities should indicate that its licensing committee and sub-committees will be prepared to grant permits authorising up to 2 machines without a hearing. If considered appropriate, licensing committees may choose not to hold hearings in respect of applications concerning larger numbers of such machines.

There is no requirement under the 1968 Act for the Police to be notified of an application.

A licensing authority may be concerned that children are able to play machines authorised under a permit in licensed premises. Parliament, however, has placed no restrictions on the age at which such machines may be played (other than those in amusement arcades). It is therefore a matter for the discretion of the premises licence holder and any adults accompanying the children concerned whether they are entitled to play such machines.

In the case of premises used exclusively or primarily for the consumption of alcohol, all children under the age of 16 will only be permitted entry to the premises if accompanied by adults. The British Amusement Catering Trade Association (BACTA), the gaming machines trade representative body, have a code of practice in respect of children and gaming machines to which their members are expected to adhere.

Under paragraph 10A of Schedule 9 to the Gaming Act 1968, all such machines must be located in a bar of the premises. The Act amends this paragraph in respect of the meaning of "bar" and the licensing authority should note that "bar" in this context means any place which, by virtue of the premises licence, may be used for the supply of alcohol, and which is exclusively or mainly used for the supply and consumption of alcohol.

What are the probable time scales for implementation of the Act?

- Early July 2004: Parliament approves guidance - fee structure and regulations subject to public consultation (12 week consultation process)
- July 2004 - Jan 2005: Local authorities prepare and publish statements of licensing policy
- 7 February 2005: First appointed day for licence applications for existing holders and the start of the six-month transitional period

- 24 November 2005: Second appointed day for full implementation of the Act

What are the exemptions for small premises?

Under Part 9, Section 177 of the Act, certain exemptions apply in respect of the suspension of conditions imposed by the licensing authority which relate to the provision of music entertainment.

The exemptions are as follows:

- Where a premises licence or club premises certificate authorizes the supply of alcohol for consumption on the premises and the provision of “music entertainment” which consists of live music or dancing or facilities enabling people to take part in those activities, and
- Where the relevant premises are used primarily for the supply of alcohol for consumption on the premises, and
- Where the premises have a permitted capacity limit of not more than 200 persons,

Then any conditions relating to the provision of the music entertainment imposed on the premises licence or club premises certificate by the licensing authority, other than those set out by the licence or certificate which are consistent with the operating schedule, will be suspended except where they were imposed as being necessary for public safety or the prevention of crime and disorder or both.

For example, this exemption could apply to a public house where the licence holder wishes to provide either amplified or unamplified live music and dancing where the premises has a permitted capacity limit of 150 persons.

However, if the same premises were intended to be used for the provision of a disco involving dancing and pre-recorded music, the exemption would not apply.

In addition, a further exemption is provided where:

- A premises licence or club premises certificate authorizes the provision of “music entertainment”, and
- The premises have a capacity limit of not more than 200 persons,

Then, during the hours of 8 am and midnight, if the premises are being used for the provision of unamplified live music or the facilities enabling people to take part in such entertainment but no other description of regulated entertainment, any conditions imposed on the licence by the licensing authority, again other than those which are consistent with the operating schedule, which relate to the provision of that music entertainment will be suspended.

For example, this exemption could apply to any premises which holds a premises licence with a permitted capacity of no more than 200 persons and that wishes to provide

unamplified live music between the hours of 8am and midnight. Such premises could include restaurants or folk clubs etc.

However, if a restaurant wished to provide unamplified live music beyond midnight or if they wanted to provide a disco with pre-recorded music, then the exemption would no longer apply.

Note: The area to which the 200 "capacity limit" applies concerns the area covered by the premises licence and not just to part of those premises unless separately licensed.

The permitted capacity will either be determined by the provisions of the Fire Precautions Act 1971 if a Fire Certificate is in force for those premises or in any other case in accordance with a recommendation made by the Fire Authority.

Section 177 can be disapplied in relation to any condition of a premises licence or club premises certificate following a review of the licence or certificate.

This means that conditions attached to the existing premises licence relating to the provision of musical entertainment can be given effect at the relevant times or that new conditions may also be imposed as an outcome of the review process.

What information has to be entered in the Licensing Register?

In accordance with Schedule 3, Section 8 of the Act, the Licensing Register kept by the licensing authority must contain a record of the following matters:

- a) Any application made to the licensing authority under section 17 (grant of premises licence)
- b) Any application made to it under section 25 (theft etc. of premises licence or summary)
- c) Any notice given to it under section 28 (surrender of premises licence)
- d) Any application made to it under section 29 (provisional notice in respect of premises)
- e) Any notice given to it under section 33 (change of name, etc of holder of premises licence)
- f) Any application made to it under section 34 (variation of premises licence)
- g) Any application made to it under section 37 (variation of licence to specify individual as premises supervisor)
- h) Any notice given to it under section 41 (request from designated premises supervisor for removal from premises licence)

- i) Any application made to it under section 42 (transfer of premises licence)
- j) Any notice given to it under section 47 (interim authority notice)
- k) Any application made to it under section 51 (review of premises licence)
- l) Any application made to it under section 71 (application for club premises certificate)
- m) Any application made to it under section 79 (theft, loss, etc of certificate or summary)
- n) Any notice given to it under section 81 (surrender of club premises certificate)
- o) Any notice given to it under section 82 or 83 (notification of change of name etc)
- p) Any application made to it under section 84 (application to vary club premises certificate)
- q) Any application made to it under section 87 (application for review of club premises certificate)
- r) Any notice given to it under section 103 (withdrawal of temporary event notice)
- s) Any counter notice given by it under section 105 (counter notice following Police objection to temporary event notice)
- t) Any copy of a temporary event notice given to it under section 106 (notice given following the making of modifications to a temporary event notice with Police consent)
- u) Any application made to it under section 110 (theft etc. of temporary event notice)
- v) Any notice given to it under section 116 (surrender of personal licence)
- w) Any application made to it under section 117 (grant or renewal of personal licence)
- x) Any application made to it under section 126 (theft, loss or destruction of personal licence)
- y) Any notice given to it under section 127 (change of name, etc of personal licence holder)
- z) Any notice given to it under section 165(4) (magistrates' court to notify any determination made after closure order)

- zi) Any application under paragraph 2 of Schedule 8 (application for conversion of old licences into premises licence)
- zii) Any application under paragraph 14 of that Schedule (application for conversion of club certificate into club premises certificate)