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LICENSING ACT 2003 Guidance for Responsible Authorities

Licensing Department
Community Services
4th Floor, The Woolwich Centre
35 Wellington Street
London SE18 6HQ
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What is the Licensing Act 2003?

- People used to go to the Magistrates' Court to obtain a licence to sell alcohol. Now they will get their licence from their local authority.
- Public Entertainment and Night Café Licences were always separate licences, both obtained from the local authority. Now they are all part of the same licensing regime.
- All these licences used to be issued to a particular person to use particular premises. Under the new Act, persons wishing to sell alcohol by retail, or authorise such sales, will be granted a Personal Licence by their local authority. This will allow them to sell alcohol anywhere in England and Wales, providing they work from premises that hold a Premises Licence.

What are the four licensing objectives?

The Government has stated the new Act has four objectives:

- Prevention of crime and disorder;
- Prevention of public nuisance;
- Public Safety; and,
- Protection of children from harm.

Local Authorities have to bear these objectives in mind when considering applications and complaints about licensed premises.

What is a Premises Licence?

A Premises Licence allows licensable activities to be held at particular premises. This includes both indoor and outdoor places.

What is a Club Premises Certificate?

A Club Premises Certificate is similar to a Premises Licence, but only applies to private members clubs. There are a lot of rules defining what a Club is. Essentially, the Club has to have rules and a constitution and not be run for profit.

How long do Premises Licences and Club Premises Certificates last for?

The lifetime of the business. A small annual fee will be payable to the Royal Borough of Greenwich as well as an initial application fee.

The only way a licence can be changed if granted is if a review is sought (see information on reviews later in this guidance).

What is a Temporary Event Notice (TEN)?

A TEN is a notice given by a person to the local authority of their intention to hold a temporary or one off event of licensable activities involving the following:

- Less than 500 people attending;
- Lasting for not more than 96 hours, with a break of at least 24 hours before the next event.

The Notice allows them to hold a licensable activity on premises that are not currently licensed, or to hold activities their existing licence does not permit. This would include for example:

- Selling alcohol at a school fête
- Providing regulated entertainment at a pub where the current licence does not permit this
- Staying open to sell hot food in to the night on a special occasion (e.g. New Year's Eve)
- Selling alcohol after the hours the normal licence permits, e.g. for a special occasion
- An amateur dramatics group putting on a play in unlicensed premises.

Restrictions on Temporary Event Notices

Some restrictions apply to the giving of a Temporary Event Notice. They are:

- You can only have up to 50 TEN's a year if you are a Personal Licence Holder;
- You can only have up to five TEN's a year if you are not a Personal Licence Holder;
- You must be aged 18 or over;
- Restrictions apply where the applicant is an "associated person" of someone who has already given a TEN, including spouses, close relations, agents and employees, and their spouses. The word "spouse" also includes someone living with the notice giver;
- You can only have a maximum of 12 TEN's a year for any particular premises, subject to an overall limit of no more than 15 days in total (where the TEN lasts for more than one day).

If the event/activity falls outside these restrictions, a full Premises Licence is required.

If the number of TEN's a person seeks in a year exceeds the limits above, we must serve a counter notice prohibiting the event from going ahead. This must be served at least 24 hours before the event.

What are licensable activities?

You need a licence under the Act for:

- Selling alcohol – e.g. a pub, nightclub, off licence, supermarket, etc. This also includes selling alcohol for one off events such as school fetes
- If you are a qualifying club, to supply alcohol to a club member, or to sell alcohol to a guest of a club member
- To provide regulated entertainment or entertainment facilities (whether for Club members or the public, or to hire out a room for private parties where this is done for a profit of some sort)
- To sell hot food or drink (late night refreshment) between 11.00pm and the following 5.00am for consumption on or off the premises, unless you are a hotel, staff canteen or campsite.

Wholesalers do not need a licence to sell alcohol if they are only selling it to people who hold a Personal Licence (see below). If they are selling to other people, they need a licence.

When is a late night refreshment licence not needed?

The following are exempt from requiring a Premises Licences for the provision of late night refreshment:

- Alcoholic hot drinks, or hot drinks containing alcohol (although consent to sell or supply alcohol is still required)
- Hot drink purchased straight from a vending machine by the person buying the drink
- Hot food or drink given away for free, and with no admission charge to the premises or other kind of charge
- Hot food or hot drink supplied by a registered charity or by a person authorised by a registered charity (i.e. a charity which is registered under the Charities Act 1993 or a charity not required by the Charities Act 1993 to be registered)
- Hot food or hot drink supplied on a moving vehicle
- Hot food or hot drink supplied to members and guests of recognized clubs that hold a Club Premises Certificate
- Hot food or hot drink supplied to hotel or bed and breakfast guests
- Refreshment made available in a staff canteen between 11.00pm and 5.00am to staff working between those hours.

If a business is selling only **cold** food and drink and not providing facilities to enable the food or drink to be heated on the premises, they do not need a licence.

What is regulated entertainment?

The following kinds of entertainment are subject to regulation – but note where exempted:

1. Plays – but exempted if performed between 08:00am and 11:00pm to an audience not exceeding 500 people;
2. Film exhibitions;
3. Indoor sporting events – but exempted if performed between 08:00am and 11:00pm to an audience not exceeding 1,000 people;
4. Boxing or wrestling exhibitions – but *wrestling* exempted if Greco-Roman or Freestyle only;
5. A contest, exhibition or display which combines boxing or wrestling with one or more martial arts (“combined fighting sports”);
6. Live music – but note the exemptions described below;
7. Recorded music;
8. Dancing – but exempted if performed between 08:00am and 11:00pm to an audience not exceeding 500 people;
9. Any entertainment similar to that described in 6, 7 or 8 above;

but only where –

- The entertainment is provided in front of an audience or spectators and is for the purpose of entertaining those persons; AND,
- The entertainment is:
 - To any extent to members of the public; OR,
 - Exclusively to members of a qualifying club and their guests; OR,

- For consideration and with a view to profit. The charge must be made by or on behalf of the organisers or management of the entertainment or the premises, and must be paid for by or on behalf of some or all of the persons for whom the entertainment or facility is provided. This would include, for example, letting out a room in your premises for people to use for wedding receptions.

Live music

Exemptions have been provided pursuant to the Live Music Act 2012, as follows:

- The licensing requirement for **amplified** live music (including karaoke) has been removed, providing it takes place between 08:00am and 11:00pm before an audience of no more than 200 persons on premises authorised by either a premises licence or a club premises certificate. Venues with more than one function room may have audiences of up to 200 per room. Performances must take place at a time when the venue is open for the purposes of being used for the supply of alcohol for consumption on the premises.
- The licensing requirement for **amplified** live music (including karaoke) being performed in a **workplace** has been removed. Schools, colleges, village halls and church halls are all classified as workplaces. This exemption provides that performances must take place between 08:00am and 11:00pm before an audience of no more than 200 persons in premises not otherwise licensed under the 2003 Act (or are only licensed for Late Night Refreshment). The workplace exemption does *not* apply if the premises are licensed to sell alcohol.
- The licensing requirement for **unamplified** live music being performed in any location has been removed, providing performances take place between 08:00am and 11:00pm.

It remains the right of Royal Greenwich Licensing to impose live music conditions following the formal f of a licence attached to a venue where music is performed. Existing conditions on a current licence pertaining to live music are deregulated, but can be re-imposed for the purposes of making them enforceable if a review should determine this appropriate.

However, conditions imposed as a result of something you have put in your operating schedule still apply under any circumstances.

Other exemptions for regulated entertainment

- Films solely or mainly intended to demonstrate a product, advertise goods or services, or provide information, education or instruction;
- Films as part of an exhibition in a museum or gallery;
- TV and radio broadcasts, providing they are shown “live” and not recorded;
- Religious meetings or services;
- Entertainment in places of public religious worship;
- Garden fêtes (unless held for private gain);
- Entertainment provided in a moving vehicle;
- Morris dancing;
- Incidental entertainment.

What does “incidental entertainment” mean?

Incidental entertainment is entertainment provided as background entertainment. The main point is that the entertainment itself is not the main “draw” enticing people to attend the premises. Examples of “incidental” entertainment are:

- a supermarket playing background music (people go there to shop - the music is not an influencing factor);
- music during keep fit classes (people are there to exercise);
- salsa dance classes (people are there to learn to dance);
- a pub jukebox playing in the background (people are there to drink; the jukebox is not an influencing factor).

What is a Personal Licence?

A Personal Licence is a licence to sell alcohol, or authorise the sale of alcohol. This is not needed for Qualifying Clubs or premises operating under a Temporary Event Notice.

The person must apply for their Personal Licence to the local authority in whose district they live.

Each premises can have as many Personal Licence Holders on the premises as they wish, providing there is only one Designated Premises Supervisor (see below). A person can also become a Personal Licence Holder to apply for more than five TEN's a year, even if they wouldn't normally need a Personal Licence (see guidance on TEN's below).

Not everyone that sells alcohol has to have a Personal Licence, so long as a Personal Licence Holder has authorised him or her to make the sale.

What is a Designated Premises Supervisor?

All premises with a licence to sell or supply alcohol (but not Club Certificates or TEN's) must appoint a Designated Premises Supervisor (DPS) for the premises. There can only be one DPS per premises. The DPS will be held as the person in overall charge of the premises.

They have to nominate the DPS on their application form. This person does not have to be on the premises at all times, but must take responsibility for what happens there. This means the DPS should ensure any staff they appoint are appropriately trained in the requirements of the Licensing Act 2003 and of any specific conditions attached to the Premises Licence.

A person cannot become a DPS unless he is also a Personal Licence Holder.

Please note – although qualifying clubs don't need a DPS to sell alcohol to members and their guests, this exemption does not apply if they hire the premises out for wedding receptions and the like with a view to profit. They will need a full Premises Licence for these activities (unless they are holding a small number of events, which they can hold under a TEN) and therefore they will need to appoint a DPS (but see notes on holding multiple licences below).

What about outdoor events such as festivals?

Any outdoor event for over 500 people will have to be dealt with by way of a Premises Licence granted for a limited period.

Will local residents be consulted on licence applications?

The applicant must display a notice at the premises for 28 days and place an advertisement of their application in the local press. A letter-drop is undertaken by Royal Greenwich Licensing to all residents living within 100 metres of the premises or event site. Residents may only object on the grounds of one or more of the four Licensing Objectives.

What is a responsible authority?

Responsible Authorities are designated bodies that must be notified of applications and are entitled to make representations to the licensing authority about the grant, variation or review of Premises Licences and Club Premises Certificates. All representations made by responsible authorities will be considered relevant, provided they concern the effect of the application on any of the four licensing objectives.

Responsible Authorities are also permitted to request a Review of a Premises Licence or Club Premises Certificate under the Act. More information on reviews follows.

The responsible authorities designated under the Act are:

- The Metropolitan Police
- The London Fire and Emergency Planning Authority
- The Local Authority Planning Officer
- The Local Authority Environmental Health Officer for noise control
- The enforcement agency responsible for enforcing the Health and Safety at Work, Etc, Act 1974
- The local Trading Standards Department responsible for Weights & Measures enforcement
- The local area Child Protection Committee
- The Local Authority Public Health Officer
- The Immigration Enforcement Department of the Home Office

Persons or businesses in the vicinity of the premises (or bodies representing them) also have the right to make representations on new or variation applications, and may also seek licence reviews.

Can the licensing authority impose conditions or request review of a licence?

Yes, they can – however, it is unusual for the Licensing Authority itself to do so. If no representations are received, Premises Licences and Club Premises Certificates *must* be granted on the terms and conditions sought by the applicant. Therefore it is vitally important that responsible authorities consider each application carefully and make appropriate recommendations within the statutory time limit. It is also imperative they are aware of the review process and seek reviews where necessary.

What are responsible authorities required to do?

As a responsible authority, you will be sent copies of all grant and variation applications under the Act. You will also receive copies of applications for Provisional Statements (this is where premises are in the process of being constructed).

The Government Guidance issued for the new Act also recommends that applicants seek the views of responsible authorities *before* submitting their applications. You are thus expected to give advice and guidance at the pre-application stage.

A licence application will contain the following information:

- Details of any existing condition(s) applicable to the licence;
- Details of the licensable activities the applicant intends to carry on;
- Details of the hours during which the applicant wishes to provide these activities;
- The steps the applicant proposes to take in order to comply with the four Licensing Objectives.

Any steps the applicant proposes to take in his Operating Schedule will become conditions of his licence when granted.

You are required to scrutinise each application and consider whether you feel the steps proposed are adequate to comply with the four licensing objectives.

On what basis may I make representations?

You can only make representations on an application under the following circumstances:

- Representations *must* be received within the statutory time limit of 28 days. The licensing authority is obliged to grant a licence if no adverse comments have been received within this time;
- Representations *must* relate to one or more of the licensing objectives. For example, the issue of car parking is not a licensing objective and is not a relevant ground for objection. The issue of health is not a licensing objective, and representations relating to cleanliness and/or hygiene in premises are irrelevant;
- No representation can duplicate the provisions of other legislation. Further information on this is given below;
- The representation must relate directly to the premises concerned and be tailored to the size, style, characteristics and activities taking place there;
- Representations must be proportionate;
- Responsible authorities must have regard to the history of the premises (see below);
- Representations should only be based on matters within the licensee's direct control. This means that conditions requiring the licensee to control the behaviour of patrons who have left the premises are *ultra vires*. However, a condition requiring the licensee to display a notice asking patrons to leave quietly would be considered acceptable.

Duplication of Existing Legislation

No representation may duplicate the requirements of other legislation. The Government's intention is that each enforcement agency should take action under its own legislation to enforce the various requirements of existing statute.

For example, a responsible authority could not seek to impose a condition requiring the applicant to:

- Obtain appropriate planning consent;
- Not cause a statutory nuisance;
- Obtain consent under Building Regulations;
- Comply with the requirements of the Food Safety Act, Health and Safety at Work Act or Fire Precautions Act.

Responsible authorities can, however, ask for conditions based on matters that exceed the requirements of existing legislation, or conditions covering issues not already dealt with by other legislation – provided they are absolutely necessary for promotion of any of the four licensing objectives.

History of the Premises

You are required to consider the history of the premises before making representations. You are expected to be mindful of any past problems, or lack of them. For example:

- Premises that have undertaken similar activities for years without complaint should be allowed to operate without additional conditions on their licence. This may apply to a pub that already provides live music until 2.00am and now wants to open for the same activity until 3.00am;
- Premises that have caused problems in the past may well be subject to additional requirements, particularly when the problems relate to previous attempts to undertake licensable activities. This could include risks to public safety, under age sales of alcohol, or causing statutory nuisance for example;
- If the premises have never been licensed for this activity before, the responsible authority must carefully consider whether it is likely that compliance with the licensing objectives can be achieved. It would be unlikely that a pub in a densely residential area, with large single glazed windows, no lobbies and no noise limiter, would be able to hold regular late night rock gigs without causing nuisance to local residents. In this case it would be perfectly reasonable to impose conditions relating to noise control.

General

The thrust of the Act is to be reactive, rather than proactive. Therefore, the general rule is that you should allow applicants to operate as they wish, but seek a review of the licence if their method of operation is causing a problem.

The local authority cannot seek to impose conditions that are *desirable*; it can only impose conditions that are *necessary* and proportionate to the individual premises concerned.

In what format should representations be made?

Representations could include:

- Disagreement with a step proposed in the Operating Schedule. This can either be that the measure proposed is unenforceable, unworkable or unrealistic, or that the measure proposed is insufficient. For example, the applicant may state they will provide door supervisors. An example of a responsible authority response might be, "The applicant should consider the hours and type of event during which the door supervisors will be provided. The Metropolitan Police consider that door supervisors should be provided during all events involving amplified music, and should be appointed from 9.00pm until the last member of the public has left the premises";
- A recommendation concerning a condition you would like to see imposed on the licence. See guidance on conditions below;
- An objection to the person nominated as Designated Premises Supervisor, for example because they have a number of existing relevant convictions and you do not feel they could adequately ensure compliance with the licensing objectives.

Requesting Conditions

Bear in mind that any conditions you request must be legally enforceable and logical. You need to consider the following:-

- Conditions will apply the whole time the premises are being used, unless you specify otherwise. Does the applicant need to carry out hourly noise patrols in the middle of the day?
- Conditions will apply to all licensable activities, unless you specify otherwise. So if you ask for plastic glasses to be used, they will have to be used for classical concerts and tea dances as well as pop concerts if you do not specify the type of event you are concerned about.
- Does the applicant have control over the issue you are concerned about? You cannot ask them to ensure taxis drop off at a certain point – they have no legal right to do so.
- Are you duplicating something that could be addressed by action under other legislation? If so, you should use that other legislation to secure compliance instead.
- Are you requesting something that contradicts other legislation? Some premises are required to prop doors open for public safety reasons, but keep them closed to avoid noise nuisance. If you think you may be clashing with other legislative requirements, you should contact the agency concerned and reach agreement before you ask for conditions.
- Conditions must be enforceable. This means that both the licensee and the licensing authority should be able to check compliance. A condition requiring noise to be inaudible inside a neighbouring property is not enforceable, as neither the licensee nor the licensing authority can insist on gaining access to a neighbour's residence.

What happens if I make representations?

We are required to attempt mediation with the applicant and anyone who has made representations, to see whether the issues can be resolved without the need for a public hearing. We hope that most representations will be resolved this way.

However, if no agreement can be reached, the application will be determined by our Licensing Sub Committee. They will listen to evidence from both sides before deciding whether to grant the licence, and what conditions should be imposed.

They may grant the application as requested, grant it subject to conditions, or refuse the application.

If you make a representation, you are expected to attend the hearing and give evidence to the Committee. This is important, as officers of the licensing authority cannot make recommendations on your behalf. You may not introduce new evidence at the hearing, although you may amplify your original representation.

A hearing need not be held if all parties agree it is unnecessary.

What is an Operating Schedule?

An Operating Schedule is where a licensee describes how they are going to run their premises, event or business to promote the four Licensing Objectives. Existing licensees don't have to do this to convert their licence, but they do if they want to vary it.

Anyone applying for a new or varied licence will have to submit an Operating Schedule.

Anything a person says they will do in their Operating Schedule will become a condition of their licence, if granted. Therefore they must only volunteer things they can, and will, do. If they do not comply with licence conditions, the Royal Borough of Greenwich can prosecute them.

What is the point of an Operating Schedule?

An Operating Schedule is essentially a way of allaying objections from responsible authorities or members of the public. For example, the noise officer may not object if the licensee promises in their Operating Schedule to ensure that regular noise patrols are carried out, that all doors and windows will be kept closed, and so on.

All items on the Operating Schedule will become conditions of the licence, if granted.

The sorts of things covered by an Operating Schedule are:

General – All Four Licensing Objectives

- Providing registered door supervisors;
- Having a Personal Licence Holder on the premises at all times the licence is being used;
- Staff training on licensing issues;
- Installing a CCTV system.

The Prevention of Crime and Disorder

- Drugs policies/notices;
- Membership of a local Pubwatch scheme;
- Providing adequate lighting;
- Use of a walkie talkie link to other licensed premises in the area;
- Age restrictions;
- Search policies;
- Bottle bans.

Public Safety

- Provision of emergency lighting;
- Provision of additional escape routes;
- Accommodation limits;
- First Aid provision;
- Seating arrangements;
- Use of special effects;
- Number of attendants.

The Prevention of Public Nuisance

- Provision and use of a noise limiting device;
- Secondary glazing/soundproofing;
- Noise patrols of the local area;
- Keeping the music to a reasonable level;
- Litter clearance;
- Considerate loading/unloading arrangements;
- Controlling noxious odours from cooking etc;
- Not using external areas after a certain time;
- Restricting hours that amplified music can take place;
- Keeping doors and windows closed while the licence is being used;
- Prevention of light pollution;
- Notices asking patrons to leave quietly.

The Protection of Children From Harm

- Restricting access to adult entertainment, e.g. lap dancing, age restricted films etc;
- Provision of children's areas;
- CRB checks of staff involved in looking after young people;
- Proof of age cards;
- Prevention of access to gaming machines;
- A limit on the hours during which children can be present on the premises;
- Requirement to be accompanied by an adult;
- Requirement for attendants to be present when children's activities are taking place.

What happens if licensed premises cause problems after a licence is granted?

Any responsible authority or interested party can apply to their local authority at any time for a review of the Premises Licence or Club Premises Certificate for premises in the authority's area. The review is a request for the local authority to look at the existing licence and decide whether its conditions are adequate to meet the four licensing objectives defined under the Licensing Act 2003. This is because Premises Licences and Club Premises Certificates last for the lifetime of the business and thus would not be subject to review at any other time.

On what grounds can I seek a review of a licence?

You can seek a review if your request relates to the failure of the business to address one or more of the four licensing objectives.

How do I apply for a review?

You must complete an application for review form. The form asks under which of the four licensing objectives you are applying for review. You are then asked to say why you are asking for a review. You are asked whether you have made any such applications before, and when. You can be fined up to £5,000 if you make a false statement on the application form.

New Licence and Full Variation Applications

You must supply a copy of your licensing application to the following ten authorities:

1. Licensing Department
Royal Borough of Greenwich
4th Floor
The Woolwich Centre
35 Wellington Street
London
SE18 6HQ
2. Greenwich Metropolitan Police Licensing
4th Floor
The Woolwich Centre
35 Wellington Street
London
SE18 6HQ

3. Environmental Health (Commercial Section) - Community Services
Royal Borough of Greenwich
4th Floor
The Woolwich Centre
35 Wellington Street
London
SE18 6HQ
4. Child Protection Team
Royal Borough of Greenwich
1st Floor
The Woolwich Centre
35 Wellington Street
London
SE18 6HQ
5. Trading Standards Manager
Royal Borough of Greenwich
4th Floor
The Woolwich Centre
35 Wellington Street
London
SE18 6HQ
6. Environmental Health Manager - Pollution Control
Community Safety & Environment
4th Floor
The Woolwich Centre
35 Wellington Street
London
SE18 6HQ
7. Fire Safety Regulation: South East Area 3
London Fire Brigade
169 Union Street
London
SE1 0LL
8. Planning Enforcement Team
Royal Borough of Greenwich
5th Floor
The Woolwich Centre
35 Wellington Street
London
SE18 6HQ
9. Greenwich Public Health Authority (NHS)
Attention: Jane Connor, Health Improvement Principal
Public Health and Well-Being
Royal Borough of Greenwich
Second floor, The Woolwich Centre
35 Wellington Street
London SE18 6HQ

10. Immigration Enforcement Department (Home Office)
Alcohol Licensing Team
Lunar House
44 Wellesley Road
Croydon
Surrey
CR9 2BY

You must also send a copy of your variation application to the holder of the Premises Licence or Club Premises Certificate for the premises.

Your application will not be valid unless you comply with these requirements.

You are also required to publish notice of your application in the local press and by way of a notice displayed on or near the premises for at least 28 days.

What happens with my application?

The licensing authority will initially try to resolve the matter by mediation. A meeting will be held between us, the person or body requesting the review, and the Premises Licence or Club Premises Certificate holder.

If all parties can agree a way forward, there will be no need to hold a hearing.

What if we cannot reach a compromise?

Royal Greenwich Licensing will hold a Sub-Committee meeting to determine your application. They can:

1. Modify the licence conditions;
2. Exclude a licensable activity from the licence;
3. Give a warning to the licence holder;
4. Remove the designated premises supervisor;
5. Suspend the licence for a period of not more than three months;
6. Revoke the licence.

Items 1 and 2 above can also be imposed for a period of not more than three months at the authority's discretion.

At the hearing, you are only allowed to comment on the matters raised in your request for a review, or to amplify them. You are not permitted to bring extra evidence to the meeting, or raise any other issues other than those referred to you in your application.

After the hearing (Reviews and Grant/Variation Hearings)

Any decision taken at the hearing will not take effect until the period within which an appeal can be brought has passed (21 days), or until the determination of such an appeal.

Any person aggrieved by the decision on a licensing matter may appeal to the Magistrates' Court. This includes the applicant, any of the responsible authorities who have made representations, or local residents or businesses who have made representations.

There is no right of appeal to the Crown Court or beyond.

This leaflet has been made as comprehensive as possible. However, in attempting to simplify the law, certain requirements have been omitted. Full details of what you must do are in the legislation itself.

Laws can and do change. This information was accurate when produced, but may have changed since. We must advise that only the Courts can give an authoritative opinion on statute law.

Revised w.e.f. April 2017.