



HILLINGDON
LONDON



Licensing Committee

Date: THURSDAY, 22 APRIL 2010
Time: 10.00 AM
Venue: COMMITTEE ROOM 3 -
CIVIC CENTRE, HIGH
STREET, UXBRIDGE UB8
1UW

**Meeting
Details:** Members of the Public and
Press are welcome to attend
this meeting

Councillors on the Committee:

Josephine Barrett (Chairman)
Michael Bull (Vice-Chairman)
David Allam
Lynne Allen
Janet Gardner
Carol Melvin
Andrew Retter
Judy Kelly
Elizabeth Kemp
Peter Kemp

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further information.**

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This Agenda is available online at:

<http://modgov.hillingdon.gov.uk/ieListDocuments.aspx?CId=257&MId=766&Ver=4>

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Agenda

- 1 Apologies for Absence
- 2 Declarations of Interest in matters coming before this meeting

Part 1 (Public)

- 3 To agree the minutes of 19 January 2010
- 4 DCMS Proposal to Exempt Live Music Events from Licensing Act 2003.
- 5 Update on Inviting Representatives from Responsible Authorities to Attend Licensing Hearings.
- 6 Update - DCMS consultation on proposed amendments to the Licensing Act 2003 (Personal Licences - Relevant Offences)
- 7 Update- Mandatory Conditions: Licensing Act 2003
- 8 Review of the Council's Statement of Licensing Policy
- 9 Street Trading Policy - Urgency Procedures
- 10 Total Number of Premises and Personal Licenses Granted under Officer Delegation Powers and by Licensing Sub-Committees and Committees up to 31 March 2010

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Minutes

**Licensing Committee
 Tuesday 19 January 2010
 Meeting held at High Street, Uxbridge, UB8 1UW**



Come into effect on: Immediately (or call-in date)

<p>Members Present: Councillors Lynne Allen, Josephine Barrett (Chairman), Michael Bull (Vice-Chairman), Janet Gardner, Judy Kelly, Elizabeth Kemp, Peter Kemp, Carol Melvin and Andrew Retter</p> <p>Officers Present: Natasha Dogra, Linda Etherington, David Frost, Sharon Garner, Bill Hickson, Norman Stanley, Beejal Soni, Sue Pollitt and Stephanie Waterford.</p>	
<p>1. APOLOGIES FOR ABSENCE</p> <p>Apologies were received from Cllr David Allam.</p>	
<p>2. DECLARATIONS OF INTEREST IN MATTER COMING BEFORE THIS MEETING</p> <p>None.</p>	
<p>3. TO CONFIRM THAT ALL ITEMS MARKED PART 1 WILL BE CONSIDERED IN PUBLIC AND ALL THOSE MARKED IN PART 2 WILL BE CONSIDERED IN PRIVATE</p> <p>All items were Part 1 and were considered in public.</p>	
<p>4. TO RECEIVE AND AGREE THE MINUTES OF 1 OCTOBER 2009</p> <p>The minutes were agreed by the Committee.</p>	
<p>5. The Policing and Crime Act 2009 in respect of an amendment to the Licensing Act 2003 to enable councillors to make representations report</p> <p>Officers informed Members of the Committee that under the Policing and Crime Act 2009 new licensing powers would be implemented on 29th January 2010. These would amend section 13(3) and section 69(3) of the Licensing Act 2003. Amendments would allow any member of the Licensing Authority (any Councillor of an authority under the Licensing Act 2003) to make representations against a new application for a premises license or variation of a premises licence within their area. It also allowed members of the Licensing Authority to call premises licences and club premises certificates to be reviewed.</p> <p>Agreed: The Committee agreed the amendments to the Policing and Crime Act 2009.</p>	
<p>6. An update on actions taken by the Metropolitan Police Service and</p>	

Trading Standards in respect of actions taken by them in respect of sales of alcohol to underage persons report

Officers informed the Committee that the report was to update Members on action taken by the Metropolitan Police Service and the Council's Trading Standards department concerning sales of alcohol to young persons.

The Trading Standards Service carried out several underage alcohol test purchase operations in conjunction with the Police in 2009. Out of the forty premises visited, nine were issued with a police Penalty Notice for Disorder (PND) for selling alcohol to a person under 18. Trading Standards Officers witnessed these sales.

Following the illegal sale of alcohol made by licensed premises, the Trading Standards Service contacted the proprietor of the business and conducted a formal interview with the proprietor, premises licence holder and DPS regarding the sale to ensure that underage sales at the premise did not recur.

Members of the Committee expressed their concerns over underage alcohol sales taking place in the borough. The Committee said more needed to be done to tackle this problem. Members asked officers how many complaints had been received from residents regarding the sale of alcohol to persons under the age of 18. Officers said four cases had been reported.

Officers informed the Committee that more could be done to tackle this problem if more resources such as staff were available to carry out site visits. At the moment, seven officers and one enforcement officer were available. However, officers worked closely with the Metropolitan Police Service and the Safer Neighbourhoods Team to keep underage sale of alcohol to a minimum.

To Note:

The Committee noted the report and expressed their concerns over the rate of alcohol sales to underage persons.

7. Sales of alcohol to underage persons via the internet or mail order

At the previous Licensing Committee meeting, Members had requested further information regarding drink delivery services that operated in the borough. Officers provided the Committee with an update.

Officers informed Members of the process of performing a test purchase. The tasks involved identifying which companies delivered alcohol within Hillingdon, identifying which companies accepted cash as a method of payment (4 companies accepted cash), finding a suitable address where the delivery would take place and finding someone to pose as a potential buyer.

A test purchase would need to be permitted by the RIPA representative prior to the purchase commencing. Legal officers informed the Committee that since no formal complaint had been made regarding the sale of alcohol via internet sites and delivery companies it would be very hard to justify a test purchase.

<p>Moreover, it would also be costly and resourceful to carry out. Officers informed the Members that covert surveillance was used by RIPA for the prevention of crime based on evidence of the crime taking place. However, as the Committee did not have any evidence of a crime taking place it would be difficult to justify the activity of a test purchase.</p> <p>Agreed: The Committee agreed not to carry out a test purchase.</p>	
<p>8. Attendance at Hearings by representatives of Responsible Authorities when they have not lodged a representation with the Licensing Authority</p> <p>Officers advised Members on the presence and involvement of the Metropolitan Police Services at Licensing Sub Committee hearings where no representations are received from the Metropolitan Police Services.</p> <p>Officers informed the Committee that in order to reach a fair and equitable decision, it was important that the Sub-Committee be provided with all information relevant to the hearing. Officers informed the Committee that they had been in touch with neighbouring Local Authorities and some did request representation at hearings and some did not. As the London Licensing Manager’s Forum had not yet taken place, Officers agreed to raise the question at the next meeting and report back to the Licensing Committee.</p> <p>Agreed: That Licensing Officers would raise the question at the London Licensing Manager’s Forum of whether or not fellow local authorities invited representatives from Responsible Authorities to attend hearings even if they have not made a representation. This would be reported back to the following Licensing Committee meeting.</p>	
<p>9. Red and Yellow Card Scheme and Mandatory and Discretionary Conditions report</p> <p>Officers informed the Committee of proposals made by the Department of Culture, Media and Sport regarding a “red and yellow card” system. Under implementation of this system licensees caught performing illegal activities such as selling alcohol to underage children would not have their license revoked. Instead this first intervention would see further conditions imposed on the license holder and the license could be revoked for a set period of time. If a second intervention then took place the license would be fully revoked.</p> <p>Officers said the Committee’s views regarding the use of only mandatory powers and no discretionary powers had been reported back in the DCMS consultation.</p> <p>To Note: The Committee noted the update.</p>	
<p>10. The Policing and Crime Act 2009 in respect of the adoptive provisions</p>	

that will enable local authorities to control sex establishments report

Officers informed the Committee that a consultation document was launched by the Home Office on 21 September 2009 to seek views on the proposed transitional arrangements for the regulation of lap dancing establishments. The new provisions to the Policing and Crime Act 2005 would mean that the Local Authority would be able to licence adult entertainment venues in the same way as sex shops under the Local Government Act 1982. This would enable the Local Authority to consider applications having regard to the appropriateness of the locality of the proposed premises and the number of premises in any area.

Local Authorities would also need to develop a licensing policy for the regulation of sex establishments within in the borough. Officers informed Members that licences were granted on a 12-month renewable basis and were dealt with on a case by case basis.

Legal Officers informed the Committee that the policy would not contravene any Human Rights.

Agreed:

The Committee agreed to recommendation adoption of this policy to Cabinet.

11. DCMS consultation on a proposal to amend the Licensing Act 2003 in respect of Licensing Statements, Interim Authority Notices and Temporary Event Notices report

Officers said on 8 December 2009 the DCMS published a consultation on their website in respect of a proposal to amend the Licensing Act 2003 for Licensing Statements Interim Authority Notices and Reinstatements on Transfer; and Temporary Event Notices.

Members were happy with the amendments to the Licensing Statements and commended the amendments to the Interim Authority Notices Reinstatements on Transfer. With regards to the Temporary Event Notices, Members asked Sgt Ian Meens whether the current period in which the police may object to a TEN was sufficient. Sgt Ian Meens informed the Committee that current time periods were insufficient, including the Police Confirmation period (in which the Police could allow a late notification by notifying the Local Authority).

Agreed:

The Committee agreed that Norman Stanley would reply to the consultation on behalf of the Committee and convey their views as follows:

- **To extend the period during which the Police may object to a TEN to 10 days.**
- **To give a new power to the Police to allow a late notification (i.e. fewer than 28 working days before the first day of the event) by notifying the Licensing Authority. This will be referred to as a Police Confirmation.**

<ul style="list-style-type: none"> • TEN forms should be submitted to the Local Licensing Authority on a weekday between 9.00 am and 5.00 pm. 	
<p>12. DCMS consultation on a proposal to amend the Licensing Act 2003 in respect of Personal Licences report</p> <p>Officers informed the Committee that on 15 December 2009 the DCMS published a consultation on their website in respect of a proposal to amend the Licensing Act 2003 to update the list of relevant offences that are treated as relevant offences for the purpose of obtaining and holding a personal licence under Part 6 of the Act.</p> <p>Members of the Committee agreed that the amendments should be included in the Act. Officers were asked whether criminal records could be obtained for foreign nationals requesting a licence, however this was not feasible.</p> <p>Agreed: The Committee agreed that Licensing Officers would compose a reply to the consultation which would include the following:</p> <ul style="list-style-type: none"> • That the Committee commended the amendments • Information regarding granting licences to persons with a history of terrorist activity or attempted terrorist activity should be included in the Act. 	
<p>13. Update on the progress of the implementation of the 2010-2013 Gambling Policy</p> <p>Officers informed the Committee that the Gambling Policy 2010-2013 was adopted by Full Council on 14 January 2010.</p> <p>To Note: The Committee noted the update.</p>	
<p>14. Updates from Licensing Service on Licensing Applications Granted</p> <p>To Note: The Committee noted the statistics.</p>	
<p>15. The Licensing Service's customer satisfaction survey report</p> <p>The Committee noted the statistics and commended the Licensing Service on the results of their customer satisfaction survey.</p>	
<p>16. Any Other Business - Street Trading</p> <p>Officers informed Members that on 14 January 2010 Full Council made a decision to authorise the Licensing Committee to consider and determine all Street Trading applications made under the London Local Authorities Act 1990. Officers advised the Licensing Committee to urgently take necessary steps to give effect to these new powers.</p>	

Officers said a majority of street trading licences currently in operation were due to expire on 31 March 2010. In order to prevent inconveniencing traders and to ensure that street trading licences do not lapse, the Licensing Committee is advised to urgently authorise Licensing Sub-Committees to consider and determine Street Trading Applications.

Agreed:

- **The Committee agreed the Part III of the London Local Authorities Act 1990: Street Trading – rules of procedure for Licensing Sub-Committees Hearings.**
- **The Committee authorised the delegation of Street Trading Application determination to the Licensing Sub-Committees.**

The meeting closed at 11:45 a.m.

Agenda Item 4

DCMS Proposal to Exempt Live Music Events from Licensing Act 2003.

Committee	Licensing Committee
Officer Contact	Norman Stanley Licensing Service Manager ext 7418
Papers with report	Response letter to the DCMS in respect of their proposal to exempt small live music events from the Licensing Act 2003
Ward(s) affected	All

SUMMARY

To inform the Licensing Committee of the response sent to the Department of Culture Media and Sport on their behalf by the Licensing Service Manager, in respect of the DCMS proposal to exempt small live music events from the Licensing Act 2003.

RECOMMENDATION

That the Licensing Committee note the report.

INFORMATION

On the 31st of December 2009 the Department of Culture, Media and Sport published via their web site a consultation on their proposal to exempt small live music events from the Licensing Act 2003.

This consultation picked up by the Institute of Licensing and it was passed on via an email alert to all IoL members.

As the Licensing Service Manager did not receive the IoL email alert information until the week commencing the 11th of January 2010, it was not possible to have the matter put onto the agenda for the full Licensing Committee meeting which was scheduled for the 19th of January 2010, consequently a *special* meeting of the Licensing Committee was convened on Monday the 8th of February to discuss the proposal and to formulate a response to the DCMS in respect of the consultation document, as responses to the consultation had to be submitted to the DCMS by the 26th of March 2010.

At the *special* meeting of the Licensing Committee on the 8th of February the DCMS consultation was then subject to full debate by the members of the Licensing Committee and they were unanimous in their opposition to the proposals.

The Licensing Committee then directed the Licensing Service Manager to write, on their behalf, to the DCMS expressing their views.

Following the meeting the Licensing Service Manager drafted a response letter to the DCMS, which was then sent to all members of the Licensing Committee for consideration.

As no adverse comments were received from members of the Licensing Committee members the Licensing Service Manager despatched the letter on the 1st of March 2010.

Note:-

A copy of the letter is annexed to this report.

FINANCIAL IMPLICATIONS

None

LEGAL IMPLICATIONS

None

BACKGROUND PAPERS

The Licensing Act 2003.

The DCMS consultation document



HILLINGDON

LONDON

Shelley Mickleburgh
Licensing Team
Department For Culture Media & Sport
2-4 Cockspur Street
London
SW1Y 5DH

1st March 2010

Dear Madam,

PROPOSAL TO EXEMPT SMALL LIVE MUSIC EVENTS FROM THE LICENSING ACT 2003

With reference to the DCMS consultation in respect of the proposal to exempt small live music events from the Licensing Act 2003, you are advised that the London Borough of Hillingdon's Licensing Committee was convened on Monday 8th February 2010 to consider the proposal.

You are advised that the proposal and all the questions detailed in chapter 7 of the consultation document were subject to much debate by members of the Licensing Committee.

The Licensing Committee also sought advice and guidance from Mr Paul Connor who is the Council's Senior Environmental Health Officer and who is the Environmental Protection Unit's professional expert in respect of noise nuisance from licensed premises.

On conclusion of the debate the consensus of opinion of the committee was as follows:-

- a) Live music will always have the potential to create a noise nuisance, especially from premises that are sited in residential areas
- b) The current provisions of the Licensing Act 2003 are pro-active in trying to avoid noise nuisance to local residents in that:-



- i) Applicants for a new premises licence, or a variation of an existing premises licence, are required to address the licensing objective of public nuisance in the operating schedule which has to be submitted with the application.
 - ii) By requiring the applicant to address the question of noise from live music that may escape from the premises, the applicant has to detail in their operating schedule how they would propose to contain the noise within their premises and if necessary propose preventative measures to avoid such noise becoming a nuisance to local residents.
 - iii) If the Environmental Health Officers, in their role as a *Responsible Authority* are of the opinion that the licensing objective of public nuisance has not been correctly addressed, they can then make an *Representation* to the Licensing Authority
 - iv) If a *representation* is made then the whole issue could be discussed in full at a hearing of the Licensing Committee and if considered necessary conditions could be imposed upon any licence granted
- c) The current situation is therefore pro-active by requiring the applicant to focus his / her mind on the possibility of any such live music creating a noise nuisance to local residents, whereas the new proposed system is entirely re-active.

In summary you are advised that Hillingdon's Licensing Committee are against any relaxation of the provisions of the Licensing Act 2003 and are strongly opposed to the proposal to exempt small live music events from this legislation.

Yours faithfully,

Norman C Stanley
Licensing Service Manager.



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department for
**culture, media
and sport**

Proposal to exempt small live music events from the Licensing Act 2003

Licensing Act 2003

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

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Chapter 1: Introduction

Summary

The consultation document seeks your views on a proposal to exempt small live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003 (the Act) relating to the licensing of live music as regulated entertainment under the Act. It also seeks views on the Legislative Reform Order that will deliver the proposal (Annex C), and the Impact Assessment (published as a separate document and available with this consultation document at

http://www.culture.gov.uk/reference_library/consultations/6499.aspx.

The Legislative Burden

- 1.1** The activities regulated by the Licensing Act 2003 include ‘the provision of regulated entertainment’, defined in Schedule 1 of the Act as ‘entertainment’ or ‘entertainment facilities’ provided either for the public; exclusively for members of a club which is a ‘qualifying club’ under the Act; or for consideration and with a view to profit. ‘Entertainment’ includes a ‘performance of live music’ (Schedule 1(2)(1)(e) ‘where it takes place in the presence of an audience and is provided for the purpose, or for purposes which includes the purpose, of entertaining that audience’.
- 1.2** Section 2 of the Act requires anyone who wishes to carry on a licensable activity to obtain an appropriate authorisation in the form of a premises licence, a club premises certificate or a temporary event notice. Any changes to a licence or club premises certificate, for example, to add live music provision, must be authorised through the full or minor variation process.
- 1.3** Section 17(5) of the Act stipulates that an application for a premises licence or a full variation must be advertised in a local newspaper and outside the premises for a certain period to give local residents and responsible authorities (the police, environmental health, etc) the opportunity to make representations against, or in favour of, the application to the licensing authority. The minimum administrative cost of making these applications is £385 plus a fee payable to the licensing authority which can vary typically from between £100 - £635 depending on the rateable value of the premises. If representations are made, section 18 of the Act requires the licensing authority to hold a hearing to consider the evidence and, if necessary, impose conditions on the licence to remove or mitigate any risks to the licensing objectives, refuse authorisation for a specific licensable activity or, in extreme cases, reject the application outright. In the case of live music, licence conditions might include, for example: closing doors and windows when music is being performed: the installation of sound-proofing measures such as rubber seals around doorways: noise limiters on amplification equipment; and restrictions on what time and how frequently live music events may be held on the

premises. The licence holder may incur a cost in meeting some of these conditions; for example, at the top end, a noise limiter can cost around £3000. The minor variation process is intended only for changes that will not impact adversely on the licensing objectives, such as the addition of low risk, live music provision. The process is quicker and cheaper than the full variation process, but there is still a minimum, administrative cost to applicants of £50-£100 and a flat rate fee of £89. People who wish to hold live music events on an occasional basis can do so by sending a Temporary Event Notice to the licensing authority at a flat rate fee of £21.

- 1.4** In general, the regulation of live music under the Act is justified by the potential impact of some live music event on the promotion of the licensing objectives¹. For example, residents living next door to a public house in a residential terrace, may be disturbed by loud performances of live music late at night, or by large numbers of people leaving the venue. Some live music events may also give rise to crime and disorder or endanger public safety. However, the Government considers that small live music events for 100 people or fewer are, in practice, extremely unlikely to give rise to these concerns and will rarely, if ever, have an adverse impact on the promotion of the licensing objectives

The Government's proposal

- 1.5** The Government proposes to introduce a revocable exemption for small live music events performed for 100 people or fewer in licensed and unlicensed premises from the requirements of the Licensing Act 2003 relating to the licensing of live music as regulated entertainment.

Administrative savings and other benefits

- 1.6** We think that this measure will primarily benefit many small venues that wish to hold live music events, but are deterred by the licensing requirements and costs. It will also benefit musicians who may find more opportunities to perform. However, we have not estimated the administrative savings for these categories as they are not currently subject to an administrative burden. People and organisations that currently use Temporary Event Notices to put on live music on an occasional basis; and licensed venues that put on small live music events for no more than 100 people are subject to a burden that the proposal will lift. We have tentatively estimated that this administrative saving could be around £406K - £881k per year. This does not take into account some costs of putting on live music that are difficult to quantify, such as the cost of new conditions applied when new applications or variations are granted. We also estimate that there will be fee savings of around £379K - £503K. There will also be a small additional cost to and burden on licensing authorities in administering the process for excluding specific premises from the exemption. However, we anticipate that this is likely to happen in only a very small number of cases, perhaps 0.3% - 1.5% per year (averaged over ten year period). Costs on licensing authorities would therefore be minimal, around £224K- £1,211K per year across all 378 authorities. A small number of licensed premises with licence conditions relating to the exempt live music that involve ongoing costs (for example a restriction on the number of live music events per week) may wish to apply to the licensing authority to remove these conditions from the licence. However, we can assume a net saving to these premises as they will not apply if

¹ The prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm.

the cost of a Minor Variation is likely to be greater than the cost saving from removing the condition. Estimated cost savings are set out in full in the Impact Assessment (published as a separate document and available with this consultation document at http://www.culture.gov.uk/reference_library/consultations/6499.aspx and comment is welcome (see question 14).

Who will be affected by the proposals?

1.7 The proposals will affect:

- Licensed premises such as clubs and pubs, unlicensed premises such as cafes, restaurants, scout huts, record shops, etc. and individuals that wish to stage small, live music events;
- Musicians – particularly those starting out in the business - who will benefit from the greater availability of venues;
- Licensing authorities, who will have to administer the new process.
- Responsible authorities, who will need to be aware of the new process and their right to call for the revocation of an exemption;
- The wider public and communities who will benefit from the increased opportunity to hear live music, but will also need to be aware of how they can take action if an exempt live music event leads to problems at a premises near them.

Implementing the proposals

1.8 We propose to introduce these exemptions by means of a Legislative Reform Order (LRO) under section 1 of the Legislative and Regulatory Reform Act 2006 (LRA). See Chapter 3 for more details of the LRO process. Your views are invited on the Order which is set out at Annex C.

Chapter 2: How to Respond

- 2.1** The closing date for making responses to this consultation is 26th March 2010 2009. If you would like to respond to this consultation, please email your response to licensingconsultation@culture.gov.uk

If you prefer, you may submit a hard copy by post to:

Shelley Mickleburgh
Licensing Team
Sport and Leisure Directorate
2-4, Cockspur Street
London SW1Y 5DH

- 2.2** If you have any queries about this consultation, or require additional copies, please contact the Licensing Team at the above address or by telephone on 020 7211 6322 or 020 7211 6380.
- 2.3** However, if you have any questions or complaints about the process of consultation on this paper, please contact the DCMS enquiries team at enquiries@culture.gov.uk or by post to Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH.

Disclosure

- 2.4** Normal practice will be for responses to this consultation document to be disclosed, and for respondents to be identified. While the LRA provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LROs. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances. You should note that:
- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymize it.

- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

2.5 Please identify any information that you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality.

Confidentiality and Freedom of Information

2.6 It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. *An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.*

Chapter 3: Legislative Reform Orders: process

Legislative Reform Orders

3.1 The Government proposes to introduce these simplification measures by means of a Legislative Reform Order under section 1 of the Legislative and Regulatory Reform Act 2006. The proposed text for amendments to be made by the draft Order is at Annex C. This consultation is being conducted in accordance with the provisions of section 13 of the LRA and the terms of the Government's Code of Practice on Written Consultations. Views are invited on all aspects of the consultation paper, including the specific questions set out in this document and summarised in Chapter 7. All responses should be received by 26th March 2010.

Legislative Reform Order-making powers

- 3.2** The LRA confers powers on a Minister of the Crown, with the approval of Parliament, to make legislative reform orders for purposes which include (under section 1) the removal or reduction of burdens falling directly or indirectly on any person from any legislation.
- 3.3** Section 1(3) of the LRA defines a burden as a financial cost; an administrative inconvenience; an obstacle to efficiency, productivity or profitability; or a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.
- 3.4** An order may not impose, abolish or vary any tax nor may it create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits. This proposal will not do so.
- 3.5** The 2006 Act specifies, under Section 3, that an Order must satisfy six preconditions. These are whether the Order has a non-legislative solution; is proportional to the policy objective; strikes a fair balance; does not remove necessary protections; does not prevent the exercise of rights and freedoms; and is not of constitutional significance. These are discussed in Chapter 6.
- 3.6** It should be noted that even where the preconditions of Section 3 of the LRA are met, an LRO cannot:
- deliver 'highly controversial' proposals;
 - remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
 - confer or transfer any function of legislating on anyone other than a Minister; persons that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
 - impose, abolish or vary taxation;

- create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- amend or repeal any provision of Part 1 of the LRA;
- amend or repeal any provision of the Human Rights Act 1998;
- remove burdens arising solely from common law.

Devolution

3.7 The LRA imposes certain restriction regarding LROs and the devolution agreements:

- Scotland – A Minister cannot make an LRO under Part 1 of the LRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an LRO under Part 1 of the LRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.

3.8 The Minister can recommend one of three alternative procedures for Parliamentary scrutiny dependent on the size and importance of the LRO. The negative resolution is the least onerous and therefore may be suitable for LROs delivering small regulatory reform. The super-affirmative procedures is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make the recommendation, Parliamentary Scrutiny Committees have the final say about which procedure will apply.

- Negative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if neither House of Parliament has resolved during that period that the LRO should not be made and the Committee has not vetoed the proposal.
- Affirmative Resolution Procedure – This allows Parliament 40 days to scrutinise a draft LRO after which the Minister can make the LRO if it is approved by a resolution of each House of Parliament.
- Super-Affirmative Resolution Procedure – This is a two stage procedure during which there is opportunity for the draft LRO to be revised by the Minister:
 - Parliament is given 60 days of initial scrutiny, when the Parliamentary Committees may report on the draft LRO, or either House may make a resolution with regard to the draft LRO.
 - After the expiry of the 60 day period (during which evidence may be sought from stakeholders and the Minister or officials by the Committees of each House), recommendations on the LRO are made by the Committees, and the

Minister must lay a revised or unrevised LRO for further scrutiny (15 days for unrevised, 25 days for revised). After this second scrutiny period, the Minister may then make an LRO in the terms of the draft, but only if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both Committees.

- 3.9** Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.
- 3.10** The Department for Culture, Media and Sport believes that the **affirmative resolution process** should apply to this LRO on the grounds that it amends the Act, and expands the scope of activities that are excluded from the ambit of the Act.
- 3.11** This consultation document contains a series of questions to which responses are invited. A list of all questions can be found at Chapter 7.
- 3.12** Comments are also invited on the draft LRO at Annex C and the Impact Assessment (published as a separate document and available with this consultation document at http://www.culture.gov.uk/reference_library/consultations/6499.aspx)
- 3.13** The consultation document follows the format recommended by the BRE for all such proposals. The criteria applicable to all UK consultations under the BRE Code of Practice on Consultation are at Annex D.
- 3.14** Under Section 3(2) of the LRRRA, the Minister of the Crown must be satisfied that certain preconditions have been met before presenting to Parliament a proposal to make a legislative reform order. For this reason, we would particularly welcome your views on whether and how the proposal in this consultation meets the following preconditions:
- (a) the policy objective intended to be secured by the order could not be satisfactorily secured by non-legislative means;
 - (b) the effect of the provision is proportionate to the policy objective;
 - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;
 - (d) the provision does not remove any necessary protection;
 - (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise; and
 - (f) the provision is not of constitutional significance.
- 3.15** These preconditions are addressed in Chapter 6.

Chapter 4: Background

Impact of the Act on live music

4.1 The Licensing Act 2003 replaced and consolidated several different licensing regimes. Live music was licensed under the Public Entertainment Licence (PEL) regime, except for performances of 2 musicians or fewer ('2 in a bar') which were exempt. In many ways, the Act had some positive benefits for live music, such as removing the need to have a separate permission and the requirement for routine annual renewals of licences. However, there were concerns about the impact of the Act on live music and in 2005, shortly after the Act came into force, the Government set up an independent Panel - the Live Music Forum - to monitor and evaluate the impact of the Act on the performance of live music. The Forum was chaired by Feargal Sharkey and included members from key bodies across the music industry and non-commercial sectors, together with local and national government, the Arts Council England and the hospitality trade. The Forum found that although the Act had a 'broadly neutral' impact on live music, there was some evidence of over zealous enforcement and lack of clarity about the legislation which had on occasion 'brought about an unwelcome and unwarranted impact on very small scale live music events (see http://www.culture.gov.uk/reference_library/publications/3650.aspx). Research carried out by MORI for the Forum also found that 29% of smaller establishments that had operated without a public entertainment licence, but used the 2 in a bar exemption to put on live music, did not apply for live music provision when the Act came into force. The Forum recommended, amongst other things, that musical activity attracting less than 100 people should be exempt from the Act.

Pre-consultation on exemptions

4.2 In 2008, the Government had early discussions with stakeholders on proposals to exempt live music performances for 100 people or fewer in unlicensed premises and 200 people or fewer in licensed premises. Both exemptions were to be restricted to performances inside a building between the hours of 11pm and 11 am and would not be revocable. It was proposed that any problems arising from the exempt live music could be dealt with through penalties available under other legislation, such as on the spot fines for noise under environmental health legislation.

4.3 These proposals were well received by the Musician's Union and other live music representatives, but were strongly opposed by licensing authorities and the police on the grounds that:

- there was no statistical evidence that the Act was restricting live music. The Local Authority Coordinators of Regulatory Services (LACORs) believed that very few

applications for live music provision were refused. The Government's Licensing Statistics Bulletin 2008 showed that the number of authorisations for live music had

- risen by 7% during 2007/8 and although this did not reflect the number of live music events staged in practice, it was nevertheless an indicator that live music was thriving.
- the proposed exemptions would remove essential rights and protections from local residents and businesses, exposing them to an increased risk of noise nuisance, crime and disorder, etc. Licensing authorities' powers under the Act to impose licence conditions such as closing doors and windows, sound insulation, etc. helped to prevent these problems occurring.
- penalties available under other legislation were largely reactive and other enforcement agencies were not resourced to deal with the problems that were likely to arise if these events were exempted from the Act.

4.4 In view of these very serious objections, the Government decided to defer consideration of live music exemptions for one year and to pursue other measures to assist live music including the new Minor Variations process which would allow applicants to add low risk, live music provision more cheaply and quickly than the full variation procedure. The Musicians Union, LACORs, the BBPA and DCMS formed a working party to consider ways of promoting and encouraging take up of the Minor Variations process and the existing exemption for incidental live music. It was agreed that these measures should be given time to bed down – and their impact on live music assessed – before returning to the issue of exemptions.

Recent developments

4.5 The Minor Variations process came into force in August 2009 and there is early evidence to suggest that it is increasingly being used to add or vary low risk live music provision. The Live Music Working Party has met several times and will be publishing a new leaflet on incidental live music and other material encouraging the use of Minor Variations to add/vary live music provision in December. However, live music groups and campaigners have continued to express concerns about the impact of the Act on small live music venues. The House of Commons Culture, Media and Sport Committee, in its 6th report of sessions, also found some anecdotal evidence that live music in smaller venues was decreasing and recommended an exemption for venues with a capacity of 200 or fewer from the Act.

4.6 The Government takes these concerns seriously and, with this in mind, has returned again to the subject of exemptions. However, it also takes seriously the concerns of local authorities, residents and the police and for this reason has amended its earlier proposal as described in the following chapter to exempt only events performed for audiences of no more than 100 people and to include a power to revoke an exemption at a specific premises if there are problems arising from the live music events.

Chapter 5: Detailed Proposals

Conditions of exemption

5.1 The Government proposes to exempt from the Act small live music events in licensed and unlicensed premises subject to the following conditions:

a) The performance takes place wholly inside a building. There is evidence that live music events held outdoors, in temporary structures such as tents or on boats, vehicles, etc are more likely to generate noise nuisance than indoor events. The Government therefore recommends that the exemption should be restricted to performances that take place wholly inside a permanent building.

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.

b) The audience does not exceed 100 people and is accommodated entirely inside the building where the performance is taking place. It was clear from the Government's earlier pre-consultation on exemptions for live music for 200 or fewer people, that licensing authorities, residents and the police had serious concerns about exempting this size of venue. Some LAs, for example, considered that an audience limit of 200 would capture all live music venues in their area. The Government is aware that there are different views on this issue, and that the CMS Committee recommended an exemption for events for audiences of no more than 200, however on balance it considers that restricting the exemption to audiences of no more 100 is less likely to give rise to issues which may affect the promotion of the licensing objectives.

It also recommends that the audience should be accommodated entirely inside the building where the performance is taking place to prevent a situation whereby, for example, patio doors might be opened to allow people on a pub terrace to see the performance, allowing noise to escape.

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.

c) **The performance does not take place between 11pm and 8am.** Noise from live music events is much more likely to disturb nearby residents etc. late at night and in the early hours of the morning, particularly (but not exclusively) on weekdays. The Government therefore recommends that exempt performances should not take place between 11pm and 8am.

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.

d) **The performance does not take place in a premises which is subject to an 'exclusion' decision** (see paragraph 5.2 below). The Government's proposal includes a revocation process to exclude specific premises from the exemption if problems arise in connection with exempt live music performances.

Exclusion/revocation process

5.2 In view of the concerns of LAs, the police and residents about the potential impact of an exemption on local residents, etc, the Government proposes to allow residents and local businesses (interested parties) and responsible authorities such as the police to apply to the licensing authority for an exemption at a specific premises to be 'excluded' from the exemption (i.e. revoked). This process will be similar to the current process for reviewing premises licences and club premises certificates, except that:

- it will apply to licensed and unlicensed premises;
- the evidence submitted in support of the application must focus on the impact of the live music event (s) on the promotion of the licensing objectives;
- the licensing authority will be responsible for placing a notice on premises to advertise the application
- licensing authorities will only have two options following a hearing: to allow the exemption to continue; or to exclude (revoke) it;
- an exclusion decision will take effect immediately, even if there is an appeal;
- Exclusions in licensed premises will be noted on the licence or club premises certificate; exclusions in unlicensed premises will be entered in a new section in the Licensing Register.

Question 5: Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.

Licence conditions relating to the performance of exempted live music

- 5.3** Unlicensed premises that wish to stage live music events that qualify for the exemption will not need to make any kind of application to the licensing authority; the exemption will automatically apply. However, licensed premises that already stage live music and qualify for the exemption may still have conditions attached to their licence in connection with their live music provision. For example, they may be restricted to a certain number of performances per week, or be required to install and maintain sound proofing equipment. These premises will be able to apply to vary their licences to remove relevant conditions through the Minor Variations process, in so far as those conditions are inconsistent with the new exemption. The Government recognises that this will involve a one off cost to licensees, but considers that some level of scrutiny by the licensing authority is necessary to ensure that conditions that relate to other licensable activities at the premises are not removed. It is not always clear why a certain condition has been applied to the licence and licensing authorities will wish to satisfy themselves that necessary conditions relating to other licensable activities remain in place. It may also be the case that a premises with a number of rooms may stage live music events for an audience of no more than 100 in one room and for a bigger audience in another room. In these circumstances, the licensing authority is likely to consider that the licence conditions relating to live music should still apply, unless they relate specifically to the smaller room. In practice licensees are unlikely to apply to remove a licence condition unless the likely saving outweighs the cost of the application.

Question 7: Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.

Chapter 6: Legislative Reform Order: Pre-conditions

Precondition (a): non-legislative solutions

- 6.1** The legal requirements relating to regulated entertainment are set out in the 2003 Act. The proposed changes to the Act cannot be made through secondary legislation (other than legislative reform orders).
- 6.2** Although the Secretary of State is empowered to issue Guidance to licensing authorities under section 182 of the 2003 Act, licensing authorities only have to 'have regard to it' and it cannot effect changes to primary legislation or regulations made under the 2003 Act or seek to influence the decisions of prosecuting authorities. In addition, the police (and other RAs) need have no regard to it.
- 6.3** The Government is satisfied that this proposal cannot be achieved by means of:
- any voluntary agreements between central government, licensing authorities and the police;
 - changes to the statutory Guidance that the Secretary of State issues under section 182 of the 2003 Act; or
 - changes to the regulations made by the Secretary of State under their powers in the 2003 Act.
- 6.4** The Government is therefore satisfied that this proposal cannot be achieved by non-legislative means.

Question 8: Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why

Precondition (b): the effect of the provision is proportionate to the policy objective

- 6.5** The policy objective is to remove unnecessary burdens on small live music events. The proposal exemption will deliver this and no more by restricting the exemption to performances of live music for audiences of no more than 100 people. Anecdotal evidence suggests that these venues are unlikely to give rise to problems which may affect the promotion of the licensing objectives and therefore suffer a disproportionate burden from the requirements of the licensing regime.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No. If No, please explain why.

Precondition (c): the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it

6.6 The public interest lies in: ensuring that live music can flourish, to the benefit of the wider community; providing more small venues where musicians, particularly young musicians who need to hone their skills in front of smaller audiences, can perform; and in ensuring that small venues can diversify their offer and generate income by putting on low risk live music. Any person who is adversely affected by an exempt live music performance will be able to apply to the licensing authority to have the exemption reviewed and if necessary, excluded. An exclusion decision will take effect as soon as it is made (even if there is an appeal), ensuring that residents and others are not exposed to further noise nuisance or other problems. The Government therefore considers that this proposal strikes a fair balance.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.

Precondition (d) the provision does not remove any necessary protection

6.7 The requirements of the Act in relation to live music are intended to ensure that local residents, businesses etc are protected from potential noise nuisance, crime and disorder, etc. that may arise from live music events. The restrictions on size of audience/venue, and the timing of events should ensure that these issues do not arise, but if, exceptionally, there are problems at a specific premises, any interested person or responsible authority may apply for an exclusion. Existing sanctions available under other enforcement regimes, such as noise protection orders and the powers available to the police in relation to crime and disorder would continue to apply to the exempt premises. The Government does not therefore consider that this proposal would remove any unnecessary protections.

Question 11: Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why

Precondition (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise

6.8 Residents and responsible authorities currently have the right to call for a review of any premises licence or club premises certificate if there are problems at a specific premises which affect the licensing objectives. They will continue to exercise this right in relation to exempt live music through the exclusion process. The restrictions on the exemption and existing sanctions under other enforcement regime will preserve

freedoms from noise nuisance, crime and disorder, etc that any person might reasonably expect to continue to exercise.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.

Precondition (f): constitutional significance

6.9 The proposal is considered to have no constitutional significance.

Question 13: Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.

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Chapter 7: List of Questions

Question 1: Do you agree that the exemption should be limited to performances held wholly inside a permanent building? Yes/No. If No, please explain why.

Question 2: Do you agree that the exemption should be limited to performances of live music for not more than 100 people? Yes/No. If No, please explain why.

Question 3: Do you agree that audiences for exempt performances should be accommodated entirely within the building where the performance is taking place? Yes/No. If No, please explain why.

Question 4: Do you agree that exempt performances should not take place between 11pm and 8am? Yes/No. If No, please explain why.

Question 5: Do you agree that there should be an exclusion process as set out above? Yes/No. If No, please explain why.

Question 6: Do you agree that the exclusion process should be similar to the current review process, with the modifications proposed? Yes/No. If No, please explain why.

Question 7: Do you agree that licensed premises that qualify for the proposed exemption should have to apply through the Minor Variations process to remove licence conditions that apply to the exempt live music performance? Yes/No. If No, please explain why.

Question 8: Do you agree that this proposal cannot be achieved by non-legislative means? Yes/No. If No, please explain why.

Question 9: Do you agree that the effect of the proposal is proportionate to the policy objective? Yes/No? If No, please explain why.

Question 10: Do you agree that the proposal, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it? Yes/No. If No, please explain why.

Question 11: Do you agree that the proposal does not remove any necessary protection? Yes/No. If No, please explain why.

Question 12: Do you agree that the proposal does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise? Yes/No. If No, please explain why.

Question 13: Do you agree that the proposal has no constitutional significance? Yes/No. If No, please explain why.

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at http://www.culture.gov.uk/reference_library/consultations/6499.aspx.)? Yes/ No. If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

Question 15: Do you think that this draft Order accurately reflects the proposed change?

Annex A: List of Consultees

Respondents are invited to contact us with the names of any other stakeholders groups not on this list who they feel might be able to contribute.

Action in Rural Sussex
Action with Communities in Rural England
Alcohol Concern
Arts Council in England
Arts Council of Wales
Association of Chief Police Officers
Association of Circus Proprietors of Great Britain
Association of Convenience Stores
Association of Directors of Social Services
Association of Inland Navigation Authorities
Association of Licensed Multiple Retailers
Association of Show and Agricultural Organisations
Bar Entertainment and Dance Association
BII
British Beer & Pub Association
British Board of Film Classification
British Holiday and Home Parks Association
British Hospitality and Restaurant Association
British Marine Federation
British Retail Consortium
Business in Sport and Leisure
Campaign for Real Ale
Central Council for Physical Recreation
Charity Commission
Chartered Institute of Environmental Health
Chief Fire Officers' Association
Children's Society

Chinese Takeaway Association UK
Cinema Exhibitors Association
Circus Arts Forum
Civic Trust
Commission for Rural Communities
Committee of Registered Clubs Associations
Community Matters
(DEFRA) Rural Communities Buildings Network
English Heritage
Enterprise Directorate, Department for Business, Enterprise and Regulatory Reform
Federation of Licensed Victuallers
Federation of Licensed Victuallers (Wales)
Federation of Private Residents' Association
Federation of Small Businesses
Federation of Wholesale Distributors
Fire and Rescue Authorities in England
Fire and Rescue Services in Wales
Greater London Authority
Guild of Bangladeshi Restaurateurs
Guild of Master Victuallers
Historic Houses Association
Independent Street Arts Network
Insolvency Service
Institute of Licensing
Interfaith Network
Justices Clerk Society
Licensing Act Active Residents Network
Licensing Authorities in England and Wales
Local Authorities Co-ordinators of Regulatory Services
Local Government Association
London Councils
Magistrates Association
Maritime and Coastguard Agency
Musicians Union
National Association of Kebab Shops
National Association of Local Councils
National Campaign for the Arts
National Farmers' Retail & Markets Association

National Federation of Fish Friers
National Federation of Retail Newsagents
National Neighbourhood Watch Association
National Operatic and Dramatic Association
National Organisation of Residents Associations
National Village Halls Forum
One Voice Wales
Open all Hours
Passenger Boat Association
Patersons Licensing Acts
Police Federation
Police Superintendents' Association
Rural Shops Alliance
Society of Local Council Clerks
Society of London Theatre and Theatrical Management Association
Tourism for All
Trading Standards Institute
United Kingdom Film Council
United Kingdom Warehousing Association
Voluntary Arts Network
Welsh Assembly
Welsh Council for Voluntary Action
Welsh Local Government Association
Welsh Music Foundation
Wine Spirits Trade Association

Annex B: Impact Assessment Question

Question 14: Do you broadly agree with the estimates, assumptions and conclusions of the Impact Assessment (published as a separate document, and available alongside this consultation on the DCMS website at

http://www.culture.gov.uk/reference_library/consultations/6499.aspx)? Yes/ No.

If not, please say which estimate you disagree with, and provide any evidence that supports an alternate estimate.

Annex C: Draft Order

Question 15: Do you think that this draft Order accurately reflects the proposed change?

In Schedule 1: (a) After paragraph 7 insert-

“Live music in certain small venues

7A (1) The provision of entertainment consisting of a performance of live music is not to be regarded as the provision of regulated entertainment for the purposes of this Act if the conditions in sub-paragraph (2) are satisfied in respect of the performance.

(2) The conditions are that-

(a) the performance takes place wholly inside a building;

(b) the performance takes place in the presence of an audience of not more than 100 persons, all of whom are accommodated wholly inside the building where the performance takes place;

(c) no part of the performance takes place between 11pm and 8am;

(d) the performance does not take place on premises in respect of which an exclusion decision under Part 2A of this Schedule has effect.”

(b) After Part 2 add-

“PART 2A

Live music in small venues: exclusion decisions

12A (1) The relevant licensing authority in relation to any premises must make an exclusion decision in respect of those premises, if the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that-

(a) an interested party or responsible authority has applied to the authority in accordance with this Part for an exclusion decision to be made in respect of the premises;

(b) the authority has held a hearing to consider the application; and

(c) the licensing authority are satisfied that the making of such a decision is necessary for the promotion of the licensing objectives.

(3) An exclusion decision made pursuant to sub-paragraph (1) has effect as soon as it is made.

(4) The Secretary of State may, by regulations under this paragraph-

(a) prescribe the form and manner in which an application under sub-paragraph (2)(a) is to be made, and the information and documents (if any) that must accompany it;

- (b) require the applicant to give a notice containing details of the application to such persons as may be prescribed within such period as may be prescribed;
- (c) require [the applicant][the authority] to advertise the application within such period as may be prescribed, and to invite representations about it to be made to the authority by interested parties, responsible authorities and such other persons as may be prescribed;
- (d) prescribe the period during which such representations may be made;
- (e) require any notice under sub-paragraph (b) or advertisement under sub-paragraph (c) to specify that period;
- (f) require that a record of each premises in respect of which an exclusion decision has effect be included in the relevant licensing authority's register kept under section 8.

(5) In this paragraph-

(a) "interested party" in relation to any premises means-

- (i) a person living in the vicinity of the premises,
- (ii) a body representing persons who live in that vicinity,
- (iii) a person involved in a business in that vicinity,
- (iv) a body representing persons involved in such businesses.

(b) "responsible authority" means-

- (i) any of the authorities referred to in section 13(4)(a) to (e) or (g), or
- (ii) a person prescribed for the purposes of this sub-paragraph."

(c) After paragraph 18 add-

"Live music in certain small venues: "building"

18A In paragraph 7A, a "building" does not include-

- (a) a temporary structure,
- (b) a structure without a roof, or without walls that form an enclosed space,
- (c) a vehicle, vessel or movable structure."

In Schedule 5, after paragraph 18 insert-

"Live music in certain small venues: exclusion decisions"

18A (1) This paragraph applies where an application for an exclusion decision in respect of premises is decided under paragraph 12A of Schedule 1.

(2) An appeal may be made against that decision by-

- (a) the applicant for the decision,
- (b) a responsible authority within the meaning of paragraph 12A(5)(b),
- (b) if a premises licence has effect in respect of the premises, the holder of that licence;
- (c) if a club premises certificate has effect in respect of the premises, the club which holds that certificate;
- (d) if neither a premises licence nor a club premises certificate has effect in respect of the premises, the owner or occupier of the premises or such other persons as may be prescribed;

(e) an interested party within the meaning of paragraph 12A(5)(a) who made relevant representations in relation to the application.

(3) In sub-paragraph (2) “relevant representations” means representations which are relevant to one or more of the licensing objectives.

(4) An appeal under this paragraph must be made to the magistrates’ court for the petty sessions area (or any such area) in which the premises concerned are situated.

(5) An appeal under this paragraph must be commenced by a notice of appeal given by the appellant to the justices’ chief executive for the magistrates’ court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

(6) On an appeal under sub-paragraph (2)(a), (b) or (e) the premises licence holder, club premises certificate holder, owner, occupier or other prescribed person (as the case may be) is to be the respondent in addition to the licensing authority.”

Annex D: BRE Code of Practice on Consultations

The consultation is being conducted in line with the BRE Code of Practice on Written Consultation. The consultation criteria are listed below. More information can be found at:

<http://www.berr.gov.uk/files/file47158.pdf>

The Consultation Criteria

1) When to consult

Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2) Duration of consultation exercises

Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

3) Clarity of scope and impact

Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4) Accessibility of consultation exercises

Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5) The burden of consultation

Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6) Responsiveness of consultation exercises

Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7) Capacity to consult

Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any questions or complaints about the process of consultation on this paper, please contact Tony Dyer, Consultation Co-ordinator, Strategy Division, Department for Culture, Media and Sport, 2-4 Cockspur Street, London, SW1Y 5DH tony.dyer@culture.gsi.gov.uk

Annex E: Legislative Reform Orders – Parliamentary Consideration

Introduction

1. This proposed exemption will require changes to primary legislation in order to give effect to it. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on this proposal as a measure that might be carried forward by a LRO.

Legislative Reform Proposals

2. The starting point for LRO proposals is thorough and effective consultation with interested parties, as reflected by this consultation and previous discussion with stakeholders. In undertaking this consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

3. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

i) explain under which power or powers in the LRRRA the provisions contained in the order are being made;

ii) introduce and give reasons for the provisions in the Order;

iii) explain why the Minister considers that:

- there is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- the effect of the provisions are proportionate to the policy objective;
- the provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- the provisions do not remove any necessary protection;
- the provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- the provisions in the proposal are not constitutionally significant; and
- where the proposals will restate an enactment, it makes the law more accessible or more easily understood.

iv) include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;

- v) identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and
- vi) give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by visiting the BRE's website at:

<http://www.berr.gov.uk/whatwedo/bre/>

Parliamentary Scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

- (a) appear to make an inappropriate use of delegated legislation;
- (b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secure a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) have an effect which is proportionate to the policy objective;
- (f) strike a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) do not remove any necessary protection;
- (h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) are not of constitutional significance;
- (j) make the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) have been the subject of, and takes appropriate account of, adequate consultation;
- (l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No. 151 (Statutory Instruments (Joint Committee)) as are

relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;

(m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

Regulatory Reform Committee (in the Commons):

http://www.parliament.uk/parliamentary_committees/regulatory_reform_committee.cfm

Delegated Powers and Regulatory Reform Committee (in the Lords):

http://www.parliament.uk/parliamentary_committees/dpr.cfm

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

How to Make Your Views Known

13. Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the address set out in the consultation document. When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

14. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

15. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

16. The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and
Regulatory Reform Committee
House of Lords
London
SW1A 0PW
Tel: 0207 219 3103
Fax: 0207 219 2571
DPDC@parliament.uk

Regulatory Reform Committee
House of Commons
7 Millbank
London
SW1P 3JA
Tel: 020 7219 2830/2833/2837
Fax: 020 7219 2509
regrefcom@parliament.uk

Non-disclosure of responses

17. Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

18. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about Third Parties

19. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

20. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Better Regulation Executive
Department for Business, Innovation and Skills

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Agenda Item 5

Update on Inviting Representatives from Responsible Authorities to Attend Licensing Hearings.

Committee	Licensing Committee
Officer Contact	Norman Stanley, Licensing Service Manager, tel; 01895 277418
Papers with report	None
Ward(s) affected	All

SUMMARY

To report back to the Licensing Committee in respect of a matter raised at their request at the London Licensing Managers Forum.

RECOMMENDATION

That the Licensing Committee note the report.

INFORMATION

The “action” instructions detailed in the minutes of the Licensing Committee meeting held on Thursday the 1st of October 2009, which related to agenda item number 7, required the Licensing Service Manager (Norman Stanley) to raise a specific question at the next meeting of the London Licensing Managers Forum, which was scheduled for the 23rd of February 2010.

The Licensing Committee’s question was:- “whether or not fellow local authorities invited representatives from responsible authorities to attend hearings even if they have not made representations”.

The question was listed on the LLMF agenda and it sparked a very lively debate.

On conclusion of the debate and following a show of hands, it was noted that the majority of London Authorities do not invite representatives from responsible authorities if they have not made a representation, however a small number of authorities do.

Following the discussion, Pat Crowley, the Chair of the LLMF, advised the delegates, that as far as he was aware there is no legal reason as to why such representatives from responsible authorities should not be invited, however he recommended they should only take part in the hearing when invited to respond to specific questions posed to them by members of the licensing sub committee.

FINANCIAL IMPLICATIONS

Licensing Committee
Part 1 – Members, Public and Press

None

LEGAL IMPLICATIONS

None

BACKGROUND PAPERS

The Licensing Act 2003

Guidance issued under section 182 of the Licensing Act 2003

Agenda Item 6

Update - DCMS consultation on proposed amendments to the Licensing Act 2003 (Personal Licences – Relevant Offences)

Committee Licensing Committee

Officer Contact Stephanie Waterford

Papers with report Hillingdon's response to DCMS consultation

Ward(s) affected All

SUMMARY

To update the Committee in respect of our response to the DCMS consultation on the proposed amendments to the personal licences – relevant offences.

RECOMMENDATION

That the Committee note the report

INFORMATION

On 15th December 2009 the DCMS published a consultation on their web site in respect of a proposal to amend the Licensing Act 2003 to update the list of relevant offences that are treated as relevant offences for the purposes of obtaining and holding a personal licence under Part 6 of the Act. The closing date for the consultation was 15th March 2010.

At the meeting of the full Licensing Committee on 14th January 2010, the Committee's views on the consultation questions were sought so that a response could be drafted by the Licensing Service.

The Committee were supportive of the new inclusions and welcomed the changes.

A copy of the response letter is attached.

Full feedback on the consultation is expected imminently from DCMS.

FINANCIAL IMPLICATIONS

None

LEGAL IMPLICATIONS

None

BACKGROUND PAPERS

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003

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HILLINGDON

LONDON

Nigel Wakelin
Licensing Team
Sport & Leisure Directorate
2-4 Cockspur Street
London
SW1Y 5DH

Reference: DCMS/Cons/10/SWPL

Your ref:

Date: 23rd February 2010

Dear Sir,

THE LICENSING ACT 2003 DCMS CONSULTATION ON PERSONAL LICENCES RELEVANT OFFENCES

With reference to the recent consultation which is to be returned to you by 12th March 2010, you are advised that the matter was presented to the Licensing Committee on 19th January 2010 to attain their advice and guidance.

At the meeting, members of the Committee were in overall support of the new proposals.

You are advised as follows in regard to the collective views on the consultation questions raised:

1. *Would you support the inclusion of the 'Failure to co-operate with a preliminary test' under section 6 of the Road Traffic Act 1988 in the relevant offences? Please explain your answer.*

Yes. This would be consistent with other offences relating to the Road Traffic Act.

2. *Would you support the inclusion of conspiracy offences related to the offences included in the relevant offences? Please explain your answer.*

Yes. Offences of this nature will indicate 'mens rea'.

Licensing Service
Environment & Consumer Protection Services
T.01895 277433 F.01895 250011
licensing@hillington.gov.uk www.hillingdon.gov.uk
London Borough of Hillingdon,
3S/09, Civic Centre, High Street, Uxbridge, UB8 1UW



INVESTOR IN PEOPLE

3. Would you support the inclusion of attempt offences arising under the Criminal Attempts Act 1981 in the relevant offences?

Yes.

4. Do you think that any of the offences suggested in questions 1-3 above are not appropriate to be included in the relevant offences? Please explain your answer.

No.

5. Do you agree that conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act should not be included in the list of new offences? If not, why not?

Yes.

6. Do you have any evidence of unspent convictions for conspiracy and attempt offences related to relevant offences from those Acts repealed by the 2003 Act?

No.

7. Are there any offences in the relevant offences that you feel should be removed from the list? If so, why?

No.

8. Should an unspent conviction for Drunk and Disorderly be included in the list of relevant offences? Please include the reasons for your view.

Yes. Inclusion of this offence will demonstrate the applicants regard for alcohol. The applicant will then have the opportunity to explain their individual circumstances to the Licensing Committee if necessary.

9. Should an unspent conviction for Possession of Controlled Drugs be included in the list of relevant offences and, if so, which classes of controlled substances should be included. Please include the reasons for your view.

Yes. Inclusion of this offence will demonstrate the applicants regard for controlled substances.

10. Do you have any views on whether persistent sales of tobacco to under 18s and offences under the food safety act should be reflected in the relevant offences?

These offences should be included as it will reflect the applicants regard for age restricted products which is important when the applicant is seeking to be in a position of responsibility.

11. Do you agree with the assumptions that we have made in calculating the costs of the proposals? Do you have any evidence to support your opinion?

No additional costs are anticipated at this stage.

12. Do you agree that the suggested costs and benefits set out in the Impact Assessment are a reasonable estimate of the potential costs and benefits?

N/A

13. Are you able to provide us with data that will help us to calculate the costs and benefits of the proposals?

No.

Please contact me should you wish to discuss any matter.

Yours faithfully

Stephanie Waterford
Licensing Service

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The Licensing Act 2003 Mandatory Conditions

Committee	Licensing Committee
Officer Contact	Stephanie Waterford
Papers with report	<ul style="list-style-type: none">○ The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 (Statutory Instrument 2010 860)○ Summary of new licence conditions
Ward(s) affected	All

SUMMARY

To update the committee in respect of changes to the mandatory conditions applicable to premises licensed for the sale of alcohol for consumption on the premises.

RECOMMENDATION

That the committee note the new legislative changes and approve the Licensing Service's proposal to notify licence holders of the new conditions.

INFORMATION

On 15th March 2010, S1 2010 860 was laid before Parliament and approved.

The order will bring into force five new mandatory conditions which will apply to all premises which sell/supply alcohol for consumption on the premises (summary attached).

In short, premises which will be affected are:

- Pubs
- Hotels and Banqueting premises
- Restaurants
- Members Clubs
- Nightclubs

Off licences and take-aways will not be affected by the new conditions.

The conditions are proposed to be implemented in phases. The first three conditions will take effect on 6th April 2010 and the final two conditions will be implemented on 1st October 2010.

Currently, there are approximately 300 premises for which the new conditions will apply.

The Licensing Service proposes to issue a new Annex 1 page for each affected premises licence/club certificate and send it out to licence holders with a covering letter explaining the changes.

A new 'Section 182 Guidance' document is expected to be released shortly by DCMS to reflect the changes.

FINANCIAL IMPLICATIONS

None

LEGAL IMPLICATIONS

None

BACKGROUND PAPERS

- The Licensing Act 2003
- SI 2010 860

2010 No. 860

LICENCES AND LICENSING

**The Licensing Act 2003 (Mandatory Licensing Conditions)
Order 2010**

Made - - - 16th March 2010

***Coming into force Paragraphs 4 and 5 of the Schedule 1st October 2010
Remainder 6th April 2010***

The Secretary of State makes the following Order in exercise of the powers conferred by sections

19A, 73B and 197(2) of the Licensing Act 2003(a).

In accordance with section 197(4) of that Act(b), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with sections 19A(1) and 73B(1) of that Act, the Secretary of State considers it appropriate for the promotion of the licensing objectives(c) to specify the conditions set out in this Order.

Citation and commencement

1.—(1) This Order may be cited as the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010.

(2) This Order shall come into force on 6th April 2010 other than paragraphs 4 and 5 of the Schedule which shall come into force on 1st October 2010.

Interpretation

2. In this Order—“the Act” means the Licensing Act 2003; “anti-social behaviour” has the meaning given in section 36 of the Anti-social Behaviour Act 2003 (d); “disability” has the meaning given in section 1 of the Disability Discrimination Act 1995

(a) 2003 c.17; sections 19A and 73B were inserted by paragraphs 2 and 4 respectively of Schedule 4 to the Policing and Crime

Act 2009 (c.26).

(b) Section 197(4) was amended by paragraph 44 of Schedule 7 to the Policing and Crime Act 2009.

(c) See section 4(2) of the Licensing Act 2003.

(d) 2003 c.38.

(e) 1995 c.50.

2 “relevant premises” has the meaning given in paragraphs (a) and (b) of the definition in section 159 of the Act;
(e); “responsible person” has the meaning given in paragraphs (a) and (b) of the definition in section 153(4) of the Act.

Mandatory conditions

3.—(1) Subject to paragraph (3), in relation to an existing or future relevant premises licence, the conditions set out in the Schedule are specified for the purposes of section 19(4)

(a) of the Act (mandatory conditions where licence authorises supply of alcohol).

(2) Subject to paragraph (3), in relation to an existing or future relevant club premises certificate, the conditions set out in the Schedule are specified for the purposes of section 73A

(b) of the Act (mandatory conditions relating to the supply of alcohol to members or guests).

(3) The conditions in paragraphs 1 to 3 and 5 of the Schedule do not apply where the licence or certificate authorises the sale by retail or supply of alcohol only for consumption off the premises.

Home Office *Alan Campbell*

16th March 2010 Parliamentary Under Secretary of State

SCHEDULE Article 3 **Mandatory Licensing Conditions**

1.—(1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following

activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

(a) games or other activities which require or encourage, or are designed to require or

encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or

supplied on the premises before the cessation of the period in which the responsible

person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(a) Section 19(4) was inserted by paragraph 1 of Schedule 4 to the Policing and Crime Act 2009.
(b) Section 73A was inserted by paragraph 3 of Schedule 4 to the Policing and Crime Act 2009.

3 (d) provision of free or discounted alcohol in relation to the viewing on the premises of a

sporting event, where that provision is dependent on—

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

4.—(1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

5. The responsible person shall ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the

premises (other than alcoholic drinks sold or supplied having been made up in advance

ready for sale or supply in a securely closed container) it is available to customers in the

following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

EXPLANATORY NOTE

(This note is not part of the Order)

Sections 19A and 73A of the Licensing Act 2003 (as inserted by section 32 of and Schedule 4 to the Policing and Crime Act 2009) provide for the Secretary of State to prescribe by order up to nine mandatory conditions applicable to relevant premises licences and club premises certificates. Relevant premises licences and relevant club premises certificates are those authorising the supply of alcohol to the public in licensed premises or to members or guests of clubs in club premises. The Schedule to the Order sets out the five mandatory conditions which apply to relevant premises licences and club premises certificates from the date of coming into force of the Order as provided in article 1. The conditions apply to all relevant premises licences

and all relevant club premises certificates authorising consumption of alcohol on the premises, with the exception of the condition in paragraph 4 of the Schedule, requiring an age verification policy to be adopted, which applies in addition to licences and certificates which permit the supply of alcohol only for consumption off the premises.

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STATUTORY INSTRUMENTS

2010 No. 860

LICENCES AND LICENSING

The Licensing Act 2003 (Mandatory Licensing Conditions)
Order 2010

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Additions to Mandatory Licensing Conditions detailed in Annex 1

Applicable from 6th April 2010

1. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—
 - (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—
 - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
 - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
 - (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);
 - (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
 - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

Cont'd overleaf....

3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

Applicable from 1st October 2010

4. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
5. The responsible person shall ensure that—
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml; and
 - (b) customers are made aware of the availability of these measures.

Agenda Item 8

REVIEW OF THE COUNCIL'S STATEMENT OF LICENSING POLICY

Committee	Licensing Committee
Officer Contact	Sharon Garner
Papers with report	Draft revision of the Statement of Licensing Policy
Ward(s) affected	All

SUMMARY

The Licensing Act 2003 requires the Council, as the Licensing Authority, to review its statement of licensing policy every 3 years. This is the second full review of the policy since the implementation of the Act in 2005. The Council will need to approve and adopt the revised policy which will be effective from 2011 to 2014.

In January 2010, the working party was convened and the review process was started.

RECOMMENDATION

That the Licensing Committee agree the draft Statement of Licensing Policy for full consultation (see appendix 1).

INFORMATION

1. Section 5 of the Licensing Act 2003 requires the Licensing Authority to review its Policy every three years.
2. Hillingdon's current Statement of Licensing Policy was reviewed in 2007 and approved by the full Licensing Committee in September 2007. The revised Policy was adopted by full Council in November 2007, and came into force for the period January 2008 to January 2011.
3. The revised policy, when approved, will be in force for the period January 2011 to January 2014.

THE LICENSING ACT 2003

1. Section 5 of the Licensing Act 2003 states that:-

Each Licensing Authority must in respect of each three year period:

- (a) determine its Policy with respect to the exercise of its licensing functions, and
- (b) publish a statement of that Policy (a 'licensing statement') before the beginning of that period.

2. Section 5 (3) of the Licensing Act 2003 requires Licensing Authorities to consult:-

- (a) the chief officer of police for the licensing authority's area
- (b) the fire authority for that area
- (c) such persons as the licensing authority considers to be representative of holders of premises licences issued by that authority
- (d) such persons as the licensing authority considers to be representative of holders of club premises certificates issued by that authority
- (e) such persons as the licensing authority considers to be representative of holders of personal licences issued by that authority, and
- (f) such other persons as the licensing authority considers to be representative of businesses and residents in its area.

ACTION INSTIGATED BY THE LICENSING SERVICE

In January 2010, a working party was convened to carry out the second full review of the Council's Statement of Licensing Policy. The working party was made up of the following officers:

- Norman Stanley – Licensing Services Manager
- Sharon Garner – Licensing Officer (the co-ordinating Officer in respect of the review)
- Kathryn Sparks – Deputy Director, Environment and Consumer Protection
- Ed Shaylor – Head of Community Safety
- Sue Pollitt – Trading Standards Service Manager
- Jaspal Wadra – Principle Environmental Health Officer
- Beejal Soni – Licensing Lawyer from Legal Services
- Natasha Dogra – Democratic Services Officer
- Sgt Ian Meens – Metropolitan Police Service
- Station Commander Martin Green (represented by Inspecting Officer Derek Bird) – London Fire & Emergency Planning Authority
- Paul Hewitt – Safeguarding Children and Quality Assurance Service Manager

The working party agreed that the current licensing policy has worked well since its implementation in 2008 and has not been subject to any challenge. It was therefore agreed by the working party not to change the content or format to any great degree, however some minor changes were proposed. Those amendments are shown typed in **RED**.

CONSULTATION AND APPROVAL PROCESS

1. The full Licensing Committee are requested to endorse the draft revised policy for full consultation.
2. The consultation period will run for 12 weeks. Consultees will include neighbouring authorities, trade bodies and associations, responsible authorities and others as detailed in Appendix 2 annexed. Comments will be invited from all consultees.
3. If observations, comments or proposals are received, they will be considered by the working party and drafted into the revised policy document.
4. The revised policy will then require formal approval from the full Licensing Committee, RESPOC, Cabinet and finally full Council.

LEGAL IMPLICATIONS

This report has been considered by the Borough Solicitor's Office for its legal implications in accordance with Council's procedures. There are no issues that need to be brought to the specific attention of Members other than those highlighted in the report.

BACKGROUND PAPERS

- The Licensing Act 2003
- Guidance issued under section 182 of the Licensing Act 2003

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REVISED STATEMENT OF LICENSING POLICY – JANUARY 2008	
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Introduction

Under the Licensing Act 2003 (The Act) the London Borough of Hillingdon is the Licensing Authority for all of the licensable activities specified under the Act within the borough. The Council as the Licensing Authority has the responsibility for administering and determining applications for, and representations against, Premises Licences, Club Premises Certificates, Temporary Permitted Activities and Personal Licences.

The activities included in the scope of the Act are:-

- The sale of alcohol by retail
- The supply of alcohol by or on behalf of a club, or the member of a club;
- The provision of regulated entertainment
- The provision of entertainment facilities
- The provision of late night refreshment (between 23.00 and 05.00)

In carrying out these responsibilities the Council as the Licensing Authority will have regard to its Statement of Licensing Policy, the Guidance issued under section 182 of the Licensing Act 2003, the four Licensing Objectives and any other relevant information.

The four Licensing Objectives are:-

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

Each objective is of equal importance

This Policy covers the period from 7th January 2011 to 6th January 2014 and will be kept under review and, following consultation, revised and amended.

1 Consultation

1.1 In reviewing the Council's first Statement of Licensing Policy, the council sought observations and comments from the following persons, organisations and groups and their comments have been incorporated into this policy where relevant:-

- The Chief Executive of the London Borough of Hillingdon
- All Corporate Directors of the London Borough of Hillingdon
- All elected Members of the London Borough of Hillingdon
- Chief Officer of Police for the London Borough of Hillingdon
- Chief Officer of British Transport Police
- Chief Officer of Police for Heathrow Airport
- Area Child Protection Committee
- Bodies representing businesses and residents in the London Borough of Hillingdon
- Bodies representing currently licensed premises in the London Borough of Hillingdon
- Community Safety and Drugs Strategic Partnership
- Groups representing Liquor Licence holders in the London Borough of Hillingdon

- Harefield Hospital
- Healthy Hillingdon
- Hillingdon Community and Police Consultative Group
- Hillingdon Drug and Alcohol Services
- Hillingdon Federation of Community Associations
- Hillingdon Hospital
- Hillingdon Sports Licensing Authority
- Hillingdon Youth Offending Service
- Local Strategic Partnership
- London Borough of Ealing
- London Borough of Harrow
- London Borough of Hounslow
- London Buses
- London Fire and Emergency Planning Authority
- London Underground Ltd
- Magistrates Court
- Mount Vernon Hospital
- Primary Care Trust
- Registered Clubs in the London Borough of Hillingdon
- Residents Associations
- Tenants Associations
- The Hillingdon Action Group on Addiction Management
- Uxbridge Initiative
- British Beer and Pub Association

2 Licensing Committee

2.1 A Licensing Committee consisting of at least ten, but not more than fifteen Councillors has been appointed. The Licensing Committee will be kept informed by way of reports from officers on a wide range of matters that impact on their role.

2.2 Government guidance states that uncontested applications should be granted and that such applications should be dealt with by specific officers who have been so delegated by the Licensing Committee.

The scheme of delegation to officers is shown in **Appendix A**.

2.3 Whenever representations from responsible authorities or interested parties have been received in respect of an application, that particular application will be referred to a Licensing Sub-Committee for determination.

The scheme of delegation to a Licensing Sub-Committee is shown in **Appendix A**.

2.4 Although the Licensing Authority welcomes views from all members of the community, Government guidance states that the Council as the Licensing Authority should be aware that the views of vocal minorities should not be allowed to predominate over the general interests of the community that the Licensing Committee represents.

2.5 The Licensing Committee will receive periodic reports detailing the licences issued by Officers under delegated authority.

3 Integration of Strategies and avoidance of duplication

3.1 The licensing function is and should remain distinct from the Town Planning process. It will be for the planning process to determine land-use decisions and the market place to determine need for particular types of premises/activities. Licensing decisions will be made with regard to the furtherance of the Licensing Objectives with regard to the particular use sought. However, it is strongly recommended that applicants ensure that:-

- The proposed licensable activities do not contravene planning legislation, and
- The hours sought are within the limits authorised by any planning permission.

3.2 The Licensing Committee should receive reports from time to time from other relevant departments of the Council regarding the state of the borough. These reports may include contributions from those responsible for the promotion of tourism, cultural development, planning, transport, reduction of crime and anti-social behaviour, community safety, social, health and community development etc. This should enable the various agencies or departments with their own strategies, aims and objectives to keep the Licensing Committee aware of the wider picture in pursuance of the licensing objectives.

3.3 A formal Protocol has been agreed between the Police and the Licensing Authority with regard to their enforcement work in respect of licensed premises and personal licence holders. Some of the enforcement may be carried out jointly with the Licensing Authority's Licensing Officers. Enforcement activity will be consistent, transparent and proportional to the nature of the licensed premises.

4 Promotion of Equality

The Council as the Licensing Authority seeks the elimination of all forms of discrimination in respect of sex, religion, race, disability and sexual orientation in accordance with its established equal opportunities policy (as amended from time to time).

This policy has been subject to an Equalities Impact Assessment and it does not have an adverse effect on equality issues.

5 General principles of policy and the role of licensing

5.1 The role of licensing is the control of the licensable activities at the licensed premises, qualifying clubs, temporary events and the conduct of the personnel involved with the licensable activities as required under the Act. Terms and conditions attached to the Premises Licences and Club Premises Certificates granted by the Licensing Authority will relate to matters over which the premises licence holder or Club Management Committees have direct control. The focus will be on the licensed premises and the activities in the vicinity of those premises. Those activities on licensed premises that have a direct impact on members of the public living, working or engaged in normal activities in the area fall within the scope of the licensing regime. Anti-social behaviour of patrons, disturbance or nuisance which can be proved to be emanating from a particular premises will be a consideration for the Licensing Authority in its enforcement and decision making role.

5.2 The prevention of anti-social behaviour away from the vicinity of a particular licensed premises is outside the licensing regime and must be dealt with by other means.

Such as:

- Positive measures to create a safe and clean environment in partnership with local businesses, transport operators and other departments of the local authority
- Powers of local authorities to designate parts of their own boroughs as Controlled Drinking Zones where alcohol may not be consumed publicly when it causes nuisance or distress

Note: The whole of the London Borough of Hillingdon is designated as a Controlled Drinking Zone

- The confiscation of alcohol from adults and children where appropriate
- Enforcement of underage sales of alcohol by Trading Standards
- Police enforcement of the normal law concerning disorder and anti-social behaviour, including the issuing of fixed penalty notices
- Positive ways to deal with the consequences of alcohol abuse through the Council's policies on community safety, domestic violence and health education.

6 Licensing Objectives

6.1 The Act states four Licensing Objectives for Licensing Authorities to promote

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

6.2 The Prevention of Crime and Disorder

6.2.1 It is recognised that licensed premises offering alcohol or entertainment can be the source of disturbance and sometimes crime and disorder. Where a number of premises may be in close proximity it may be difficult to attribute the disorder to patrons of particular premises. There is a duty on Premises Licence Holders or Club Management Committees to act responsibly to ensure their own customers do not contribute to crime and disorder whilst in their premises and in the vicinity of their premises.

6.2.2 Applicants should state in their Operating Schedule (which forms an integral part of the licence application process) how they intend to address the licensing objective of the *Prevention of Crime and Disorder* and applicants are advised to give serious consideration to the measures set out in Part 1, Annex D of the Guidance issued under Section 182 of the Licensing Act 2003. The Metropolitan Police Service and the Council's Licensing Officers ~~will be~~ **are** able to offer advice and guidance in regard to such matters.

However the responsibility for completing the Operating Schedule correctly rests with the applicant. Applicants are advised to seek professional guidance in respect of this issue.

See Appendix B

6.2.3 If representations are received from a Responsible Authority **or interested parties** the application will be determined by a Licensing Sub-Committee (see item 2.3).

6.2.4 Applications referred to the Licensing Sub-Committee will be determined on the individual merit of each case. The Licensing Sub-Committee will have the power to impose specific conditions when considered necessary in respect of the Crime and Disorder objective.

6.2.5 The Council's Licensing Officers will work closely with the Metropolitan Police Service to ensure licence conditions are met and that licensed premises are being operated according to the requirements of the Act.

6.2.6 Following the grant of a premises licence, the Metropolitan Police Service and/or interested parties such as local residents and businesses can apply to the Licensing Authority for a review of the licence (see item 12) if they consider that the Prevention of Crime and Disorder objective has not been met.

6.2.7 The Licensing Authority's Licensing Officers will conduct ~~periodic~~ **risk rated** inspections of licensed premises to ensure that the ~~standards~~ **licence conditions** relating to crime and disorder are being ~~maintained and that licence conditions are being~~ complied with.

6.2.8 ~~Inspections will be risk based. Consequently,~~ High risk or poorly managed premises will be subject to a higher frequency of inspections than low risk and well managed premises. Some of these inspections will be unannounced and conducted whilst the premises are in use for the purpose of the licence.

6.2.9 A liaison protocol has been agreed between the Licensing Authority and the Metropolitan Police Service with regard to their involvement and responsibilities in respect of crime and disorder in licensed premises.

6.2.10 In the interest of public order and the prevention of terrorism, the Licensing Authority would expect that for significant events, a comprehensive risk assessment is undertaken by premises licence holders to ensure that crime and disorder and public safety matters are identified and addressed. Accordingly, for premises that wish to stage promotions, or events {see examples set out in Appendix B} the Licensing Authority recommends that applicants address the Risk Assessment and debrief processes in their operating schedule.

The Licensing Authority recommends the Metropolitan Police Promotion / Event Risk Assessment Form 696 and the After Promotion / Event Debrief Risk Assessment Form 696A as useful and effective tools for this purpose. Where the Risk Assessment forms are used to assess the likely risks for any promotion or event, the Licensing Authority would normally expect that they will be completed following consultation with the Metropolitan Police Service. This procedure should also be considered by the applicant when completing their Operating Schedule.

6.2.11 Personal Licence applicants will have to meet specific standards with regard to their suitability. There are a number of obligations on Personal Licence Holders including those who are named as Designated Premises Supervisors, the breach of which could mean appearing before the Magistrates Court. While treating each case on its merits this objective makes it a key responsibility of the Magistrates to consider very carefully any breach of the ~~new~~ licensing law and or other relevant criminal law

6.3 Public Safety

6.3.1 Applicants should state in their Operating Schedule (which forms an integral part of the licence application process) how they intend to address the licensing objective of *Public Safety* and applicants are advised to give serious consideration to the measures set out in Parts 2 and 3 of Annex D of the Guidance issued under Section 182 of the Licensing Act 2003. The London Fire and Emergency Planning Authority and the Council's Licensing Officers ~~will be~~ **are** able to offer advice and guidance in regard to such matters. However the responsibility for completing the Operating Schedule correctly rests with the applicant. Applicants are advised to seek professional guidance in respect of this issue.

See Appendix C

6.3.2 If representations are received from a Responsible Authority **or interested parties** the application will be determined by a Licensing Sub-Committee (see item 2.3).

6.3.3 Applications referred to the Licensing Sub-Committee will be determined on the individual merit of each case. The Licensing Sub-Committee will have the power to impose specific conditions when considered necessary in respect of the Public Safety objective.

6.3.4 The Council's Licensing Officers will work closely with the London Fire and Emergency Planning Authority to ensure licence conditions are met and that licensed premises are being operated according to the requirements of the Act.

6.3.5 Following the grant of a premises licence, the London Fire and Emergency Planning Authority, the enforcing authority within the meaning given by section 18 of the Health and Safety at Work etc. Act 1974 and/or interested parties such as local residents and businesses can apply to the Licensing Authority for a review of the licence (see item 12) if they consider that the Public Safety objective has not been met.

6.3.6 The Licensing Authority's Licensing Officers will conduct ~~periodic~~ **risk rated** inspections of licensed premises to ensure that the approved safety standards are being maintained and that licence conditions are being complied with.

6.3.7 ~~Inspections will be risk based~~ High risk or poorly managed premises will therefore be subject to a higher frequency of inspections than low risk and well managed premises. Some of these inspections will be unannounced and conducted whilst the premises are in use for the purpose of the licence.

6.3.8 A liaison protocol has been agreed between the Licensing Authority and the London Fire and Emergency Planning Authority with regard to their involvement and responsibilities in respect of fire safety in licensed premises.

6.4 The Prevention of Public Nuisance

6.4.1 The types of business and the range of premises covered under the licensing legislation could potentially lead to nuisance being caused to neighbours. This is particularly relevant for late night businesses when ambient noise levels are relatively low and noise from equipment such as extractors, music or patrons could be more readily detected than in the daytime. Public nuisance such as noise disturbance, light pollution and noxious smells can be prevented or mitigated by effective management. **Appendix D** provides a list of examples of activities which could give rise to public nuisance and measures which can be taken to prevent such nuisance occurring. The Licensing Authority working jointly with the Police also has powers to close down instantly for up to 24 hours any licensed premises or a temporary event if excessive noise is emanating from that particular premises or event.

6.4.2 Applicants should state in their Operating Schedule (which forms an integral part of the licence application process) how they intend to address the licensing objective of the *Prevention of Public Nuisance* and applicants are advised to give serious consideration to the measures set out in Part 4, Annex D of the Guidance issued under Section 182 of the Licensing Act 2003. The Council's Environmental Protection Unit and the Council's Licensing Officers ~~will be~~ **are** able to offer advice and guidance in regard to such matters. However the responsibility for completing the Operating Schedule correctly rests with the applicant. Applicants are advised to seek professional guidance in respect of this issue.

See Appendix D

6.4.3 Applicants should give particular consideration to measures to reduce the occurrence of public nuisance associated with accommodating smokers outside the premises, following the introduction of smoke free areas in enclosed or substantially enclosed places.

6.4.4 If representations are received from a Responsible Authority **or interested parties** the application will be determined by a Licensing Sub-Committee (see item 2.3).

6.4.5 Applications referred to the Licensing Sub-Committee will be determined on the individual merit of each case. The Licensing Sub-Committee will have the power to impose specific conditions when considered necessary in respect of the Prevention of Public Nuisance objective.

6.4.6 Following the grant of a premises licence, the Council's Environmental Protection Unit and/or interested parties such as local residents and businesses can apply to the Licensing Authority for review of the licence (see item 12) if they consider that the Prevention of Public Nuisance objective has not been met.

6.4.7 The Licensing Authority's Licensing Officers will conduct ~~periodic~~ **risk rated** inspections of licensed premises to ensure that the ~~standards~~ **conditions** relating to the prevention of public nuisance are ~~being maintained and that licence conditions are~~ being complied with.

6.4.8 High risk or poorly managed premises will therefore be subject to a higher frequency of inspections than low risk and well managed premises. Some of these inspections will be unannounced and conducted whilst the premises are in use for the purpose of the licence.

6.5 The Protection of Children from Harm

6.5.1 The range of 'licensed premises' is very broad. It includes pubs, cinemas, theatres, restaurants, off licences etc. Under the Licensing Act 2003, unaccompanied children under the age of 16 are not allowed on premises such as public houses which are used exclusively or primarily for the supply of alcohol for consumption on the premises.

This restriction does not apply to premises such as restaurants and bowling alleys etc where the supply of alcohol is not the principal use of the premises. However, unaccompanied children under the age of 16 are not permitted in such premises between the hours of midnight and 5 a.m. Admission of children will always be at the discretion of those managing the premises.

6.5.2 Applicants should state in their Operating Schedule, (which forms an integral part of the licence application process), how they intend to address the licensing objective of the *Protection of Children from Harm* and applicants are advised to give serious consideration to the measures set out in Part 5, Annex D of the Guidance issued under section 182 of the Licensing Act 2003 **and with particular regard to Box N on the Operating Schedule concerning adult entertainment**. The Council's ~~Child Protection Team in Social Services~~ **Safeguarding Children and Quality Assurance Team on behalf of the local Safeguarding Children Board (LSCB)** and the Council's Licensing Officers will be able to offer advice and guidance in regard to such matters. However the responsibility for completing the Operating Schedule correctly rests with the applicant. Applicants are advised to seek professional guidance in respect of this issue.

See Appendix E

6.5.3 If representations are received from a Responsible Authority **or interested parties** the application will be determined by a Licensing Sub-Committee (see item 2.3).

6.5.4 Applications referred to the Licensing Sub-Committee will be determined on the individual merit of each case. The Licensing Sub-Committee will have the power to impose specific conditions when considered necessary in respect of the Protection of Children from Harm objective.

6.5.5 Following the grant of a premises licence, the Council's ~~Child Protection Team in Social Services~~ **Safeguarding Children and Quality Assurance Team** ~~can~~ and/or interested parties such as local residents and businesses **can** apply to the Licensing Authority for a review of the licence (see item 12) if they consider that the Protection of Children from Harm objective has not been met.

6.5.6 The Licensing Authority's Licensing Officers will conduct ~~periodic~~ **risk rated** inspections of licensed premises to ensure that the ~~standards~~ **conditions** relating to the protection of children from harm are being ~~maintained and that licence conditions are being~~ complied with.

6.5.7 High risk or poorly managed premises will therefore be subject to a higher frequency of inspections than low risk and well managed premises. Some of these inspections will be unannounced and conducted whilst the premises are in use for the purpose of the licence.

6.5.8 The Licensing Authority will usually expect that each operator dealing in the sale and supply of alcohol requires that personal identification is mandatory in every case where there is any doubt as to whether the customer is aged 18 or over: 'No ID- No sale'. Best practice would be to adopt the 'Challenge 21' policy. Recommended

forms of personal identification include a passport, a photo driving licence, or a PASS (Proof of Age Standards Scheme) accredited proof of age identity card. Trading Standards Officers and Police Officers will carry out test purchases of alcohol using young volunteers. Where sales are made, enforcement action will be taken against all responsible persons.

Children's access to cinemas

6.5.8 The Licensing Authority accepts that the British Board of Film Classification (BBFC) is the recognised authority in categorising films. It therefore accepts the BBFC classifications with respect of children's films. The Licensing Authority will expect applicants to include in their operating schedules arrangements for restricting children from viewing age-restricted films classified according to BBFC recommendations.

Children and Public Regulated Entertainment

6.5.9 There are many kinds of regulated entertainment which are specifically arranged for children, such as plays, concerts, film shows, some of which may be school based. When it is proposed to present an entertainment specifically for children, then additional safety measures may need to be considered. The Council's Licensing Officers ~~will be~~ **are** able to offer advice and guidance in respect of such presentations **and organisers of such events are encouraged to seek such advice.**

Other key issues

7 Cumulative effect

7.1 Whilst the London Borough of Hillingdon does not have a concentration of licensed premises as found in central London boroughs, it nevertheless has a relatively large number of pubs and restaurants in Town Centre areas. Most of these Town Centre areas are also home to many residents. However, the Council, as the Licensing Authority, does not propose, at this stage, to set quotas for particular types of licences. Applications will be considered on their individual merit thus ensuring that the characteristics of the many different types of licensable activity are fully considered. If crime and disorder or general disturbance/nuisance do prove to be linked to the concentration of customers of licensed premises in any particular areas, then the Licensing Authority will introduce controls over the issue of new licences through a 'Special Policy' (to limit the number of licensed premises).

It would first be necessary to establish that, because of the number and density of licensed premises selling alcohol in a particular area, there are exceptional problems of nuisance, disturbance and or disorder outside or away from those licensed premises as a result of their combined effect. Where particular premises are identified as being responsible for the problems it may be possible to take specific measures against those individual Premises Licence Holders or Club Management Committees following relevant representations. Where there is public disorder from a minority of people who display anti-social behaviour away from licensed premises, there are other measures available to the Police Authority to address such issues.

7.2 Before deciding whether to adopt a Special Policy (to limit the number of licensed premises), the Council as the Licensing Authority must be sure that the imposition of individual conditions to particular premises would not solve the problem. The Council

as the Licensing Authority has a duty under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder. It must be sure it has met its obligations under the Crime and Disorder Act 1998 and in terms of its promotion of the licensing objectives under the Licensing Act 2003.

7.3 If objector representations are made as to the cumulative effect of a new application and hence the need for a Special Policy (to limit the number of licensed premises), the onus will be on the objector to provide the evidence that the additional premises would produce the impact claimed.

7.4 If a Special Policy (to limit the number of licensed premises) is introduced it will be reviewed regularly to assess whether or not it is still needed.

7.5 The Metropolitan Police Service report that the ~~new~~ licensing regime appears to be working well in the London Borough of Hillingdon and it is not therefore necessary to introduce a Special Policy at present.

8 Licensing Hours

8.1 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 number of customers were required to leave the premises simultaneously.

8.2 The aim through 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 will therefore be avoided.

8.3 The four licensing objectives will be paramount at all times and the council will always consider the individual merits of each case.

8.4 In accordance with guidance there is no fixed restriction on terminal hours for any particular areas of the borough. Such a restriction could cause the migration of patrons from one area to another and create the circumstances that the ~~new~~ legislation is attempting to avoid. Each application will be dealt with on its merits. It is for the applicants to detail in their Operating Schedule exactly what times they intend to open and close the premises and what measures they will take to ensure that they do not cause nuisance or disturbance to their neighbours in the vicinity. The later the terminal hour applied for, the greater will be the need to address the issues of disturbance and nuisance.

8.5 Shops, stores and supermarkets licensed to sell alcohol will normally be allowed to do so for the full duration of their trading hours. Restrictions may be applied for example where representations are made indicating the particular premises or patrons of the premises are linked to disorder and or disturbance.

9 Applications

9.1 The application form and accompanying Operating Schedule should be completed clearly and concisely to reflect the exact nature of the business and how the four licensing objectives will be addressed. All sections of the application form must be completed, including Box N. Guidance as to what type of information should be included in the operating schedule is given in the appendices to this Policy.

9.2 Applications which are incomplete or illegible will be returned to the applicant with an explanation for the return. Reasons may include incomplete or missing forms, the absence of the fee, absence of required plans or insufficient information detailed on the plans and operating schedule. For personal licences also the absence of certificates or photographs.

9.3 Applicants are advised to seek advice from the Licensing Authority and other Responsible Authorities concerning the licensing requirements for premises and/or licensable activities being applied for prior to completing their operating schedule. Large or unusual events need particular consideration and applicants are advised to submit applications as far in advance as is practical.

9.4 The Council's Licensing Service will provide applicants with advice and guidance in respect of completing their application forms and, in particular, how they should address each one of the four prime licensing objectives in their operating schedules.

10 Rights of applicants and those making representations against applications.

10.1 This policy will not seek to exclude any rights enshrined in the Act or any other legislation for applicants or those making representations against applications. Each application and representation will be treated on its merits taking into account the legislation, the Guidance issued under section 182 of the Licensing Act 2003 and this policy.

10.2 Representations can be made to the Council, as Licensing Authority, by a 'Responsible Authority' or by 'Interested Parties' which include bodies or individuals who live in the vicinity of such a premises, and residents association, trade associations and other businesses operating in the vicinity. Representations can be made concerning:-

- Applications for premises licences
- Variations of such licences
- Personal licence applications on criminal grounds (only by the Police)

10.3 The Licensing Act 2003 does not permit ~~Ward Councillors~~ **Elected Members** to make ~~general~~ representations on **their own behalf as well as on** behalf of their constituents. ~~However, persons~~ **Members of the public** who are making representations may **also** request that their Ward Councillor speaks on their behalf at public hearings to determine premises licence and/or Club Premises Certificate applications.

11 Conditions of licence

11.1 Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will be used to ensure the premises are safe and do not create a nuisance. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity. They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity.

11.2 Conditions on premises licences and club certificates are determined by:

- The measures put forward on the Operating Schedule
- Mandatory conditions within the Act
- Measures decided at a hearing by the Licensing Sub Committee

11.3 **Mandatory conditions** determined by the Act are:-

Alcohol

- No sale/supply of alcohol shall be made when there is no Designated Premises Supervisor in respect of the premises licence
- No sale/supply of alcohol shall be made when the Designated Premises Supervisor does not hold a Personal Licence or when his/her Personal Licence is suspended
- Every sale/supply of alcohol under the premises licence shall be made, or authorised, by a person who holds a Personal Licence

Films

- The admission of children shall be restricted according to the classification given by the British Board of Film Classification for the film being shown.

Door Supervisors

- All Door Supervisors employed at the premises shall be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001 or be entitled to carry out that activity by virtue of section 4 of that Act.

11.4 The following mandatory conditions were introduced in 2010:-

1.1 The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

1.2 In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

- (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
- (ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

- (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;
 - (d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on–
 - (i) the outcome of a race, competition or other event or process, or
 - (ii) the likelihood of anything occurring or not occurring;
 - (e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
2. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).
3. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.
- 4.1 The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
- 4.2 The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.
5. The responsible person shall ensure that–
 - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures–
 - (i) beer or cider: ½ pint;
 - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
 - (iii) still wine in a glass: 125 ml; and
 - (b) customers are made aware of the availability of these measures.

12 Reviews

12.1 At any stage following the grant of a premises licence or a club premises certificate, an application for a review can be submitted to the Licensing Authority by a Responsible Authority or an Interested Party in connection with any of the four licensing objectives:-

Prevention of Crime and Disorder – see Appendix B
Public Safety – See Appendix C
Prevention of Public Nuisance – See Appendix D
Protection of Children from Harm – See Appendix E

However, the Council as Licensing Authority, will reject an application for review where it considers that the complaint is:

- Not relevant to any of the Licensing Objectives
- Vexatious, frivolous or repetitious

12.2 It is recommended that applications for review of premises licences are not made until at least three months after the grant of a licence in order to allow time for evidence to be gathered on the grounds for review.

13 Live music, dance and theatre

13.1 The Council, as the Licensing Authority will encourage the promotion of live music, dance and theatre for the wider cultural benefit of the community, particularly in pursuance of any cultural strategy. It will carefully balance the potential for limited disturbance in particular areas with the wider benefits to the community, particularly children. Any conditions attached to such a licence or certificate following relevant representations will reflect this balance and the licensing objectives. The conditions should not be a deterrent to holding the activity because of the cost of implementation.

14 Further information:-

Further information, application packs and guidance notes on:-

- Premises Licences (new and variation)
- Reviews of Premises Licences
- Making representations and committee procedures
- Personal Licences
- Temporary Event Notes

can be obtained from:-

The Licensing Service,
Civic Centre (3S/09)
Uxbridge
UB8 1UW

Tel: 01895 277433
Fax: 01895 250011

Email: licensing@hillingdon.gov.uk

Or the Council's website: www.hillingdon.gov.uk

Appendix A

TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	SUB-COMMITTEE	OFFICERS
Application for the grant or renewal of a personal licence	If a Police objection	If no objection made
Application for personal licence, with unspent convictions	If a Police objection	If no objection made
Application for premises licence/club premises certificate	If a representation made	If no representation made
Application for provisional statement	If a representation made	If no representation made
Application to vary premises licence/club premises certificate	If a representation made	If no representation made
Application to vary designated premises supervisor	If a Police objection	All other cases
Request to be removed as designated premises supervisor		All cases
Application for transfer of premises licence	If a Police objection	All other cases
Application for Interim Authorities	If a Police objection	All other cases
Application to review premises licence/club premises certificate	All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc		All cases
Decision to object when local authority is a consultee and not the lead authority	All cases	
Revocation of Personal Licence where convictions come to light after grant or renewal	All cases	
Determination of a police representation to a temporary event notices	All cases	

APPENDIX B – PREVENTION OF CRIME AND DISORDER

It should be noted that it is unlawful under the 2003 Act to:

- Knowingly to sell or supply or attempt to sell or supply alcohol to a person who is drunk **or under the statutory minimum age**
- Knowingly to allow disorderly conduct on licensed premises
- For the holder of a premises licence or a designated premises supervisor knowingly to keep or to allow to be kept on licensed premises, any goods which have been imported without payment of duty or which have otherwise been unlawfully imported.
- To allow the presence of children under 16 who are not accompanied by an adult between midnight and 5am at any premises licensed for the sale of alcohol for consumption on the premises and at any time in premises used exclusively or primarily for the sale and consumption of alcohol.

Examples of measures to prevent crime and disorder which could be included **where applicable** in Operating Schedules

- Door Supervisors registered with the Security Industry Agency
- Door Supervisors to wear distinctive reflective jackets or arm bands at all times.
- No entry or re-entry after a certain time
- Searches using metal detectors if necessary
- Staff alarms fitted to doors
- A system of queuing inside or outside the premises
- Any condition which the Licensing Committee would consider to prevent crime and disorder
- Bottle bans
- Plastic containers and toughened glass
- ~~CCTV to be installed (police can assist with placement and numbers of cameras), where possible a digital system should be used and recordings should be kept in a secure management position, upon the premises, for a minimum period of thirty days.~~
- **CCTV to be installed of at least a minimum specification and quality, as advised by the LBH CCTV Manager, and meeting minimum standards of placement and quantity of cameras as advised by police. A digital recording system should be used and recordings should be kept in a secure management position, upon the premises, for a minimum period of thirty days.**
- Open containers not to be taken from the premises
- Restrictions on Drinking Areas
- Capacity Limits
- Proof of Age Cards

- Crime Prevention Notices
- ~~Drinks Promotions~~
- **No Drinks promotions**
- Direct phone links to taxi companies
- Premises should be designed to ensure that all areas can be monitored visually

Note: Premises Licence Holders and representatives from Clubs are encouraged to participate in Pub Watch, Club Watch, Business Watch such as UBAC (Uxbridge Business Against Crime) and Radio Link schemes

Nightclubs and other similar venues

Nightclubs and other similar venues should, when completing their operating schedule, consider including reference to the use of risk assessments for the different types of music and DJ's/MC's or similar that they propose to use.

In addition, if it is proposed, on occasions, to stage significant events or promotions, then applicants should also consider when completing their operating schedule, submitting a separate risk assessment for each individual event or promotion followed by the submission of a subsequent 'de-brief' report.

Detailed below are examples of conditions that applicants may wish to consider offering in their operating schedule:-

1. The premises licence holder shall undertake a risk assessment of any promotion or event (as defined below) using the MPS Promotion/Event Risk Assessment (Form 696) or an equivalent and provide a copy* to the Metropolitan Police Service using the email as detailed below and the Licensing Authority not less than 14 days before the event is due to take place.
2. Where an 'event' has taken place, the premises licence holder shall complete **follow up feedback** ~~an MPS After Promotion/Event Debrief Risk Assessment (Form 696A)~~ and submit this to the Metropolitan Police using the email as detailed below and the Licensing Authority, within 3 days of the conclusion of the event.

ClubsFocusDesk-CO14@met.police.uk

~~*submission of electronic documents by e-mail is preferred.~~

Definition of an 'Event'

~~An event will be deemed to be: any occasion in any location licensed under the provisions of the Licensing Act 2003, where there will be a live performer/s – meaning musicians, DJs, MCs or other artiste; that is promoted in some form by either the venue or an outside promoter; where entry is either free, by invitation, pay on the door or by ticket.~~

The recommended guidance to music event organisers, management of licensed premises or event promoter on when to complete Form 696 is where you hold an event that is –

- promoted / advertised to the public at any time before the event, and
- predominantly features DJs or MCs performing to a recorded backing track, and
- runs anytime between the hours of 22.00 hours and 04.00 hours, and
- is in a nightclub or a large public house.

Note:

Further advice is available from:

Crime Prevention Office, West Drayton Police Station 020 8246 1769

Crime Prevention Office, Ruislip Police Station 020 8246 1822

APPENDIX C – PUBLIC SAFETY

Publications which applicants should consider when preparing their operating schedules:-

- ~~British Standard 5588 Part 6 – Code of Practice for places of assembly~~
- ~~British Standard 5588 Part 8 – Means of escape for Disabled People~~
- **British Standard 9999 - Code of Practice for Fire Safety**
- **Regulatory Reform (Fire Safety) Order 2005 – clause 14(2) (a)-(h)**
- British Standard 7671 - Requirements for Electrical Installations (I.E.E. Wiring Regulations)
- British Standard 5266 - Code of Practice for emergency lighting systems
- British Standard 5839 - Fire detection and alarm systems for buildings
- ~~British Standard 5588 Part 9 – Code of Practice for ventilation and air conditioning ductwork~~
- Model National Standard Conditions for Places of Entertainment – Published by LDSA Publications, PO Box 266, Bromley, Kent, BR2 9ZN
- Technical Standards for Places of Entertainment - Published by LDSA Publications, PO Box 266, Bromley, Kent, BR2 9ZN
- The Event Safety Guide - A guide to health, safety and welfare at music and similar events, HSG195 (ISBN 0-7176-2453-6)
- Managing Crowds Safely, HSG154 (ISBN 0-7176-1834-X)
- 5 Steps to Risk Assessment, Case Studies (HSE 1998) (ISBN 0-7176-1580-4)
- The Guide to Safety at Sports Grounds published by HMSO, The Green Guide (ISBN 0-11-341072-7)
- Safety Guidance for Street Arts, Carnival, Processions and Large Scale Performances, www.streetartsnetwork.org/pages/publications
- Home Office and London Drug Policy Forum guidance 'Safer Clubbing
- ~~British Standard 5588 Part 11 – Code of Practice for shops~~

APPENDIX D – PREVENTION OF PUBLIC NUISANCE

Examples of public nuisance

- Anti-social behaviour including other disturbances caused by persons leaving the premises
- Noise, including amplified music, emanating from the premises including extended areas such as beer gardens
- Noise from vehicles delivering and collecting customers
- Nuisance caused by persons, whether consuming alcohol or not, either waiting or entering, or leaving, or spilling outside the premises
- Litter and refuse storage including fly posters and illegal placards
- Fireworks
- Disturbance and obstruction caused by queuing, either by pedestrian or vehicular traffic
- The inappropriate siting of external lighting, including security lighting which could cause light pollution to neighbouring properties
- Nuisance from persons smoking outside
- Nuisance caused by cigarette smoke
- Cigarette litter

Examples of measures to prevent public nuisance which could be included in Operating Schedules

- Effective management control of noise levels
- Keep music at a reasonable level
- Noise limiters
- The provision of mechanical ventilation and air conditioning systems so as to prevent windows and doors being opened.
- Double glazing
- The provision of lobbies to the main entrance/exit doors so as to prevent the escape of noise causing nuisance to local residents when the doors are opened
- Alarms (staff warning devices) on doors other than the main entrance/exit so as to alert management if the doors are opened
- Notices to request patrons to leave quietly
- Placing used bottles in waste containers at responsible times
- Diverting queues away from neighbouring premises and using Door Supervisors to control queues
- Provision of suitably located smoking areas and cigarette bins
- Any condition which the Licensing Committee would consider to prevent public nuisance

Examples of when it may be necessary to initiate the Review process in respect of public nuisance:-

- When the prevention of public nuisance objective is not being met. (See examples of public nuisance above)
- A failure by the premises licence holder to respond to relevant concerns identified by the Environmental Protection Unit
- When the Police have closed down the premises for a period of up to 24 hours on the grounds of noise nuisance
- When the Council has closed down the premises under the Anti-Social Behaviour Act 2003 on the grounds of noise nuisance
- When an abatement notice under Part 3 of the Environmental Protection Act 1990 has been served by the Council

Publications which should be considered when preparing operating schedules:-

- a) British Standard 4142 1997 - Method for rating industrial noise affecting mixed residential and industrial areas
- b) Good Practice Guide on the Control of Noise from Pubs and Clubs (Institute of Acoustics)
- c) Control of 'Noise' published by the British Beer and Pubs Association

APPENDIX E – PROTECTION OF CHILDREN FROM HARM

Examples of measures to protect children from harm which could be included in Operating Schedules

- Limitations on the hours when children may be present
- Age limitations (below 18)
- Limitations or exclusions when certain activities are taking place
- Requirements for accompanying adult
- Full exclusion of people under 18 from the premises when any licensable activities are taking place

Examples of when it may be necessary to initiate the Review process:

- where there have been instances of serving alcohol to minors, or a reputation for underage drinking
- where sales are made during test purchase operations led by Officers of the Council's Trading Standards Service and the Police.
- with a known association with drug taking or dealing
- where there is a strong element of gambling on the premises
Note: This will not apply to a small number of AWP (Amusement with Prizes) machines
- where entertainment of an adult or sexual nature is commonly provided without appropriate safeguards for the protection of children

APPENDIX F

RESPONSIBLE AUTHORITIES FOR GRANT, VARIATION OR REVIEW OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE WITHIN THE LONDON BOROUGH OF HILLINGDON

The applicant must send the *original* application to the Licensing Service and a complete copy of the application including the form, operating schedule and plan in the prescribed form to each responsible authority as follows:-

<p>The Licensing Service London Borough of Hillingdon Civic Centre 3S/09 High Street Uxbridge UB8 1UW <i>Licensing Authority</i></p>	<p>Chief Officer of Police c/o Northwood Police Station Murray Road Northwood HA6 2YW Attn Sgt I Meens <i>Hillingdon Police Enforcement</i> <i>*for all areas except Heathrow</i></p>
<p>Chief Officer of Police c/o Inspector Robert Harrison ACIT Heathrow Police Station East Ramp Hounslow TW6 2DJ <i>Heathrow Police Enforcement</i> <i>*for Heathrow area only</i></p>	<p>Fire Safety Regulation: North West Area 1 London Fire Brigade 169 Union Street London SE1 0LL <i>Hillingdon Fire Authority</i></p>
<p>Service Manager – Safeguarding Children and Quality Assurance 4S/07 Social Services London Borough of Hillingdon Civic Centre, Uxbridge UB8 1UW <i>A body involved in the Protection of Children from Harm</i></p>	<p>Food, Health and Safety Team London Borough of Hillingdon Civic Centre, Uxbridge UB8 1UW <i>Enforcing Authority for the Health and Safety at Work Act 1974</i></p>
<p>Trading Standards Service London Borough of Hillingdon, Civic Centre, Uxbridge, UB8 1UW <i>Enforcing Authority under the Weights and Measures Act 1985</i></p>	<p>Environmental Protection Unit London Borough of Hillingdon, Civic Centre, Uxbridge UB8 1UW <i>Enforcing Authority for matters relating to Environmental Pollution and Public Nuisance</i></p>
<p>Head of Planning and Enforcement London Borough of Hillingdon, Civic Centre, Uxbridge UB8 1UW <i>The Planning Authority</i></p>	<p>* Health and Safety Executive Rose Court, 2 Southwark Bridge London SE1 9HS <i>Enforcing Authority for The Health and Safety at Work Act 1974</i></p>
<p>* British Waterways, Willow Grange Church Road Watford, Hertfordshire WD17 4QA <i>Navigation Authority for navigable waterways in the London Borough of Hillingdon</i></p>	

* where appropriate

STREET TRADING POLICY

Committee	The Licensing Committee
Officer Contact	Beejal Soni
Papers with report	Appendix A: Draft Rules of Procedure for Urgent Licensing Sub-Committee Hearings on Street Trading Applications

HEADLINE INFORMATION

Purpose of report	To recommend that Members authorise the Licensing Sub Committees to consider and determine all Street Trading applications in accordance with the procedure outlined in Appendix A
Contribution to our plans and strategies	This report contributes to the Council's priorities for a Clean and Attractive borough, its Sustainable Community Strategy and for Opportunities Open to All.;
Financial Cost	Any cost consideration is expected to be absorbed within existing budgets
Relevant Policy Overview Committee	Not Applicable
Ward(s) affected	All

RECOMMENDATION

The Licensing Committee is asked:

- To approve the draft Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications as attached at Appendix A.**

INFORMATION

Reasons for recommendation

On 19 January 2010 the Licensing Committee approved Rules of Procedure to enable its Sub Committees to determine applications for Street Trading Licences.

This report proposes Rules of Procedure to determine certain specified and urgent applications for Street Trading Licences within a shortened time frame

In order to ensure that hearings are conducted in a fair and transparent manner, it is recommended that the procedure detailed in Appendix A of this report is approved.

Alternative options considered / risk management

No alternative decision is available. Any delay in adopting the recommendations will unfairly prejudice traders who, for reasons out of their control, require a determination of the applications within a shorter time frame.

Supporting Information

Part III of the London Local Authorities Act 1990 (as amended) [“the Act”]

A simple definition of Street Trading is any trading activity which takes place on designated streets within 7 metres of the public highway. As per the definition in the legislation, Street Trading activity includes the placing of shop displays and tables and chairs on public property within 7 metres of the highway.

The Act regulates various aspects of the trading activity including enforcement action that may be taken, rules relating to the trading stalls, registration requirements for new application and renewals, mandatory grounds for the rejection of an application and appeal rights of traders. The Act further makes allowances for the issue of temporary and permanent licences. Temporary Licences are valid for a maximum period of 6 months whilst permanent Licences are valid for more than 6 months but less than 3 years.

Cabinet and the Street Scene Enforcement Team have recognised that there are certain situations which arise during any trading period which may require licences to be issued urgently. These situations may include but are not limited to:

1. Applications for charitable street trading;
2. Applications for street trading linked to community events, for example, fairs
3. Applications linked to Shop Front or Tables and Chairs Licences which seek to amend / vary the named Licence Holder;
4. Applications for pitch licences which seek to amend / vary the assistants licensed to the pitch;
5. Any other unopposed application which the relevant Council Officer considers to be urgent.

Any existing trader who fails to submit the a Street Trading application within advised timescales may not use of urgency procedures to determine the application unless the Council Officer is satisfied that the lateness is due to exceptional circumstances.

Rules of Procedure for Licensing Sub-Committee Hearings on Street Trading Applications

Members are requested to consider and approve the attached draft rules of procedure that will apply to all urgent Street Trading Licences.

The relevant points of procedure to note are:

1. Hearings will take place within 72 hours of Democratic Services receiving a report related to an unopposed application for a street trading licence or variation of a street trading licence from the relevant Council Officer.
2. The Council Officer shall detail in the body of the report the reasons for urgency.
3. The quorum for urgent hearings related to Street Trading Applications shall be 2 members of the Licensing Committee; one of whom shall be a chairman of the Licensing Sub-Committee;
4. Hearings will be conducted in the same manner and as per the principles and evidentiary rules currently in place for Licensing Act 2003 hearings;
5. Correspondence advising traders of the outcome of the hearing will be despatched within 5 working days of the hearing;
6. As is permitted by the Licensing Act 2003, Ward Councillors may address the Sub-Committee in their capacity as Ward Councillors or on behalf of an objector/group of objectors on condition that relevant notice is provided to Democratic Services.

The Public Bodies (Admission to Meetings) Act 1960 requires that the urgent meeting of the Licensing Sub-Committee must be conducted in a manner that will permit members of the public to attend the scheduled meetings. A Sub-Committee meeting should therefore be convened.

It will not be possible to determine such urgent applications on papers alone. A public consultation is required prior to introducing an alternative decision making process for urgent applications.



HILLINGDON
LONDON

Part III of the London Local Authorities Act 1990 (as amended) : Street Trading

Rules of Procedure for Urgent Licensing Sub-Committee Hearings

1. SCOPE

- 1.1 These procedure rules apply to Licensing Sub-Committees established by the Licensing Committee of Hillingdon Council acting as Licensing Authority. The rules are subject to Street Trading legislation as contained in Part III of the London Local Authorities Act 1990 (as amended)

- 1.3 The purpose of these procedure rules is to guide the Licensing Sub-Committees through the various stages of hearing urgent applications for street trading licences and to direct the sub-committee hearing a case, and all other parties involved, on the essential procedural requirements to be followed before, during and after a hearing.

- 1.4 Urgent applications to be determined in accordance with this procedure shall include but is not limited to:
 - a. Applications for charitable street trading;
 - b. Applications for street trading linked to community events, for example, fairs
 - c. Applications linked to Shop Front or Tables and Chairs Licences which seek to amend / vary the named Licence Holder;

- d. Applications for pitch licences which seek to amend / vary the assistants licensed to the pitch;
- e. Any other unopposed application which the relevant Council Officer considers to be urgent.

2. SUB-COMMITTEES

Role, Composition and Quorum

- 2.1 All hearings under these procedure rules will be conducted by licensing sub-committees for the sole purpose of determining urgent applications for and in relation to licences as required under Street Trading legislation as contained in Part III of the London Local Authorities Act 1990 (as amended) [the “Act”].
- 2.2 A sub-committee will usually consist of two members drawn from the Licensing Committee. The quorum for hearings and meetings of a sub-committee is two members. Each meeting shall be chaired by a designated Licensing Sub-Committee Chairman.
- 2.3 The Head of Democratic Services, or his representative (usually the Clerk to the Licensing Committee) shall appoint each sub-committee taking into account the need for it to be politically balanced, where possible; the need to involve all members of the Licensing Committee as equally as possible; the need to avoid involving members with an interest in the item to be discussed or members from the ward in which the subject premises is located; and the timescale available for determining applications.
- 2.3 Where hearings are convened using this procedure, Section 100A of the Local Government Act 1972 permits a Sub-Committee meeting to be convened with less than five clear days notice.

Power to adopt own Procedure

- 2.4 Except where otherwise prescribed by the Act, the sub-committee has wide powers to adopt its own procedures as to the general order and manner in which the hearing is to be conducted. For example, it may in any particular case dispense with or modify these Rules of Procedure.

3. BEFORE THE HEARING

Time Limits for Setting up Hearings

3.1 The Act does not prescribe a specific period of time within which an urgent hearing is to be held. It is expected that a hearing will to be commenced within 72 hours of Democratic Services receiving a report related to an unopposed application for a street trading licence / variation of a street trading licence from the relevant Council Officer

Notice Procedures

3.2 In order to hold a fair and transparent hearing, the relevant Council division and parties to proceedings are required to notify each other of relevant information in advance of the hearing as follows:

Notice of Hearing from the Licensing Authority

3.3 Notice shall given as soon as possible by Democratic Services to all parties to the hearing specifying the date, time and place at which the hearing is to be held.

3.4 The Notice of Hearing shall be accompanied by information in writing regarding the following:

- (i) This procedure note, confirmation from the relevant Council Officer that the matter is unopposed and details of the application as provided by the relevant Council Officer.
- (ii) Confirmation that a party may be assisted / represented by a person who does not have to be legally qualified;
- (ii) The consequences if a party:
 - (a) Informs the sub-committee that he/she does not wish to attend or be represented at the hearing, or
 - (b) Fails to inform the relevant committee whether he/she wishes to attend or be represented at the hearing, or

- (c) Informs the sub-committee that he/she wishes to attend or be represented at the hearing, but fails to attend or be represented.
- (iii) the legal requirements imposed on the sub-committee in conducting the hearing.

Street Scene Enforcement Team Officer's Report

3.5 A report on the application to be determined will be presented at the hearing by the relevant Council Officer, which will contain a summary of the application, their technical observations and recommendations.

Consequences of failure to Attend Hearing

3.6 The sub-committee committee may proceed with a hearing in the absence of the Applicant.

3.7 Where the hearing is held in the absence of a party, the relevant committee shall consider at the hearing the application or objections made by that party.

4. THE HEARING

Principles to be applied

4.1 Subject to paragraph 4.2 and 4.3 below, the hearing shall take place in public.

4.2 The sub-committee may direct that all or part of a hearing must be held in private if it is satisfied that it is necessary in all the circumstances of the case, having had regard to:

- (i) any unfairness to a party that is likely to result from hearing in public; and
- (ii) the need to protect as far as possible, the commercial or other legitimate interests of a party.

4.3 Issues that involve personal details such as medical conditions or criminal records will normally be held in private session.

- 4.4 Changes to the membership of the sub-committee will be announced at the beginning of the hearing.
- 4.5 The hearing will take the form of a discussion led by the Chairman of the relevant committee. As the hearing is not a court:
- (i) strict rules of evidence will not apply
 - (ii) comments and questions are to be directed through the sub-committee Chairman.
 - (iii) cross-examination will not be permitted unless the sub-committee considers that cross-examination is required for it to consider the representations or application.
 - (iv) information, discussion and address must be relevant to the Act.
- 4.6 The sub-committee will have regard to the common law rules of natural justice and the Human Rights Act 1998 when exercising its decision-making functions, with particular reference to Article 6 of the European Convention of Human Rights which provides that:
- “...in the determination of civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”.*
- 4.7 A party may be assisted or represented at the hearing by any person whether or not that person is legally qualified. For the avoidance of doubt, a party may be assisted or represented by their Ward Councillor. However, no member sitting on the relevant sub-committee hearing the case can represent any of the interested parties or applicant.

Procedure at the Hearing

- 4.8 The Chairman shall at the beginning of the hearing introduce the members of the sub-committee, invite the parties to identify themselves and then explain to the parties the procedure that the sub-committee intends to follow.
- 4.9 The relevant Council Officer will then be invited by the Chairman to present the relevant details of his/her report (referred to in paragraph 3.11 above), and any other information regarding any details relevant to the application or representations which may have come to light since the report was written. Alternatively, the Chairman may proceed directly to paragraph 4.10 below.

- 4.10 The Applicant (s) or their representatives will normally be invited to address the sub-committee.
- 4.11 Each party shall be entitled to:
- (i) address the sub-committee or call witnesses
 - (ii) provide further information on, or explanation of, any matter on which the licensing authority has indicated that it would want further clarification under paragraph 3.7(vi) above.
 - (iii) subject to paragraph 4.4(iv) above, question any other party or person representing a party on any matter that is relevant to the application, or representation made on the application, where in all the circumstances the sub-committee considers it is appropriate to do so.
- 4.12 The sub-committee will take into consideration documentary or other information in support of the application or objections produced by a party:
- (i) before the hearing; or
 - (ii) at the hearing, with the consent of all other parties attending the hearing.
- 4.13 At any time during the hearing, parties may be asked questions upon their presentation or evidence by any member of the sub-committee.
- 4.14 The parties shall be entitled to make closing submissions and will normally be invited to do in the following order:
- (i) Street Scene Enforcement Officer
 - (ii) Applicant
- 4.15 The sub-committee may require any person who in his/her opinion is behaving in a disruptive manner to leave the hearing and may refuse to permit that person to return or to return upon complying with such conditions as the relevant committee may specify. However, any such person will be allowed to submit any evidence in writing that they proposed to give orally, provided they do so before the end of the hearing.
- 4.16 At the conclusion of evidence and closing submissions, the sub-committee will adjourn into closed session in order to deliberate and reach a decision. During this process only the Legal Adviser and Committee Clerk will remain with them.

4.17 If, during its deliberations, the sub-committee considers that it is necessary for any person present at the hearing to provide further information or clarification on a particular point, the hearing may be re-convened to deal with that issue before reaching a decision.

Role of Legal Advisor

4.18 The sub-committee may seek advice or clarification of any procedural, technical or legal matter from the legal adviser at any time during the course of the hearing.

4.19 The legal adviser will provide the Sub-Committee with any advice it requires properly to perform its functions whether or not the Sub-Committee requested that advice, on:

- (i) questions of law or of mixed fact and law;
- (ii) matters of practice and procedure;
- (iii) the range of options available to the Sub-Committee;
- (iv) Relevant national guidance, policy or codes;
- (v) Other issues relevant to the matter before the Sub-Committee;
- (vi) The appropriate decision-making structure to be applied in any given case.

4.20 The legal adviser may ask questions of witnesses and the parties in order to clarify the evidence and any issues in the case. The legal adviser is under a duty to ensure that every case is conducted fairly.

4.21 The legal adviser will play no part in making findings of fact but may assist the Sub-Committee by reminding it of the evidence taken from his/her own or the committee clerk's notes.

4.22 The legal adviser will assist the Sub-Committee where appropriate as to the formulation of reasons and the recording of those reasons.

5. THE DECISION

Principles to be applied

- 5.1 Each application will be determined on its own merits and the sub-committee shall make its decision based upon the merits of the individual circumstances of each case and its considerations shall be restricted to the evidence placed before it (see paragraph 5.3 and 5.4 below on how evidence will be assessed);
- 5.2 All decisions reached by a sub-committee shall be supported by reasons and a summary of the relevant evidence supporting those reasons. All decisions reached by the sub-committee must comply with the Act.

Time Limit

- 5.3 The relevant sub-committee shall determine the application on the last day on which the hearing was held. So, if the hearing finishes on a Monday, the determination must occur on the same day.
- 5.4 A verbal decision is given to the public at the end of the hearing or at the end of the relevant agenda item.

6. AFTER THE HEARING

Notification of Decision

- 6.1 After the hearing, formal notice of the sub-committee's decision and related information, such as any conditions that may be imposed on the street trading licence, shall be communicated to all parties to the proceedings, in writing, within 5 working days of a verbal decision being given.
- 6.2 All decisions upon an urgent application shall further be published for viewing on the Council's official website.

Agenda Item 10

TOTAL NUMBER OF PREMISES AND PERSONAL LICENCES GRANTED UNDER OFFICER DELEGATED POWERS AND BY LICENSING SUB-COMMITTEES UP TO 31ST MARCH 2010

Premises Licences

Type of Licence	No. issued
Clubs	89
Entertainment Premises	57
Hotels	34
Off Licences	254
Public Houses	152
Restaurants	146
Take Aways	77
Other	13
Total	822

Personal Licences

Personal Licences	1903
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Temporary Event Notices (TENS)

Issued from April 2009 to March 2010	390
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Period April 2009 to March 2010													
New premises licence applications by type and month													
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Totals
Clubs					3			1			1		5
Entertainment prems							1	1	1		1		4
Hotels													0
Off Licences	2	2		2	2	1		2	1	1	1	1	15
Pubs											1		1
Restaurants		1	2	3								1	7
Take Aways		1	1				1						3
Other					1	1							2
Totals	2	4	3	5	6	2	2	4	2	1	4	2	37
Variation and Minor Variation applications by type and month													
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Totals
Clubs				1			2						3
Entertainment prems						1				1	1		3
Hotels							1	1		1	2		5
Off Licences	1	1	1		2	1		1			2		9
Pubs		1	1	1			3		1	1	1		9
Restaurants				2		2		2			1		7
Take Aways							2						2
Other													0
Totals	1	2	2	4	2	4	8	4	1	3	7	0	38

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Date Determined	Premises	Applicant	Licensable Activities	Operating Hours
12-Jan-10	Crown Conerence Centre, Hall 2, Long Drive,	Jasbir Singh Johal	Sale of Alcohol	0000-2400 each day
New premises	<i>New premises licence</i>		Regulated Entertainment	
			Late Night Refreshment	
22 January 2010	Brunel University - Antonin Artaud Building	Brunel University	Regulated Entertainment	0800 - 2400 each day
Minor Variation	<i>Removal of sale of alcohol from licence</i>			
1-Feb-10	Sunrise Plaza, Hayes Gate House, 27-33 Uxbridge Road,	Sunrise Plaza Banqueting Ltd	Sale of Alcohol	0900 - 0300 each day
New premises	<i>New premises licence</i>		Regulated Entertainment	
			Late Night Refreshment	
9-Feb-10	Sheraton Skyline Hotel, Bath Road, Hayes, UB3	HHR UK TRS Ltd	Sale of Alcohol	0000 - 2400 each day
Minor Variation	<i>Removal of conditions relating to 18R adult films</i>		Regulated Entertainment	
			Late Night Refreshment	
09 February 2010	Vishal News, 4 Clayton Road, Hayes	Mr R Patel	Sale of alcohol	0700 - 2300 each day
New premises	<i>New premises licence</i>			
18-Feb-10	Tesco Store Ltd, 734-736 Uxbridge Road, Hayes	Tesco Stores Ltd	Sale of alcohol	0600 - 2300 each day
New premises	<i>New premises licence</i>			
18-Feb-10	Harefield News & Post Office	Mr J Thuruajah	Sale of alcohol	0800 - 2300 each day
Minor Variation	<i>Alteration of internal layout</i>			
22-Feb-10	The Grapes, Uxbridge Road, Hayes	Whitbread Restaurants Ltd	Sale of Alcohol	1000 - 0100 each day
Minor Variation	<i>Alteration of internal layout</i>		Regulated Entertainment	
			Late Night Refreshment	
25-Feb-10	Londis, 3 Gloucester Parade, Bourne Avenue	Jagjit Gaba	Sale of alcohol	0800 - 2300 each day
New premises	<i>New premises licence to merge two shop units into one</i>			
25-Feb-10	Broadway Food & wine, 7 Broadway Parade, Coldharbour Lane	Mr Thiruchelvan	Sale of alcohol	0700 - 2400 each day
Variation	<i>Variation to internal layout</i>			
1-Mar-10	All Saints Church Hall, Long Lane, Hillingdon	Parochial Church Council	Regulated Entertainment	0800 - 0030 each day
New premises	<i>New premises licence</i>		Late Night Refreshment	

4-Mar-10	Hilton London Heathrow Hotel, Terminal Four, Heathrow	Adda Hotels Ltd	Sale of Alcohol	0000 - 2400 each day
Minor variation	<i>Alteration of internal layout</i>		Regulated Entertainment	
			Late Night Refreshment	
9-Mar-10	Compass Theatre, Glebe Avenue, Ickenham	Arts Service, LBH	Sale of Alcohol	0900 - 2330 Each day
Minor Variation	<i>Alteration of restrictive conditions</i>		Regulated Entertainment	
			Late Night Refreshment	
22-Mar-10	Hillingdon Golf Club, 18 Dorset Way, Hillingdon	Hillingdon Golf Club	Sale of Alcohol	0700 - 0100 each day
New premises	<i>New premises licence</i>		Regulated Entertainment	
			Late Night Refreshment	
12-Apr-10	The Gamboge, 7 New Broadway, Uxbridge Road	Bikan Investments Ltd	Sale of Alcohol	0900 - 0200 each day
New Premises	<i>New premises licence</i>		Regulated Entertainment	
			Late Night Refreshment	

A list of Licensing Sub-Committee decisions from January to April 2010

Date Determined	Premises	Reason for Hearing	Decision
26-Jan-10	De Burgh Arms, Station Approach, West Drayton <i>Variation to include the performance of nude/topless dance</i>	Representations received from local residents, John Randall MP, Local Safeguarding Children Board, and Metropolitan Police Service. All on Crime & Disorder/Public nuisance grounds.	Variation refused
1-Apr-10	Heathrow Inn, 140 Coldharbour Lane, Hayes <i>Variation to include live music and dancing</i>	Representations received from Metropolitan Police Service, Cllr. Lynne Allen and the Hillingdon Housing Supply Team on public nuisance grounds.	Variation refused
